

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: DOCKET NO. CWA-10-2023-0131

TOWN OF COULEE DAM CONSENT AGREEMENT

Town of Coulee Dam, Washington

Respondent. 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 \$25,847 per day for each day during which the violation continues, up to a maximum penalty of \$323,081. *See also* 88 Fed. Reg. 986 (January 6, 2023) (2023 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 Town of Coulee Dam (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 redelegate this authority to the Director of the Enforcement and Compliance Assurance Division, EPA Region 10.

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 101(a)(2), 33 U.S.C. § 1251(a)(1) establishes a “national goal that the discharge of pollutants into the navigable waters be eliminated by 1985.”

3.3. 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.

3.4. CWA § 502(7) defines Navigable Waters as “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

3.5. CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), authorizes EPA to assess administrative penalties against any person who violates CWA Section 301, 33 U.S.C. § 1311 or any condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

General Allegations

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

3.7. Respondent owns and operates a wastewater treatment plant located at 101 Beaver Drive, Coulee Dam, WA 99116 (Facility) that is responsible for treating wastewater from domestic, industrial, and commercial sources.

3.8. The Facility discharges treated wastewater from Outfall 001 throughout the year to the Columbia River.

3.9. The Columbia River in the vicinity of the Facility is impaired for dissolved oxygen, total dissolved gas, and temperature. Its beneficial uses include water supply, stock watering, fish and shellfish, wildlife habitat, ceremonial and religious water use, recreation, commerce, and navigation.

3.10. The Facility’s collection system consists of a separate sanitary sewer system.

3.11. The Facility serves a resident population consisting of approximately 1,500 people from the Town of Coulee Dam, the Town of Elmer City, and the U.S. Bureau of Reclamation Grand Coulee Dam complex.

3.12. The Facility sits north of Grand Coulee Dam, between State Route 155 and the Columbia River, on land leased from United State Bureau of Reclamation and lies within the exterior boundaries of the Confederated Tribes of the Colville Reservation (Colville Tribes).

3.13. Outfall 001 is a point source as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

3.14. The Facility's effluent is a pollutant as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

3.15. The Columbia River is a traditional Navigable Water under Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

3.16. The Facility is a point source that discharges pollutants into a navigable water of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

3.17. Respondent's pollutant discharge from the Facility requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

3.18. On October 18, 2017, EPA Region 10 issued NPDES Permit Number WA0020281 to Respondent for its discharges from the Facility to the Columbia River. NPDES Permit Number WA0020281 became effective on December 1, 2017 and expired and was administratively renewed on November 30, 2022.

3.19. Respondent operated at all relevant times under the conditions and limitations of NPDES Permit Number WA0020281.

3.20. According to NPDES Permit Number WA0020281, Outfall 001 is located at 47° 58' 48" North, 118° 58' 48" West.

3.21. On November 20, 2019, an EPA inspector conducted a compliance evaluation of the Facility due to Respondent's failure to submit discharge monitoring reports (DMRs).

3.22. During a tour of the Facility, Respondent showed the inspector that Respondent was finishing a major upgrade to account for the age of the existing plant and for population growth. The new treatment plant would treat up to 194,000 gallons per day, would have an aeration basin for primary and secondary clarification, and would perform disinfection with ultraviolet light.

3.23. Respondent submitted its permit renewal application on November 30, 2022.

Violations

3.24. As described below, over the past five years Respondent violated CWA Section 301, 33 U.S.C. § 1311, and the conditions of NPDES Permit Number WA0020281.

Violation 1 – Failure to Submit Notice of New Plant Operation

3.25. NPDES Permit Number WA0020281 Part I, Section B, Paragraph 9 required Respondent to submit written notice to EPA and the Colville Tribes when its new plant began operation.

3.26. Respondent informed EPA in January 2023 that the new plant began operation on May 2, 2019.

3.27. Respondent submitted notice of new plant operations to EPA on January 19, 2023.

3.28. Respondent did not submit the required notice to the Colville Tribes.

3.29. Respondent's late notice of new plant operations and non-notice to the Colville Tribes each constitute one effluent limitation and monitoring violation.

