

BEFORE THE STATE OF ALASKA

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the matter of: )  
STATE OF ALASKA, DEPARTMENT OF )  
ENVIRONMENTAL CONSERVATION, )  
 )  
Complainant, ) **COMPLIANCE ORDER BY**  
 ) **CONSENT**  
vs. )  
 )  
CITY AND BOROUGH OF JUNEAU )  
 )  
Respondent. )

\_\_\_\_\_  
ADEC Case No. 2018-R0090  
Enforcement Tracking No. 18-R0090-50-0002

**A COPY OF THIS ORDER (INCLUDING APPENDICES) MUST BE KEPT AT  
THE CITY AND BOROUGH OF JUNEAUS' FACILITY AND MADE  
AVAILABLE TO ADEC UPON REQUEST**

WHEREAS, the State of Alaska, Department of Environmental Conservation ("ADEC") and City and Borough of Juneau ("Respondent" or "Parties" collectively), desire to resolve and settle a disputed matter in order to avoid the uncertainty and expense of a formal civil enforcement proceeding,

NOW, THEREFORE, the Parties agree as follows:

**I. JURISDICTION AND VENUE**

1. This Compliance Order by Consent ("Order") is entered into under the authority granted to ADEC by AS 46.03.020, AS 46.03.760(e), AS 46.03.765, AS 46.03.850, and Title 18 of the Alaska Administrative Code (AAC), including but not limited to 18 AAC 95.160; and under the settlement authority of the Attorney General under AS 44.23.020.

## II. FINDINGS AND CONCLUSIONS

The compliance history and procedural background of both facilities is set out separately below:

2. Respondent is the owner and operator of the Mendenhall and Juneau Douglas Wastewater Treatment Plant (WWTP) (“Mendenhall” or “Juneau Douglas” respectively, “Facilities” combined). Respondent operates the Facilities in Juneau, Alaska, and receives mail at 2009 Radcliffe Road.

**The following is the chronology for the Juneau Douglas WWTP: Individual Permit (IP) number AK0023213**

3. The National Pollutant Discharge Elimination System (NPDES) permit for the JD WWTP was initially issued by the Environmental Protection Agency (EPA) under a four-year term in October 1974 and was later modified in May 1975. EPA reissued the permit again in 1985 and 2001.
4. On May 05, 1997, the EPA and Respondent entered into an Administrative Compliance Order regarding the Juneau Douglas WWTP’s failure to meet residual chlorine limits. There was not a penalty associated with the action. The action was closed on March 31, 2000.
5. The 2001 permit expired on December 26, 2006. Under the Administrative Procedures Act and state regulations at 18 ACC 83.155(c), a federally issued NPDES permit may be administratively extended (i.e., continues in force and effect), provided that the permittee submits a timely and complete application for a new permit prior to the expiration of the current permit. A timely application for a new permit was submitted by the Respondent on June 27, 2006; therefore, the 2001 permit issued by EPA was administratively extended until a new permit was reissued.
6. On August 29, 2006, Respondent and the EPA finalized a formally negotiated action. The action addressed the Respondent’s failure to prepare a Long Term Control Plan (LTCP) for their Combined Sewer System (CSS) per the conditions of their NPDES Permit. In April 2005, the Respondent submitted a LTCP that did not meet the conditions of their permit. The negotiated Order required that the Respondent submit a LTCP that met the necessary conditions within 60 days of the issuance of the Order. The action was closed on January, 23 2007.

7. On October 31, 2008 the Department received authority from EPA to administer the NPDES Program in the State of Alaska, primacy included authorizing domestic wastewater discharges.
8. On November 30, 2010, DEC conducted an inspection of the Juneau Douglas WWTP. A copy of the Inspection Report was provided to the facility on March 8, 2011; the report identified 58 effluent violations. Respondent failed to comply with permit conditions under 18 AAC 83, violations included: inability to produce and make available required permit records, plans, reports and forms, numerous effluent violations under their secondary treatment requirements spanning from November, 2008 through November, 2010 and failure to take timely samples and measurements of pollutants in its effluent stream prior to discharge into receiving waters.
9. On August 27, 2015, DEC and Respondent entered into a Settlement Agreement to address violations identified during the 2010 Juneau Douglas site inspection. The Settlement Agreement required that the Respondent pay a penalty in the amount of \$62,000 (Attachment 1).
10. On February 24, 2016, DEC staff conducted an inspection of the facility and documented failure to report violations from July 1, 2015- August 31, 2015 that included 2 violations for failure to submit non-compliance notifications.
11. On March 24, 2016, DEC issued a Compliance Letter for failure to properly submit permit noncompliance notifications.
12. On April 24, 2018, DEC staff conducted an inspection and documented effluent violations during the review period of April 1, 2016 - April 30, 2018 that included 31 violations for pH, TSS, 5-Day BOD, and Ammonia as Nitrogen.
13. On May 17, 2018, DEC issued a Notice of Violation for failure to meet effluent limits, as well as violations for not updating the Quality Assurance Program Plan (QAPP) and Operation & Maintenance Plan (OMP) as identified during the inspection conducted in April 2018. On June 11, 2018, Respondent provided the Department with a response to the Notice of Violation.
14. On January 23, 2020, DEC staff conducted an inspection and documented six effluent violations during the review period of April 21, 2018 – January 23, 2020. Additionally, Respondent failed to properly sample and notify the public of a combined sewer overflow.

15. On February 20, 2020, Respondent received a copy of the Inspection Report and Notice of Violation regarding the January 2020 site inspection. The Notice of Violation was satisfied on March 6, 2020. Having satisfied all deliverables, Respondent received a copy of the DEC Close Out letter.

**The following is the chronology for the Mendenhall WWTP: Individual Permit (IP) number AK0022951**

16. On September 11, 2000, the EPA and Respondent began negotiations on a Consent Agreement. The agreement was finalized on August 15, 2001, and included a \$30,000 penalty. The action was modified on September 8, 2000.

17. The Respondent received multiple violation/warning letters from the EPA throughout the 1980s into 2008, those letters were issued on April 27, 1988, January 9, 1989, May 6, 1998, February 22, 2002, September 26, 2002, and July 21, 2008.

18. On October 31, 2008 the Department received authority from EPA to administer the NPDES Program in the State of Alaska, primacy included authorizing domestic wastewater discharges.

19. On December 1, 2010, DEC inspected the Facility as part of a routine compliance inspection. During the onsite portion of the inspection, facility compliance was assessed to determine compliance with the requirements of the IP number AK0022951.

