

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

CITY OF PELICAN

Pelican, Alaska

Respondent.

DOCKET NO. CWA-10-2022-0031

CONSENT AGREEMENT

Proceedings Under Section 309(g) of the Clean
Water Act, 33 U.S.C. § 1319(g)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g).

1.2. Pursuant to CWA Section 309(g)(1)(A), 33 U.S.C. § 1319(g)(1)(A), EPA is authorized to assess a civil penalty against any person that has violated CWA Section 301, 33 U.S.C. § 1311, and/or any permit condition or limitation in a permit issued under CWA Section 402, 33 U.S.C. § 1342.

1.3. CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of Class II civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed \$22,584 per day for each day during which the violation continues, up to a maximum

penalty of \$282,293. *See also* 85 Fed. Reg. 83820 (December 23, 2020) (2021 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to CWA Section 309(g)(1)(A) and (g)(2)(B), 33 U.S.C. § 1319(g)(1)(A) and (g)(2)(B), and in accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and the City of Pelican, Alaska (Respondent) agrees to issuance of, the Final Order attached to this Consent Agreement.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), execution of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (“Complainant”).

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CWA, together with the specific provisions of the CWA and implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

Statutory and Regulatory Framework

3.1. As provided in CWA Section 101(a), 33 U.S.C. § 1251(a), the objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

3.2. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person from any point source into waters of the United States except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

3.3. CWA Section 502(12), 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

3.4. CWA Section 502(6), 33 U.S.C. § 1362(6), defines a “pollutant” to include, *inter alia*, dredged spoil, rock, sand, chemical wastes, and industrial wastes.

3.5. CWA Section 502(14), 33 U.S.C. § 1362(14), defines “point source” to mean any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel or conduit from which pollutants are or may be discharged.

3.6. CWA Section 502(5), 33 U.S.C. § 1362(5), defines “person” as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State or any interstate body.”

3.7. CWA Section 502(7), 33 U.S.C. § 1362(7), defines navigable waters as “waters of the United States. In turn, “waters of the United States” is defined to include, *inter alia*, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; tributaries to such waters; and wetlands adjacent to the foregoing waters. 40 C.F.R. § 120.2 (June 22, 2020); 40 C.F.R. § 122.2 (1993).

3.8. CWA Section 402(a), 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of any pollutant into the waters of the United States upon such specific terms and conditions as the Administrator may prescribe.

General Allegations

3.9. Respondent is a municipality and is therefore a “person” under CWA Section 502(5), 33 U.S.C. § 1362(5).

3.10. At all times relevant to this action, Respondent owned and/or operated the City of Pelican Wastewater Treatment Facility (the “Facility”) at 159 Breakwater Road in Pelican, Alaska.

3.11. On September 27, 1985, EPA issued NPDES Permit No. AK-004353-2, which became effective on October 28, 1985, expired on October 28, 1990, and was administratively extended pursuant to 40 C.F.R. § 122.6 (the “Permit”). The Permit authorizes, subject to its terms and conditions, the discharge of municipal wastewater containing pollutants.

3.12. At all times relevant to this action, Respondent was authorized to discharge wastewater containing pollutants from the Facility pursuant to the Permit.

3.13. On June 7, 2017, an authorized representative of EPA conducted a compliance inspection of the Facility to determine Respondent’s compliance with the Permit and CWA Sections 301 and 402, 33 U.S.C. § 1311 and 1342.

3.14. On December 16, 2020, EPA issued an Information Request to Respondent pursuant to CWA Section 308, 33 U.S.C. § 1318. Respondent provided its response to that Information Request in March 2021.

3.15. At all times relevant to this action, the Facility discharged pollutants from an outfall which discharges into Lisianski Inlet. The outfall is a “point source” under CWA Section

502(14), 33 U.S.C. § 1362(14).

3.16. The Lisianski Inlet is subject to the ebb and flow of the tide and is a “navigable water” under CWA Section 502(7), 33 U.S.C. § 1362(7). Accordingly, Lisianski Inlet is a “water of the United States” within the meaning of 40 C.F.R. § 120.2 (June 22, 2020) and 40 C.F.R. § 122.2 (1993).

3.17. Respondent has discharged pollutants from a point source into waters of the United States at the Facility, within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).

Violations

3.18. As described below, from February 2017 to March 2021, Respondent violated CWA Section 301, 33 U.S.C. § 1311, and the conditions and/or limitations of its Permit.

Count 1: Biochemical Oxygen Demand Effluent Exceedances

3.19. Part I.A.1.d of the Permit requires Respondent to comply with a Biochemical Oxygen Demand (5 day) (BOD₅) monthly average effluent limitation of 190 milligrams per liter (mg/l) discharged from the Facility.

3.20. EPA alleges that Respondent violated Part I.A.1.d of the Permit by exceeding the BOD₅ monthly average effluent limitation 334 times at the Facility from September 2017 until May 2020. Violations of the Permit are enforceable under CWA Section 309(g), 33 U.S.C. § 1319(g).

Count 2: Failure to Monitor Fecal Coliform Bacteria

3.21. Part I.A.2.a and Part I.A.2.e of the Permit require Respondent to monitor fecal coliform bacteria discharged from the Facility three times per year, once during each of the months of April, June, and August.