Violation 2 – Failure to Submit Notice of Old Plant Closure to EPA on Time

3.30. NPDES Permit Number WA0020281 Part I, Section B, Paragraph 10 required Respondent to submit written notice to EPA and the Colville Tribes when its then-existing plant went off-line.

3.31. Respondent informed EPA in January 2023 that the old plant went off-line on May 2, 2019.

3.32. Respondent submitted notice that the old plant went off-line to EPA on January 19, 2023.

3.33. Respondent did not submit the required notice to the Colville Tribes.

3.34. Respondent's late notice of the old plant going off-line and non-notice to the Colville Tribes each constitute one effluent limitation and monitoring violation.

Violation 3 – Failure to Submit Notice of Operations and Maintenance Plan Development and Implementation to EPA on Time

3.35. NPDES Permit Number WA0020281 Part II, Section A requires Respondent to submit written notice to EPA and the Colville Tribes that the Operations and Maintenance Plan has been developed and implemented within 180 days of the effective date of the permit, or by May 30, 2018.

3.36. Respondent submitted written notice that it had developed its Operations and Maintenance Plan to EPA on January 19, 2023.

3.37. Respondent did not submit the required notice to the Colville Tribes.

3.38. Respondent's late notice of the development and implementation of its Operations and Maintenance Plan, and non-notice to the Colville Tribes each constitute one Operations and Maintenance Plan violation.

Violation 4 – Failure to Submit Notice of Quality Assurance Plan Development and Implementation to EPA on Time

3.39. NPDES Permit Number WA0020281 Part II, Section B requires Respondent to submit written notice to EPA and the Colville Tribes that the Quality Assurance Plan has been developed and implemented within 180 days of the effective date of the permit, or by May 30, 2018.

3.40. Respondent submitted written notice that it had developed its Quality Assurance Plan to EPA on February 22, 2023.

3.41. Respondent did not submit the required notice to the Colville Tribes.

3.42. Respondent's late notice of the development and implementation of its Quality Assurance Plan, and non-notice to the Colville Tribes each constitute one Quality Assurance Plan violation.

Violation 5 – Failure to Submit Industrial User List to EPA on Time

3.43. NPDES Permit Number WA0020281 Part II, Section D, Paragraph 3 requires Respondent to develop and maintain a master list of the industrial users introducing pollutants to the Facility and specifies what information the master list must contain.

3.44. NPDES Permit Number WA0020281 Part II, Section D, Paragraph 4 requires Respondent to submit the above list, along with a summary description of the sources and information gathering methods used to develop this list, to EPA within two years following the effective date of the NPDES permit, or by December 1, 2019.

3.45. Respondent submitted its industrial user list electronically on January 27, 2023.

3.46. Because Respondent submitted its industrial user list electronically, Paragraph 4 also required Respondent to add the Colville Tribes as a recipient.

3.47. Respondent's late industrial user list and non-notice to the Colville Tribes each constitute one industrial waste management violation.

Violation 6 – Failure to Submit Notice of Emergency Response and Public Notification Plan to EPA on Time

3.48. NPDES Permit Number WA0020281 Part II, Section E, Paragraph 2 requires Respondent to submit written notice to EPA and the Colville Tribes that the Emergency Response and Public Notification Plan has been developed and implemented within 180 days of the effective date of the permit, or by May 30, 2018.

3.49. Respondent submitted written notice that it had developed its Emergency Response and Public Notification Plan to EPA on January 19, 2023.

3.50. Respondent did not submit the required notice to the Colville Tribes.

3.51. Respondent's late notice of the development and implementation of its Emergency Response and Public Notification Plan, and non-notice to the Colville Tribes each constitute one Emergency Response and Public Notification Plan violation.

Violation 7 – Failure to Properly Report Monitoring Results to EPA

3.52. NPDES Permit Number WA0020281 Part III, Section B requires Respondent to submit monitoring data and all other reports electronically using NetDMR.

3.53. Part III, Section B, Paragraph 1 requires Respondent to submit monitoring data electronically to EPA no later than the 15th day of the month following the completed time period.

3.54. Part I, Section B references Table 1 for the parameters that Respondent must include in its DMRs. Each DMR must report ten parameters: biochemical oxygen demand, BOD₅ percent removal, total suspended solids, TSS percent removal, *Enterococci* bacteria, fecal coliform bacteria, total residual chlorine, pH, narrative limitations, and total ammonia. Therefore, each DMR that is not submitted on the fifteenth day of the subsequent month constitutes ten violations of NPDES Permit Number WA0020281.