20. On May 18, 2011, DEC sent an Inspection Report and Compliance Letter to the Respondent setting out violations of the IP. The violations included: failure to conduct surface/receiving water monitoring, failure to maintain a QAPP, failure to submit required hardness and river flow correlation report, and failure to sample fecal coliform.

21. On October 21, 2013, DEC inspected the Facility as part of a routine compliance inspection. On March 3, 2014, DEC sent the Inspection Report and Cover Letter to the Respondent. The violations included: failure to monitor for all parameters, failure to conduct WET testing, failure to maintain QAPP onsite.

22. On November 17, 2015, DEC inspected the Facility as part of a routine compliance inspection. On December 1, 2015, DEC sent the Inspection Report and Compliance Letter to the Respondent setting out the violations identified at the facility, including

their failure to meet effluent limits. On December 31, 2015, Respondent provided a response to the Compliance Letter.

23. On December 11, 2017, DEC inspected the Facility as part of a routine compliance inspection. On February 28, 2018, DEC sent the Inspection Report and a Notice of Violation to the Respondent identifying violations of the IP. The violations identified included the facility's failure to meet effluent limits and failure to properly store containers. On March 16, Respondent provided the Department with a response to the Notice of Violation.
24. On September 10, 2019, DEC inspected the Facility as part of a routine compliance inspection. On September 29, 2019, DEC sent the Inspection Report and Notice of Violation to the Respondent setting out violations of the IP. The violations identified include: failure to meet effluent limits, failure to properly perform Whole Effluent Toxicity (WET) testing, failure to maintain Operation and Maintenance Plan, unapproved discharge, and failure to timely report the facility's noncompliance. On February 10, the Notice of Violation was closed after receiving all deliverables specified in the Notice of Violation.
25. The violations identified in paragraph 10 through 15 and paragraph 19 through 24 were the result of site inspections conducted by the Department as part of the normal inspection interval and not the result of complaint driven investigations or reports of observed harm to human health or the environment.
26. The following statutory and regulatory authorities, among others, apply to Respondent and its operation of the Facility:
  - a. AS 46.03.100(a) and (m) prohibit the disposal or discharge of waste material, including "pollutants" as defined in 33 U.S.C. 1362(6), into the waters of the state without prior authorization from ADEC.
  - b. 18 AAC 70.010(a) prohibits operations that cause or contribute to a violation of the water quality standards.
  - c. AS 46.03.110(d) gives ADEC the power to limit, via a permit or other mechanism, the manner in which a person discharges into waters.
  - d. 18 AAC 83.405(b) provides that all permittees must comply with the conditions of their permit and that noncompliance is a violation of 18 AAC 83, AS 46.03, and the federal Clean Water Act (33 U.S.C. §§ 1251–1387).

- e. 18 AAC 83.405(e) requires a permittee to take 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.
- f. 18 AAC 83.405(f) requires a permittee to always properly operate and maintain all facilities and systems of treatment and control and related appurtenances that the permittee installs or uses to achieve compliance with the permit's conditions.
- g. 18 AAC 83.405(i) states that a permittee shall provide requested information to ADEC to determine permittee's compliance with the permit.
- h. 18 AAC 83.405(k)(4) requires a permittee to conduct monitoring according to testing procedures approved under 40 C.F.R. Part 136, adopted by reference in 18 AAC 83.010, unless other test procedures have been specified in the permit.
- i. 18 AAC 83.405(l) requires all applications, reports, or information submitted to ADEC in compliance with a permit requirement to be signed and certified in accordance with 18 AAC 83.385.
- j. 18 AAC 83.410(e) requires a permittee to timely submit progress or compliance reports in accordance with a permit's compliance schedule, no later than 14 days following the scheduled date of each interim and final requirement.
- k. 18 AAC 83.455(a)(4) requires a permittee to monitor the mass or other measurement specified in the permit for each pollutant limited in the permit, the volume of effluent discharged from each outfall, and other appropriate measurements to assure compliance with permit limitations.
- l. 18 AAC 83.475(4) provides a permit must include best management practices to control or abate the discharge of pollutants in the permit.
- m. AS 46.03.760(a) provides that a person who violates or causes or permits a violation of a provision of AS 46.03, a regulation adopted by ADEC, a lawful order of the State, or a permit or term or condition of a permit issued under AS 46.03, is liable to the State in a civil action for a sum to be assessed by the court of not less than \$500 nor more than \$100,000 for the initial violation, nor more than \$5,000 for each day after that on which the violation continues. These amounts apply separately to each violation of a statute, regulation, permit, or order.

- n. AS 46.03.760(e) provides that a person who violates or causes or permits to be violated a regulation adopted by ADEC, a lawful order of the State, or a permit or term or condition of a permit issued under the APDES program is liable to the State in a civil action for a sum to be assessed by the court of not less than \$500 nor more than \$100,000 for the initial violation, nor more than \$10,000 for each day after that on which the violation continues. These amounts apply separately to each violation of a statute, regulation, permit, or order.

**B. Applicable Statutory and Regulatory Definitions**

27. The definitions set forth in AS 46.03.900 and 18 AAC 83.990 apply to terms utilized in this Order, including, without limitation:

- a. “ADEC” or “Department” means the Alaska Department of Environmental Conservation.
- b. “APDES” means the Alaska Pollutant Discharge Elimination System set out at 18 AAC 83.
- c. “CWA” means the Clean Water Act (33 U.S.C. § 1251, *et seq.*).
- d. The discharge of wastewater referenced above is a “Discharge” under the definition set out at 18 AAC 83.990(22) and 33 U.S.C. § 1362(16).
- e. The City and Borough of Juneau is a “Person” under the definition set out at 18 AAC 83.990(47) and 33 U.S.C. § 1362(5).
- f. “NOV” means Notice of Violation.
- g. “Operation” or “Operations” means the land-based aspects of the City and Borough of Juneau wastewater treatment plants located in Juneau, Alaska, which are authorized pursuant to APDES Individual Permits.
- h. City and Borough of Juneau is an “owner or operator” under the definition set out at 18 AAC 83.990(45).
- i. “Permit” or “Permits” means APDES Individual Permits AK0023213 or AK0022951, for the Juneau Douglas WWTP or Mendenhall WWTP, respectively.
- j. “Point source” means the definition set out at 18 AAC 83.990(48) and 33 U.S.C. § 1362(14).

- k. “Pollutants” means the definition set out at 18 AAC 83.990(49) and 33 U.S.C. § 1362(6).
- l. “State” means the State of Alaska.
- m. “Waters of the United States” means the definition set out at 18 AAC 83.990(77).
- n. The Facility is a “facility or activity” as that term is defined in 18 AAC 83.990(29).
- o. Individual Permits AK0023213 or AK0022951, which are issued to Respondent, is a water discharge permit for purposes of AS 46.03, 18 AAC 83, and is the applicable operating permit for purposes of this Order.

