

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

CITY OF TENSED

Tensed, Idaho

Respondent.

DOCKET NO. CWA-10-2022-0128

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 \$23,989 per day for each day during which the violation continues, up to a maximum penalty of \$299,857. *See also* 87 Fed. Reg. 1676 (January 12, 2022) (2022 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 Tensed, Idaho (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. § 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 Tensed Wastewater Treatment Facility (the “Facility”) at 8761 Branch Road in Tensed, Idaho.

3.11. On February 5, 2004, EPA issued NPDES Permit No. ID0025101, which became effective on April 4, 2004, and was administratively extended pursuant to 40 C.F.R. § 122.6 (the “Permit”). On August 12, 2020, the Permit was reissued with an effective date of October 1, 2020 (the “2020 Permit”). The Permit and 2020 Permit authorize, subject to 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 or the 2020 Permit.

3.13. On August 26, 2016, 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 April 27, 2017, EPA issued a Notice of Violation to Respondent.

3.15. On September 24, 2020, EPA conducted an interview with Respondent following an audit of the Facility’s records.

3.16. At all times relevant to this action, the Facility discharged pollutants from an outfall which discharges into Hangman Creek. The outfall is a “point source” under CWA Section 502(14), 33 U.S.C. § 1362(14).

3.17. Hangman Creek is a perennial tributary of the Spokane River. The Spokane River is a perennial tributary to the Columbia River. The Columbia River is a navigable waterway

under Section 10 of the Rivers and Harbors Act, 33 U.S.C. § 403, and is a “navigable water” under CWA Section 502(7), 33 U.S.C. § 1362(7). Accordingly, Hangman Creek is a “water of the United States” within the meaning of 40 C.F.R. § 122.2 (1993).

3.18. 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

3.19. As described below, from January 2018 to November 2021, Respondent violated CWA Section 301, 33 U.S.C. § 1311, and the conditions and/or limitations of its Permit and 2020 Permit.

Count 1: Total Suspended Solids Effluent Limitation Exceedances

3.7. Part I.A.1 of the Permit required and Part I.B1 of the 2020 Permit requires Respondent to comply with a Total Suspended Solids (TSS) monthly average effluent limitation of 8 pounds per day (lbs/day) or 30 milligrams per liter (mg/l) discharged from the Facility and weekly average effluent limitation of 11 lbs/day or 45 mg/l.

3.8. EPA alleges that Respondent violated Part I.A.1 of the Permit and Part I.B.1 of the 2020 Permit by exceeding the TSS monthly average effluent limitation at the Facility in May 2018, January 2019, April 2019, December 2019, March 2021, and April 2021 and by exceeding the TSS weekly average effluent limitation at the Facility in May 2018, April 2019, March 2021, and April 2021. Violations of the Permit and the 2020 Permit are enforceable under CWA Section 309(g), 33 U.S.C. § 1319(g).

Count 2: Total Residual Chlorine Effluent Limitation Exceedances

3.9. Part I.A.1 of the Permit required and Part I.B.1 of the 2020 Permit requires Respondent to comply with a Total Residual Chlorine (Chlorine) average monthly and maximum

daily effluent limitation of 0.1 mg/l with a loading at or below 0.025 lbs/day discharged from the Facility.

3.10. EPA alleges that Respondent violated Part I.A.1 of the Permit and Part I.B.1 of the 2020 Permit by exceeding the Chlorine average monthly effluent limitation at the Facility in January 2019, April 2019, December 2019, and March 2021 and by exceeding the Chlorine maximum daily effluent limitation at the Facility multiple times in January 2019, April 2019, and multiple times in December 2019. Violations of the Permit and the 2020 Permit are enforceable under CWA Section 309(g), 33 U.S.C. § 1319(g).

Count 3: E.coli Bacteria Effluent Limitation Exceedances

3.11. Part I.A.1 of the Permit required Respondent to comply with an E.coli Bacteria (E.coli) average monthly effluent limitation of 126/100 mg/l and an instantaneous maximum effluent limitation of 576/100 mg/l discharged from the Facility.