3.55. Respondent's failure on at least 51 occasions between December 2018 and December 2022 to timely submit monitoring data in violation of Part III, Section B of its NPDES permit constitute 510 Parameter Reporting violations.

Violation 8 – Failure to Properly Sign and Certify all DMRs

3.56. NPDES Permit Number WA0020281 Part III, Section B, Paragraph 2 requires Respondent to sign and certify all DMRs, and all other reports, in accordance with the requirements of Part V Section E of the permit.

3.57. Part V Section E, Paragraph 2 requires, *inter alia*, that Respondent's reports must be signed by a responsible corporate officer or that officer's duly authorized representative.

3.58. Part V Section E, Paragraph 4 requires that any person signing, *inter alia*, a DMR must make a certification specified in that paragraph.

3.59. Over the statutory period, Respondent submitted 59 DMRs that were not signed and certified in accordance with permit requirements.

3.60. Respondent's improperly certified DMRs constitute 59 Signature and Certification violations.

Violation 9 – Failure to Submit DMRs to the Colville Tribes

3.61. NPDES Permit Number WA0020281 Part III, Section B, Paragraph 3 requires Respondent to submit copies of the DMRs and other reports to the Colville Tribes.

3.62. Respondent has submitted no DMRs to the Colville Tribes.

3.63. As at Paragraph 3.54, *supra*, Respondent is to submit reports for ten parameters in its DMRs. Therefore, each DMR that was not submitted to the Colville Tribes on the fifteenth day of the subsequent month constituted ten violations of NPDES Permit Number WA0020281.

3.64. Respondent's 60 unsubmitted DMRs over the statutory period constitute 600 Parameter Reporting violations.

Violation 10 – Failure to Submit Application for Permit Renewal to EPA on Time

3.65. NPDES Permit Number WA0020281 Part V, Section B requires Respondent to submit a new application at least 180 days before the expiration date of November 30, 2022, or June 3, 2022.

3.66. Respondent submitted its application for a new permit on November 30, 2022, in violation of Part V, Section B of its NPDES Permit.

Violation 11 – Improper Location Data for Outfall 001

3.67. The Code of Federal Regulations governing applications for permits requires applicants to provide latitude and longitude, to the nearest second, for each outfall as applicable. 40 C.F.R. § 122.21(j)(3)(i)(C).

3.68. NPDES Permit Number WA0020281 identifies the latitude and longitude of Outfall 001 as 47° 58' 48" North, 118° 58' 48" West, which appears to be about 3,500 feet from the actual discharge point.

3.69. Outfall 001 discharges at roughly 47° 58' 15" North, 118° 58' 51" West.

3.70. Respondent's inaccurate permit location for Outfall 001 violates 40 C.F.R. § 122.21(j)(3)(i)(C).

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 considered "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 these factors as they apply to this case, EPA has determined that an appropriate penalty to settle this action is \$70,881.00.

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 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://www.epa.gov/financial/makepayment>. Payments made by check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

Address format for standard delivery (no delivery confirmation requested):

U.S. Environmental Protection Agency
P.O. Box 979077
St. Louis, MO 63197-9000

Address format for signed receipt confirmation (FedEx, DHL, UPS, USPS certified, registered, etc):

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

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
R10_RHC@epa.gov

Kyle Masters
U.S. Environmental Protection Agency
Region 10
Masters.Kyle@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.

4.7.1. **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 contained herein, 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.

4.7.2. **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 expenses 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.

4.11. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and 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:

08-21-2023

FOR RESPONDENT:



ROBERT POCH

Mayor

Town of Coulee Dam

FOR COMPLAINANT:

EDWARD J. KOWALSKI

Director

Enforcement and Compliance Assurance Division

EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

TOWN OF COULEE DAM

Town of Coulee Dam, WA

Respondent.

DOCKET NO. CWA-10-2023-0131

FINAL ORDER

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

1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.

2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act (CWA) for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

4. This Final Order shall become effective upon filing.

IT IS SO ORDERED.

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10