### **III. COMPLIANCE**

#### **A. Required Corrective Action**

28. Required Compliance. In order to address the issues set forth above, Respondent agrees to fully and timely perform and complete the remedial measures, corrective actions, and work (collectively “Corrective Action”) set forth below by no later than the dates specified in this Order or otherwise approved by ADEC in writing, time being of the essence in all respects regarding the Corrective Action. All required submittals to the Department will be addressed as outlined in Paragraph 66.
29. Respondent will provide the Department with a source control strategy for cruise ship discharges into the Juneau Douglas WWTP. The control strategy should specifically state how influent from cruise ships will be received by the Juneau Douglas WWTP in such a way to ensure that effluent violations do not occur and address other controls implemented to ensure that the WWTP can safely (both in treatment capabilities and design flow) accommodate this influent. This goal be met in two stages:
- a. Phase 1 – by May 31, 2022, provide a revised contracts with the cruise lines requiring additional information (such as description of the type of wastewater, volume to be discharged, and measure or estimate of strength prior to offloading).
  - b. Phase 2 – by May 31, 2023 complete implementation of control strategies at the WWTP, including any facility upgrades required to accommodate expected wastewaters.



30. By May 31, 2021, complete an Industrial User (IU) survey for the collection area of the Mendenhall WWTP. Specifically identify:
- a. Potential sources which were examined
  - b. Why they were excluded/included as Significant Industrial Users (SIU). This determination should include an explanation of what potential or expected impact they could have on the WWTP.
  - c. For any facility identified as a SIU, provide options for Source control implementation strategies
31. By February 28, 2022, provide the Department with a Long-Term Treatment Option Study. Specifically, the study must include:
- a. Load reduction strategies. Examples include fat/oil/grease reduction efforts.
  - b. An evaluation of new treatment technologies and operational strategies that could improve the treatment capacity of the plant to include:
    1. Expansion or construction of a new facility
    2. Installation of membrane bioreactors
    3. Upgrades to the SBRs (such as hydrocyclones)
    4. Other technologies
  - c. An evaluation of the benefits from seasonal redirection of wastewater from the Mendenhall WWTP to the Juneau Douglas WWTP. If this is determined to be an effective alternative control regarding influent currently being directed to the Mendenhall WWTP, a potential construction schedule will be included. This construction schedule will not be included as an enforceable document under this agreement.
  - d. An examination of the current treatment capacity of the plant in terms of both hydraulic and organic/solids loading. The result of this analysis will provide specific maximum waste loads that can be accepted at the plant without exceeding permitted effluent limits. This baseline plant treatment capacity can then be used to help design future improvements and evaluate the efficacy of implemented treatment strategies.
32. By May 31, 2021, provide the Department with an interim update on the progress of the supervisory control and data acquisition (SCADA) upgrades of work performed

during calendar year 2020 and expected final completion date. If the expected completion date is beyond May 31, 2022, provide the Department with an explanation of why the work cannot be completed before May 31, 2022. If the expected completion date is beyond May 31, 2022, specifically request an extension and modification to this order.

33. By December 31, 2022, provide the Department with a copy of the IU survey results which includes those items identified in Paragraphs 30(a) through 30(c) and how the controls recommended in Paragraph 31(a) through 31(d) might be implemented to reduce biological overloading. If those controls are not determined to be the most appropriate means to meet effluent limits, propose alternatives not addressed in a subsection of Paragraph 31. Potential controls and construction schedules will be included in this action upon agreement between the Parties.
34. Complete an examination of the collection system of the Mendenhall and Juneau Douglas WWTP to examine inflow and infiltration (I&I) rates from June 1, 2021 through May 31, 2024. At a minimum, the examination will include the installation of communications and other equipment as needed to allow for collection of flow information from lift stations. Respondent will determine the appropriate locations and number of monitoring points, but will make this determination to allow the Parties to accomplish the goals of Paragraph 35 below.
35. By May 31, 2025, Respondent will provide the Department with the findings from the examination to include, at a minimum:
  - a. An overview of the monitoring program including a map of:
    1. The monitoring locations.
    2. The collection area of each monitoring location (upstream flow).
    3. Approximate number of residential homes in each collection area.
  - b. A summary of the potential and expected causes of I&I (if found).
  - c. An examination and correlation between the flow data collected and expected causes (such as precipitation or thawing events). If higher than expected flows, are found at monitoring locations, but it is not believed to be caused by storm water, a rationalization for this position (such as referencing the Industrial User survey in Paragraph 30 or other suspected industrial contributors).

d. Repairs made to existing collection system since, at a minimum, the effective date of this order to May 31, 2024. An accompanying map will be included which shows the areas where the construction took place.

36. By August 1, 2025, the Parties will agree upon a mitigation plan for areas where I&I was identified as a ‘significant’ contributor to influent to the facility. Potential controls, construction schedules, and a threshold of ‘significant’ will be included in this action upon agreement between the Parties and based on the findings of the 2025 report specified above.

### **C. Other Compliance Requirements**

37. ADEC Requests for Additional Information or Corrective Action. If at any time after the Effective Date of this Order, ADEC determines that the actions required under this Order may be insufficient to achieve the goals and purposes of this Order or to otherwise ensure Respondent is in compliance with applicable provisions of this Order, ADEC will make a written request with a reasonable deadline that the Respondent provide additional information.

38. Respondent and ADEC shall mutually agree on additional corrective actions as are reasonably necessary, stating the reasons and the date the requested information is due to ADEC.

39. Following the Effective Date of this Order, Respondent must promptly provide a copy of this Order (including the attached Exhibits) or make it reasonably available to all officers, employees, agents, consultants, contractors and others, whose duties or work might reasonably include activities in any way related to compliance with any provision of this Order.

## **IV. CIVIL PENALTIES AND ASSESSMENTS**

40. Civil Penalties and Assessments. Respondent agrees to pay ADEC civil penalties and assessments pursuant to AS 46.03.760(a) and (e) in the amount of **\$64,000** (“the Penalty Amount”) within 30 days of the execution of this Order. For purposes of this Order only, the Penalty Amount (Economic Benefit and Gravity – as calculated using the EPA Penalty Methodology (*Interim CWA Settlement Penalty Policy – March 1, 1995*)) represents the reasonable compensation to ADEC of the alleged violation; an assessment of the gravity of the alleged violation, including the importance to the State’s water quality regulatory scheme; the length of time of the violation; the size of the violator; and an assessment sufficient to deter future noncompliance.