3.12. EPA alleges that Respondent violated Part I.A.1 of the Permit by exceeding the E.coli average monthly effluent limitation at the Facility in April 2019 and by exceeding the E.coli instantaneous maximum effluent limitation at the Facility in April 2019. Violations of the Permit are enforceable under CWA Section 309(g), 33 U.S.C. § 1319(g).

Count 4: Biochemical Oxygen Demand Effluent Limitation Exceedance

3.13. Part I.A.1 of the Permit required Respondent to comply with a Biochemical Oxygen Demand (BOD5) average monthly effluent limitation of 8 lbs/day discharged from the Facility.

3.14. EPA alleges that Respondent violated Part I.A.1 of the Permit by exceeding the BOD5 average monthly effluent limitation at the Facility in April 2019. Violations of the Permit are enforceable under CWA Section 309(g), 33 U.S.C. § 1319(g).

Count 5: Failure to Adequately and Timely Summarize Monitoring Results

3.15. Part II.B.1 of the Permit required Respondent to summarize monitoring results each month using Discharge Monitoring Reports (DMRs) and requires Respondent to submit those DMRs monthly, postmarked by the 15th day of the following month.

3.16. EPA alleges that Respondent violated Part II.B.1 of the Permit by failing to submit timely DMRs for the January 2018 and March 2018 monitoring periods for the Facility and by failing to adequately summarize monitoring results for the March 2018, May 2018, October 2018, November 2018, January 2019, April 2019, May 2019, June 2019, and March 2020 DMRs for 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 Sample Preservation Temperature

3.17. Part II.C of the Permit required that monitoring be conducted according to test procedures approved under 40 C.F.R. Part 136. 40 C.F.R. Part 136, Table II, requires the E. coli sample preservation temperature be less than 10 °C and the sample preservation temperature for all other parameters be less than or equal to 6 °C.

3.18. EPA alleges that Respondent violated Part II.C of the Permit by failing to properly maintain required sample preservation temperatures for samples at the Facility during multiple events in May 2018, in January 2019, during multiple events in April 2019, in multiple events in October 2019, and in December 2019. Violations of the Permit are enforceable under CWA Section 309(g), 33 U.S.C. § 1319(g).

Count 7: Failure to Develop Quality Assurance Plan

3.19. Part II.B of the 2020 Permit requires Respondent to develop a Quality Assurance Plan for the Facility.

3.20. EPA alleges that Respondent violated Part II.B of the 2020 Permit by failing to develop a Quality Assurance Plan for the Facility. Violations of the 2020 Permit are enforceable under CWA Section 309(g), 33 U.S.C. § 1319(g).

Count 8: Failure to Update Operations and Maintenance Plan

3.21. Part II.A of the 2020 Permit requires Respondent to update the Facility's Operations and Maintenance Plan to reflect any changes at the Facility.

3.22. EPA alleges that Respondent violated Part II.A of the 2020 Permit by failing to update the Facility's Operations and Maintenance Plan to reflect changes at the Facility. Violations of the 2020 Permit are enforceable under CWA Section 309(g), 33 U.S.C. § 1319(g).

Count 9: Failure to Develop Emergency Response and Public Notification Plan

3.23. Part II.F of the 2020 Permit requires Respondent to develop an Emergency Response and Public Notification Plan for the Facility.

3.24. EPA alleges that Respondent violated Part II.F of the 2020 Permit by failing to develop an Emergency Response and Public Notification Plan for the Facility. Violations of the 2020 Permit are enforceable under CWA Section 309(g), 33 U.S.C. § 1319(g).

Count 10: Failure to Develop Facility Plan

3.25. Part II.D of the 2020 Permit requires Respondent to develop a Facility Plan for the Facility.

3.26. EPA alleges that Respondent violated Part II.D of the 2020 Permit by failing to develop a Facility Plan for the Facility. Violations of the 2020 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 \$2,500.

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

Steven Potokar, Compliance Officer
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
potokar.steven@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 thirty (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 they are 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-10-2022-0127.

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:

FOR RESPONDENT:

RICK KEAVENY
Mayor
City of Tensed, Idaho

DATED:

FOR COMPLAINANT:

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