3.22. EPA alleges that Respondent violated Part I.A.2.a and Part I.A.2.e of the Permit by failing to monitor fecal coliform bacteria discharged from the Facility in six months between

April 2017 and August 2018. Violations of the Permit are enforceable under CWA Section 309(g), 33 U.S.C. § 1319(g).

Count 3: Failure to Report Sludge Depth of Septic Tank

3.23. Part I.A.2.i of the Permit requires Respondent to measure and report as part of the discharge monitoring reports the sludge depth in the septic tank at the Facility at a minimum frequency of once every four months.

3.24. EPA alleges that Respondent violated Part I.A.2.i of the Permit by failing to report as part of the discharge monitoring reports the sludge depth in the septic tank at the Facility in five months between August 2017 and December 2020. Violations of the Permit are enforceable under CWA Section 309(g), 33 U.S.C. § 1319(g).

Count 4: Failure to Report Noncompliance

3.25. Part II.J of the Permit requires Respondent to report instances of noncompliance with the Permit at the time that monitoring reports are submitted for the Facility.

3.26. EPA alleges that Respondent violated Part II.J of the Permit by failing to report noncompliance in monitoring reports submitted in sixteen months between August 2017 – December 2020. Violations of the Permit are enforceable under CWA Section 309(g), 33 U.S.C. § 1319(g).

Count 5: Failure to Maintain Septic Tank Valves

3.27. Part III.E of the Permit requires Respondent to properly operate and maintain all facilities and systems of the treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the Facility's Permit.

3.28. EPA alleges that Respondent violated Part III.E of the Permit by failing to properly maintain septic tank valves from February 2017 – March 2021 at the Facility.

Violations of the Permit are enforceable under CWA Section 309(g), 33 U.S.C. § 1319(g).

Count 6: Failure to Maintain Proper Condition of Septic Tank Coating and Insulation

3.29. Part III.E of the Permit requires Respondent to properly operate and maintain all facilities and systems of the treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the Facility's Permit.

3.30. EPA alleges that Respondent violated Part III.E of the Permit by failing to properly maintain septic tank insulation and waterproof coating from February 2017 – March 2021 at the Facility. Violations of the Permit are enforceable under CWA Section 309(g), 33 U.S.C. § 1319(g).

Count 7: Failure to Maintain Outfall

3.31. Part III.E of the Permit requires Respondent to properly operate and maintain all facilities and systems of the treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the Facility's Permit.

3.32. EPA alleges that Respondent violated Part III.E of the Permit by failing to properly maintain the outfall, resulting in a clog in June 2020 at the Facility. Violations of the Permit are enforceable under CWA Section 309(g), 33 U.S.C. § 1319(g).

Count 8: Failure to Use Standard Sludge Depth Measuring Method

3.33. Part III.E of the Permit requires Respondent to properly operate and maintain all facilities and systems of the treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the Facility's Permit.

3.34. EPA alleges that Respondent violated Part III.E of the Permit by failing to

properly use a standard method of sludge depth monitoring from February 2017 – March 2021 at the Facility. Violations of the Permit are enforceable under CWA Section 309(g), 33 U.S.C. § 1319(g).

Count 9: Failure to Comply with the Permit

3.35. Part III.A. of the Permit requires that the permittee comply with all conditions of this Permit and that any Permit noncompliance constitutes a violation of the CWA.

3.36. EPA alleges that Respondent violated Part III.A of the Permit by failing to comply with all conditions of the Permit from February 2017 – March 2021. Violations of the Permit are enforceable under CWA Section 309(g), 33 U.S.C. § 1319(g).

Count 10: Failure to Mitigate Discharges

3.37. Part III.D of the Permit requires Respondent to take all reasonable steps to minimize or prevent any discharge in violation of the Permit which has a reasonable likelihood of adversely affecting human health or the environment.

3.38. EPA alleges that Respondent violated Part III.D of the Permit by failing to perform routine operation and maintenance from February 2017 – March 2021 at the Facility resulting in discharges that had a reasonable likelihood of adversely affecting human health or the environment. Violations of the Permit are enforceable under CWA Section 309(g), 33 U.S.C. § 1319(g).

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations contained in this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), EPA has taken

into account “the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.” After considering all of these factors as they apply to this case, EPA has determined that an appropriate penalty to settle this action is \$12,000.

4.4. Respondent consents to the assessment of the civil penalty set forth in Paragraph 4.3 and agrees to pay the total civil penalty within thirty (30) days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check or certified check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check, or proof of other payment method described in Paragraph 4.5, on the Regional Hearing Clerk and EPA Region 10 Compliance Officer at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
R10_RHC@epa.gov

Rick Cool, Compliance Officer
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
cool.richard@epa.gov

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

a. Interest. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

b. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III above other than those alleged violations that will be corrected in accordance with Administrative Compliance Order on Consent, Docket Number: CWA-10-2021-0148.

4.11. Except as described in Subparagraph 4.7.b., above, each party shall bear its own costs in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

DATED:

FOR RESPONDENT:

PATRICIA PHILLIPS
Mayor
City of Pelican, Alaska

FOR COMPLAINANT:

EDWARD J. KOWALSKI
Director
Enforcement and Compliance Assurance Division
EPA Region 10