41. Additional Payment Terms and Conditions. Unless otherwise provided in this Order, the Penalty Amount under this Section, the Stipulated Penalties under Section V, and any other sums due under this Order, shall bear interest at an annual rate of the AS 09.30.070 statutory limit on post judgment amounts (prorated based on the applicable number of days) from the date due until the date paid in full. In the event of a partial payment, the payment shall be applied first to any interest owed and the remainder shall be applied to the penalty or other amount due under this Order.
42. All payments of any kind required to be made under this Order will: (i) be made payable to the State of Alaska; (ii) include the ADEC Enforcement Tracking number of this Order 18-R0090-50-0002; (iii) be delivered to the Alaska Department of Environmental Conservation, Attn: Sandra Rasmussen , Water Administrative Services, 555 Cordova St Anchorage, Alaska 99501; and (iv) unless otherwise provided herein, will include all applicable interest that is due calculated at the rate and for the applicable number of days as provided in Paragraph 41 above.
43. If any payment required by this Order is not received by ADOL on time, time being of the essence, or if any negotiable instrument presented as payment is not honored, ADOL/ADEC is entitled to immediate payment of the total amount due under this Order, including but not limited to the Penalty Amount, Stipulated Penalties, interest, administrative costs and expenses, attorney's fees and costs (including all costs incurred seeking to collect any amounts owing), and may file a civil action to collect the amounts due. In any such collection action, the validity, amount, and appropriateness of such assessments, penalties, and other fees and expenses shall not be subject to review.

## **V. STIPULATED PENALTIES**

44. Stipulated Penalty Amounts. In addition to any other sums due or payable under this Order or applicable law or regulations, if Respondent fails to fully and timely comply with the terms of this Order, and subject to the provisions of Paragraph 82 (Dispute Resolution), Respondent shall pay Stipulated Penalties ("Stipulated Penalties") to the State of Alaska, as outlined below.
45. Late Payment of Civil Penalty or Assessments. If Respondent fails to pay the civil penalty or assessment required to be paid under Section IV of this Order (Civil Penalties and Assessments) when due, Respondent shall pay a stipulated penalty of \$1,000 per day for each day the payment is late.

46. Reporting and Notification Violations: Respondent shall pay a stipulated penalty of \$500 per day, per violation for:

- a. Failing to report to, or notify, ADEC as required by this Order;
- b. Providing a late or materially incomplete report or notice required by this Order;
- c. Providing late or materially incomplete information in response to any ADEC written Information Request under this Order;
- d. Providing late or incomplete information in response to an ADEC written information request regarding a report, a notice, or a response to an ADEC initial information request, under this Order.
- e. Failing to take corrective actions, or sufficient corrective actions, when required to do so under the Order.
- f. For a failure to record or retain any records required to be recorded or retained by this Order. If the missing entry can accurately be thereafter generated or recreated, an obligation to do so. For purposes of this Paragraph the term “record” means every observation or data entry required to be made at one time. Failure to produce a record at an inspection creates a rebuttable presumption that the record does not exist. Respondent may rebut this presumption by producing the record within 24 hours of the inspection.
- g. Violates any other provision of this Order (or included corrective action plan) or violates a provision/limit of the Permits.

47. Payment of Stipulated Penalties. All Stipulated Penalties owed to the State under Section V shall be due and payable within 15 days of the Respondent’s receipt from ADEC of a written demand for payment of the Stipulated Penalties, unless the Respondent invokes the procedures under Paragraph 82 of this Order (Dispute Resolution).

48. Power to Compromise. Without affecting enforcement discretion in any other situation, ADEC may, for any reason and at any time, forgive, waive or otherwise relieve the Respondent of any Stipulated Penalty.

49. Accrual of Stipulated Penalties. Stipulated Penalties shall begin to accrue on the day after performance is due or the day a violation occurs and shall continue to accrue each day through the final day of the correction of the noncompliance or completion of the activity. Separate Stipulated Penalties shall accrue for each separate violation

of this Order. Stipulated Penalties shall accrue automatically regardless of whether ADEC has notified the Respondent of a violation.

50. No Effect on Obligation to Comply with Order. The payment of Stipulated Penalties shall not alter in any manner the Respondent's obligation to fully and timely comply with all the terms, conditions and provisions of this Order.

51. Effect of Dispute Resolution. Stipulated Penalties and interest shall continue to accrue on a per violation per day basis during any dispute resolution period and judicial review, if any, but need not be paid until or unless one of the following occurs:

- a. If the dispute is resolved by agreement or by a decision of ADEC that is not appealed as provided herein, Respondent shall pay all accrued Stipulated Penalties and interest owed to the State within 15 days of the agreement or the receipt of ADEC's decision or order; or
- b. If the dispute is appealed as provided herein and ADEC prevails in whole or in part, Respondent shall pay all accrued Stipulated Penalties determined on appeal to be owed to the State, plus interest from the original due date under this Order, within 15 days of receipt of the final decision or order on appeal.

52. Non-Exclusivity of Remedy. Stipulated Penalties are not ADEC's sole or exclusive remedy for violations of this Order or applicable law. The Stipulated Penalties provided for in this Order shall be in addition to any other rights, remedies, sanctions, or relief available to ADEC by reason of Respondent's failure to comply with any requirement of this Order or applicable law; provided, however, that Respondent shall be allowed a credit for any Stipulated Penalties actually paid against any new or additional civil assessments, penalties, damages, or monetary relief sought by ADEC or imposed on Respondent for any such violation of this Order.

## **VI. EFFECT OF ORDER**

53. Duty to Comply. Unless otherwise provided by this Order, Respondent shall fully and timely comply with all the terms, conditions, provisions, requirements, duties and obligations of this Order, as well as the terms, conditions, provisions, requirements, duties and obligations contained in any applicable permit, order, or federal, state, or local environmental law related to the Facility. Nothing in this Order prevents Respondent or any of its operators from opting out of future general permits, in whole or in part, as allowed by law or applicable regulation, for example,

by cessation of a regulated operation; selection of an individual permit; or other legal methods for relief from amended or successor permits.

54. Covenant Not to Sue. Provided Respondent fully and timely complies with the terms, conditions, limitations, provisions, requirements, duties, and obligations of this Order, ADEC shall not institute any civil enforcement action against Respondent arising from the violations alleged in Section II (Findings and Conclusions) of this Order.
55. Effect of Noncompliance. Any noncompliance with this Order, any applicable permits or environmental laws, or any documents or reports required by this Order, constitutes grounds for enforcement action by ADEC and the immediate revocation, modification, or termination by ADEC of this Order, and may furthermore subject Respondent to civil, administrative, or criminal penalties under applicable federal and state law.
56. No Warranty by ADEC; No Relief from Compliance. By entering into this Order, ADEC does not warrant, represent, or aver in any manner that Respondent's compliance with this Order will result in its compliance with the provisions of any applicable permit, order, or federal state, or local environmental law related to the Facility.
57. Need to Halt or Reduce Activity Not a Defense. It shall not be a defense for Respondent in any enforcement or other action by ADEC under this Order that it would have been necessary to halt or reduce its operations in order to maintain compliance with this Order, or that it is financially unable to perform any obligation under this Order or make any payment due under this Order.
58. ADEC's Reservation of Rights.
  - a. ADEC reserves the right to initiate administrative or judicial proceedings, including but not limited to seeking civil assessments, penalties, damages, injunctive relief, or other relief, relating to any violation not alleged in Section II (Findings and Conclusions) subject, however, to its covenant not to sue contained herein.
  - b. ADEC reserves the right to initiate administrative or legal proceedings, including but not limited to seeking new or additional civil assessments, penalties, damages, injunctive relief, or other relief, for the alleged violations described in Section II (Findings and Conclusions) above if:

- (i) Respondent does not fully and timely comply with the provisions of this Order to ADEC's reasonable satisfaction; or
  - (ii) in ADEC's reasonable opinion, subsequently discovered events or conditions constitute an immediate or imminent threat to human health, public safety and welfare, or the environment, regardless of whether ADEC may have been able to discover the event or condition prior to entering into the Order.
- c. ADEC reserves all rights not expressly waived in this Order, including but not limited to all rights and remedies, both legal and equitable, available to ADEC to enforce the provisions of this Order or any applicable federal, state, or local laws or regulations.
- d. If, as a result of Respondent's breach of any of the terms, conditions, or provisions of this Order, ADEC seeks civil assessments, penalties, damages, or other monetary relief from Respondent for the alleged violations described in Section II (Findings and Conclusions) of this Order, the amounts Respondent has paid under Section IV (Civil Penalties and Assessments) shall offset any subsequent civil assessments or penalties for those alleged violations, but in no event shall ADEC be required to refund any portion of any civil assessments, penalties, damages, or monetary relief paid by Respondent under this Order.

59. Third Party Rights Not Affected. This Order does not limit or affect the rights of ADEC or Respondent against any third parties, who are not party to this Order. Unless otherwise provided by law, this Order does not limit or affect the rights of any third parties, not party to this Order, against Respondent or others.

60. Not a Permit or Modification. This Order is not a permit, or a modification of any existing permit, under any federal, state, or local law or regulation.

## VII. GENERAL CONDITIONS

61. Purpose of Order. It is the express purpose of the Parties in entering into this Order to further the pollution prevention goals of the Clean Water Act, as amended, 33 U.S.C. § 1251 *et seq.*, the APDES Program, and respective implementing regulations. All obligations under this Order shall have the objective of causing Respondent to be and remain in full and timely compliance with the Clean Water Act and the APDES Program, including any APDES permits issued with respect to operations at the Facility, and of protecting human health, public safety and welfare, and the environment.



62. Costs Incurred by Respondent. Respondent shall bear all costs incurred in carrying out the terms, conditions and provisions of this Order.
63. Breach. Respondent understands that any failure to fully and timely comply with any of the terms, conditions, limitations, provisions, requirements, duties, obligations or deadlines set forth in this Order may, at ADEC's option, be deemed a material breach of this Order and may result in prompt legal action, enforcement action, or other action under this order to enforce the terms, conditions, requirements, duties, obligations or deadlines of this Order as well as all other applicable legal or regulatory requirements; and provide a basis for ADEC's revocation, modification, or termination of this Order.
64. ADEC Order. Respondent acknowledges and accepts that this Order constitutes a lawful order of ADEC for all purposes under state law. Respondent shall not institute any action challenging the validity of this Order or the authority of ADEC to enforce this Order in an administrative or other legal proceeding; nor shall the Respondent contest or challenge the validity of this Order, any term, provision or condition of this Order, or the authority of ADEC to issue and enforce this Order in any subsequent proceedings initiated by ADEC or the State of Alaska.
65. Waiver of Rights and Procedures. By entering into this Order, Respondent acknowledges that with regard to the matters set forth herein, it is knowingly and voluntarily waiving the rights and procedures that would otherwise protect it in any formal administrative or adjudicatory proceeding, or any civil action in a court of law, including the right to present evidence and witnesses on its behalf, to cross-examine witnesses, to request a jury trial, and to seek administrative and judicial review. Respondent freely and voluntarily consents to this waiver, which it finds to be in its best interests after having the opportunity to consult with counsel of its own choosing.
66. Notice. All notices, demands, submissions, applications, reports, logs, data, communications, and other information which either party is required or desires to provide to the other in connection with this Order shall (i) be given in writing; (ii) reference Enforcement Tracking No. 19-R0270-50-0002; (iii) be only by the following means: personal delivery, express courier service or certified mail with return receipt requested, or via email; and (iv) such delivery shall be to the addresses set forth below for the respective party; provided, that if any party gives notice of a change of its name or address in the manner provided in this paragraph, notices to that party shall thereafter be provided to the names and addresses as specified in that notice. All notices shall be effective upon receipt by the party to whom the notice is

being given. Elective communications which either party desires to provide in connection with this Order may, in addition to the means listed above, be made by electronic mail with a delivery receipt.

**To ADEC:**

Alaska Department of Environmental Conservation, Division of Water  
Attn: Jon Wendel, Enforcement Section Manager  
410 Willoughby Ave  
Juneau, AK 99801  
Email: [Jon.Wendel@alaska.gov](mailto:Jon.Wendel@alaska.gov)  
Email: [DEC.Water.Enforcement@alaska.gov](mailto:DEC.Water.Enforcement@alaska.gov)

With a copy to (notices and demands only):

Alaska Department of Law – Environmental Section  
Attn: Ashton Roberts, Asst. Attorney General  
1031 W. 4<sup>th</sup> Avenue, Suite 200  
Anchorage, AK 99501-1994  
Email: [Ashton.Roberts@alaska.gov](mailto:Ashton.Roberts@alaska.gov)

**To Respondent:**

City and Borough of Juneau – City Manager  
Attn: Rorie Watt  
155 S. Seward St.  
Juneau, AK 99801  
Email: [Rorie.Watt@juneau.org](mailto:Rorie.Watt@juneau.org)  
Email: [Katie.Koester@juneau.org](mailto:Katie.Koester@juneau.org)

67. Modifications. Any amendments or changes to this Order must be in writing and signed by both Parties. The ADEC Director of Water and an authorized representative of the Alaska Department of Law (ADOL) must both sign on behalf of the State of Alaska for an amendment to be effective. No oral or written communications or understandings between Respondent (including any consultant of Respondent) and ADEC (including its management or staff) shall alter or modify in any manner the requirements of this Order, or otherwise relieve Respondent of any requirements or obligations of this Order or applicable permit, unless the Order is modified as provided in this paragraph.
68. State Not a Party. The State of Alaska shall not be held as a party to any contract or other agreement or arrangement entered into by Respondent related to any activities conducted pursuant to this Order.

69. Rule of Law/Jurisdiction. This Order shall be governed by and construed in accordance with the laws of the State of Alaska. Any judicial action brought by either party to enforce or adjudicate any provision of the Order shall be brought in the Superior Court for the State of Alaska, First Judicial District at Juneau. Jurisdiction for any judicial action arising under or related to this Order shall be in the Superior Court for the State of Alaska.
70. Right of Entry and Access to Information. Respondent shall allow ADEC representatives unrestricted access and entry to the Facility at reasonable times for the purpose of determining compliance with this Order or any applicable statute, regulation, or permit including but not limited to copying any records, inspecting any monitoring equipment or method required under applicable law, testing, collecting samples, taking video or photographs, making recorded interviews, or conducting any other activities that ADEC deems reasonably necessary to determine compliance. ADEC shall inform Respondent at the time of obtaining access or entry to the Facilities of the presence of ADEC's representative on the property, and Respondent may have a representative accompany ADEC's representative. Respondent shall also promptly provide ADEC with any other information that ADEC may request in writing to determine such compliance.
71. Document Retention. The Respondent shall maintain legible copies of all the records and reports, and documentation thereof, required by this Order, until a minimum of two years after the termination of this Order and shall provide any such records and reports to ADEC within fourteen (14) days of a written request by ADEC for such information.
72. Certification of Documents, Reports and Other Submissions. All documents, other records, reports and other submissions provided to ADEC under this Order shall be signed and certified under penalty of law by a responsible official of Respondent in the manner as provided in 18 AAC 83.385, including the following certification:
- I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

73. Severability. It is the intent of the Parties that the terms, provisions and conditions of this Order are severable. Should any part of this Order be declared by a court to be void, invalid or unenforceable, all other terms, provisions and conditions of this Order shall remain in full force and effect. Notwithstanding the foregoing, the Parties shall promptly meet and in good faith seek to negotiate replacement language for any invalidated or unenforceable provision that most nearly effectuates the original intent of the Parties to the extent possible in compliance with the court's order.
74. Rules of Construction. This Order has been freely negotiated between the Parties. Any rule of construction (judicial or otherwise) that a document should be more strictly construed against the drafter thereof shall not apply to any term, condition or provision of this Order.
75. Headings. The headings in this Order are for ease of reference only and shall not affect the interpretation of any of the terms and conditions contained herein.
76. No Waiver. A failure by ADEC to enforce any provision of this Order shall in no way imply a waiver of ADEC's right to insist upon strict performance of the same or other provision in the future.
77. Parties Bound. This Order shall apply and be binding upon the State of Alaska and Respondent, its officers, employees, agents, parent corporations, subsidiaries, affiliates, partnerships, successors, and assigns, and upon all persons and entities, including partners, contractors and consultants, acting on behalf of Respondent.
78. Transfer or Sale of Ownership Interest.
- a. In addition to any requirements under any applicable statute, regulation, permit, or other approval, if Respondent proposes to sell, assign, merge, reorganize, lease, sublease or otherwise transfer an ownership interest in the Facility subject to this Order or an ownership interest in any corporation, partnership, business, company, person or other legal entity holding an ownership interest in the Facility (collectively "Ownership Interest") to another party while this Order remains in effect, Respondent shall promptly notify ADEC at least 30 days in advance of the proposed transfer pursuant to the Notice provisions of Paragraph 66 of this Order. Respondent shall also notify ADEC promptly in accordance with the Notice provisions of Paragraph 66 of this Order in the event operations permanently cease at the Facility while this Order remains in effect.
  - b. Prior to the completion or closing of any such transfer, sale, or assignment of the Ownership Interest in the Facility, Respondent shall incorporate a copy of this

Order into the documents of transfer, sale, or assignment, and shall provide in those documents that the new owner, assignee, lessee, sublessee, or other transferee shall take the Ownership Interest expressly subject to the provisions of this Order.

- c. Unless and until the Parties enter into a written modification relieving Respondent of liability for the obligations associated with the transferred Ownership Interest, Respondent shall remain liable for all the requirements of this Order, including those that may be applicable to the purchased, transferred, or assigned Ownership Interest.

#### 79. Termination.

- a. The minimum term of this Order shall be until Respondent's successful completion of the compliance measures set forth in Section III of this Order, or five (5) years from the Effective Date of this Order, whichever occurs later. The term of this Order shall be automatically extended to encompass successful completion of any additional Corrective Actions accepted by Respondent without dispute under Paragraph 82, or imposed on Respondent through Paragraph 82 following Dispute Resolution. At any time thereafter, Respondent may request in writing that ADEC terminate this Order. The Order will not terminate absent ADEC's and ADOL's written and signed consent. In seeking ADEC's consent to terminate the Order Respondent must demonstrate that:
  - i. Respondent has paid all monies, damages, civil penalties and assessments, Stipulated Penalties, and interest which have become due under this Order;
  - ii. Respondent is in full and timely compliance with the Order and any applicable permit, order, authorization, or federal, state, or local environmental law related to the Facility including, but not limited to, the submission of all reports required by this Order.
  - iii. There are no unresolved matters still subject to Dispute Resolution pursuant to Paragraph 82 of this Order; and
  - iv. No enforcement action under this Order, other applicable permit, order or authorization, or federal, state, or local environmental law related to the Facility is pending.

80. No Admission of Liability. The Parties have entered into this Order to resolve and settle a disputed matter and avoid the uncertainty and expense of a formal civil enforcement proceeding. By entering into this Order, Respondent neither admits nor denies the allegations in Section II (Findings and Conclusions) of this Order and

nothing in this Order shall constitute or be construed as an admission of liability or wrongdoing on the part of Respondent.

81. Applicability of Other Legal Obligations and Laws. The terms, conditions, limitations, requirements, duties, and obligations set forth in this Order are in addition to any terms, conditions, limitations, requirements, duties or obligations set forth in any permit, order, or authorization which ADEC has issued or may issue to Respondent in the future and are in addition to any terms, conditions, limitations, requirements, duties or obligations imposed by or through any other applicable state, federal or local law, regulation, permit, other authorization or order. Unless expressly provided herein, this Order does not relieve Respondent of the duty to comply with all terms, conditions, limitations, requirements, duties and obligations imposed by ADEC in any such permit, order or authorization or those of any applicable state, federal and local laws.

82. Dispute Resolution.

- a. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Order shall first be the subject of informal negotiations between the Parties at the staff level. The dispute shall be considered to have arisen on the day one Party delivers to the other Party a written Notice of Dispute, or on the day following delivery by overnight courier or 3 days following delivery by U.S. Mail, return receipt requested. Such Notice of Dispute shall clearly describe the matter in dispute and include or reference the relevant documentation. The period of informal negotiations shall not exceed 30 days from the date the dispute arises, unless that period is modified by written agreement of the Parties.
- b. Formal Dispute Resolution. If the Parties cannot resolve a dispute by informal negotiations within the time period provided in subparagraph (a) of this subsection, then the position advanced by ADEC shall be considered binding unless, within 15 days after the conclusion of the informal negotiation period, Respondent makes a written request for the ADEC Commissioner (or the Commissioner's delegate) to formally resolve the dispute. The Commissioner (or the Commissioner's delegate) may meet with the Parties or request briefing or the submission of particular documents or other evidence, as he or she deems advisable to resolve the dispute, but the Parties agree that formal adjudication proceedings under 18 AAC 15 or any other statutes or regulations (including AS 44.62) are not contemplated or required. The Commissioner (or Commissioner's delegate) will issue a final determination in writing. That written decision will be final for purposes of judicial review pursuant to Alaska Rule of

Appellate Procedure 602(a)(2). The determination of the Commissioner (or the Commissioner's delegate) will remain in effect pending resolution of any judicial appeal unless a stay is sought and granted by the court on appeal. In any dispute under this paragraph, Respondent shall bear the burden of proof that its position complies with the terms and conditions of this Order, including but not limited to Paragraph 61 (Purpose of Order).

- c. In any dispute concerning termination of this Order, Respondent shall bear the burden of proof that all conditions required for termination of this Order have been satisfied.
- d. The pendency of any dispute pursuant to this paragraph shall not affect the responsibility of Respondent to continue to fully and timely perform all of its obligations under this Order.

83. Time of the Essence. Time is of the essence as to each and every provision set forth in this Order.

84. Computation of Time Periods. Unless otherwise provided herein, all references to dates in this Order shall be to calendar days. If a deadline falls or occurs on a Saturday, Sunday, or legal holiday recognized by the State of Alaska, the deadline shall be extended only until the next day which is not a Saturday, Sunday, or legal holiday.

85. Effective Date. The effective date (“Effective Date”) of this Order is the date of the last signature, below, on this Order by an authorized representative of Respondent, ADEC, and ADOL.

86. Understanding of Terms / Voluntary Agreement. Each party acknowledges and represents that it has had the opportunity to consult with an attorney if it so chose, has carefully read and understands the scope and effect of the provisions of this Order, and has voluntarily entered into this Order.

87. Signatory Authority. Each individual signing this Order on a Party’s behalf certifies and warrants that he or she is authorized to enter into the terms and conditions of this Order and to execute on behalf of and legally bind such Party to this Order.

88. Counterparts. This Order may be executed in several counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same document. For purposes hereof, a facsimile or scanned copy of a signature page hereto shall be deemed to be an original.

89. Attachments.

- a. Attachment 1: 2015 Settlement Agreement

90. Retention of Copy of Order at Facility. A copy of this Order (including the Attachment) must be kept at the Facility and made available to ADEC upon request.

91. Entire Agreement. This Order represents the entire agreement of the Parties. There are no other oral or written understandings or agreements relating to the subject matter of this Order.

[SIGNATURE PAGES TO FOLLOW]

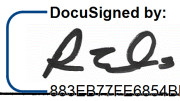


Signature Page for Compliance Order by Consent in:

*In the Matter of the State of Alaska, Department of Environmental  
Conservation v. CITY AND BOROUGH OF JUNEAU*

DATED: 3/5/2021 \_\_\_\_\_

DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION

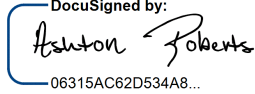
By:  \_\_\_\_\_  
883EB77EE6854BD  
Randy Bates, Director  
Division of Water

Signature Page for Compliance Order by Consent in:

*In the Matter of the State of Alaska, Department of Environmental  
Conservation v. CITY AND BOROUGH OF JUNEAU*

DATED: 3/5/2021

CLYDE "ED" SNIFFEN  
ACTING ATTORNEY GENERAL

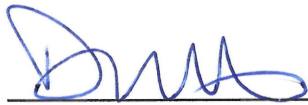
By:   
06315AC62D534A8...  
Ashton Roberts  
Assistant Attorney General

Signature Page for Compliance Order by Consent in:

*In the Matter of the State of Alaska, Department of Environmental Conservation v. CITY AND BOROUGH OF JUNEAU*

DATED: 3-3-21

CITY AND BOROUGH OF JUNEAU

By: 

Duncan Rorie Watt  
City Manager

**ACKNOWLEDGMENT**

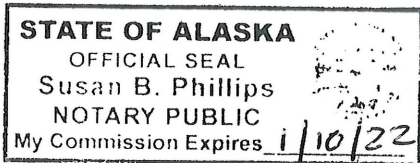
I, ~~Susan Phillips~~ <sup>Rorie Watt SBP</sup>, hereby certify that I hold the position of ~~Executive Asst.~~ <sup>City Manager SBP</sup> and that I am a responsible official for Respondent City and Borough of Juneau ("Respondent") and that I have the authority to enter into this Order on behalf of the Respondent and to otherwise legally bind the Respondent. I hereby acknowledge that I have freely and voluntarily entered into this agreement with the State of Alaska on behalf of the Respondent.

SUBSCRIBED AND SWORN to before me this 3<sup>rd</sup> day of March, 2021.



Notary Public, State of Alaska

My commission expires: 1/10/22



# Attachment 1

## **SETTLEMENT AGREEMENT**

(ADEC Enforcement Tracking No. 11-0363-40-9242)

**WHEREAS**, the parties to this Settlement Agreement (“Agreement”) are the State of Alaska, through the Alaska Department of Environmental Conservation (“State,” “ADEC,” or “Department”) and the City and Borough of Juneau, a unified municipality (“CBJ”) (collectively referred to herein “the Parties”); and

**WHEREAS**, by this Agreement the Parties intend to resolve, compromise, and settle the violations alleged in Paragraphs 1-19 below;

**NOW, THEREFORE**, the Parties hereby agree as follows:

### **I. FINDINGS AND CONCLUSIONS**

#### **A. Background**

1. CBJ is the owner and operator of the Juneau-Douglas Wastewater Treatment Plant, a municipal wastewater treatment facility located at 1540 Thane Road, Juneau, Alaska (the “Facility”).
2. On December 13, 2001, EPA issued CBJ an NPDES Permit No. AK-002321-3 (the “2001 Permit”) under Section 402 of the federal Clean Water Act (the “Act” or “CWA”), 33 U.S.C. §1342, for the “Facility.”
3. The 2001 Permit authorized CBJ to discharge treated domestic wastewater from the Facility to the Gastineau Channel within the effluent limits and subject to the requirements set forth in the 2001 Permit.
4. The Gastineau Channel is used as rearing, feeding, and migrating habitat by Pacific salmon and other marine organisms including crab, halibut, herring and other forage fish, marine mammals, and water fowl.
5. The 2001 Permit expired on December 26, 2006, and the City timely applied for a new NPDES permit, thereby administratively extending the 2001 Permit pursuant to 40 C.F.R §122.6.
6. On November 30, 2010, ADEC Division of Water Compliance and Enforcement officers conducted a site inspection of the Facility and found various violations of the 2001 Permit.
7. ADEC prepared an Inspection Report dated March 4, 2011, which details the results of the site inspection. A true copy of the report is attached hereto as Appendix A and incorporated herein by reference.

8. The March 4, 2011 Inspection Report describes numerous permit violations at the Facility, including CBJ's inability to produce and make available various records, plans, reports, forms, and other documents required by the 2001 Permit to be maintained by CBJ and kept at the Facility.

9. On March 8, 2011, ADEC issued a Notice of Violation (the "NOV") to CBJ alleging, among other permit violations, fifty one (51) effluent limit violations and seven (7) "percent removal" violations for the period November 1, 2008 through November 30, 2010. A true copy of the NOV, including appendices thereto, is attached hereto as Appendix B and incorporated herein by reference.

10. Part I.A. of the 2001 Permit required CBJ at all times to comply with effluent limit sets out in Table 1.A.1 of the permit for listed parameters including biological oxygen demand ("BOD<sub>5</sub>"), total suspended solids ("TSS"), fecal coliform bacteria, and pH.

11. Part II.C of the 2001 Permit required that CBJ take samples and measure the pollutants in its effluent stream prior to discharge into receiving waters and report the results to EPA and ADEC in monthly Discharge Monitoring Reports ("DMRs").

12. DMRs submitted by CBJ to ADEC pursuant to the 2001 Permit for the period January 1, 2009 to April 30, 2011 reported 990 effluent violations. The majority of the effluent violations were of secondary treatment requirements (40 CFR 133.102) for BOD<sub>5</sub>, TSS, and pH. Twenty-four (24) fecal coliform effluent limit violations were reported during the period.

## **B. Statutory and Regulatory Authority**

13. On October 31, 2008, EPA approved the State of Alaska's assumption of the NPDES program under Section 402(b) of the CWA.

14. As part of state assumption, ADEC established the Alaska Pollutant Discharge Elimination System ("APDES") Program under Title 18, Alaska Administrative Code Chapter 83, which authorizes ADEC to implement the APDES program in a manner which meets the purposes of AS 46.03 and in accordance with Section 402 of the CWA, 33 U.S.C. § 1342, and the requirements adopted by reference in 18 AAC 83.010.

15. Under 18 AAC 83.155, a federally-issued NPDES permit in effect at the time of state assumption serves as the APDES permit required under 18 AAC 83.015, and the NPDES permit remains fully effective and enforceable by ADEC.

16. Under 18 AAC 83.405(b), a permittee is required to comply with all the conditions of the permittee's APDES permit. Any permit noncompliance constitutes a violation of the 18 AAC 83 and the CWA.

17. AS 46.03.760(e) provides that any person who violation a term or condition of a permit authorized under the APDES program is liable for civil penalties of up to \$100,000 per day per violation.

18. Section 301(a) of the CWA, 33 U.S.C. §1311(a), prohibits the "discharge of any pollutant by any person," except in compliance with various requirements including an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. §1342.

19. Section 309(d) of the CWA, 33 U.S.C. §1319(d), provide that any person who violates Section 301 of the CWA, or "any permit condition or limitation" implementing Section 301 of the CWA in a permit issued under Section 402 of the CWA, is subject to civil penalties not to exceed \$37,500 per day per violation.

### **C. Alleged Violations**

20. Based on Paragraphs 1-19 above, ADEC alleges that CBJ violated various terms and conditions of the 2001 Permit, in violation of Alaska Statutes Titles 44 and 46, 18 AAC 83, the CWA.

## **II. RECOVERY OF ADMINISTRATIVE FEES, COSTS, AND EXPENSES**

21. Administrative Fees, Costs, and Expenses. CBJ shall pay ADEC for all of the administrative fees, legal fees, costs, and expenses incurred by the State, including those of ADEC and the Alaska Department of Law ("ADOL"), in connection with the: (i) investigation, enforcement, and resolution of the violations alleged above, including the preparation and implementation of this Agreement; or (ii) enforcement and collection of any amounts owing and the resolution of any future violations of this Agreement. All payments owed to the State under this Section II shall be due and payable within thirty (30) days of CBJ's receipt from ADEC or ADOL of an invoice for payment of the administrative fees, costs, and expenses.

## **III. CIVIL PENALTY PAYMENT TERMS AND CONDITIONS**

22. Civil Penalty Payment Amount. In addition to any payment required under Section II of this Agreement (Recovery of Administrative Fees, Costs, and Expenses), CBJ agrees to pay ADEC the amount of \$62,000 ("the Payment Amount"). For purposes of this Agreement only, the Payment Amount represents the fair and reasonable amount to ADEC for the settlement of the violations alleged herein.

23. Payment Due Date. CBJ shall deliver the Payment Amount to ADEC within thirty (30) days of the Effective Date of this Agreement. The Payment Amount shall be delivered to ADEC at the address indicated in Paragraph 23 below (Additional Payment Terms and Conditions) and must be received by ADEC no later than 4:30 p.m. local Alaska time on the due date.

24. Additional Payment Terms and Conditions

a. All payments of any kind required to be made under this Agreement shall: (i) be made payable to the State of Alaska; (ii) include the ADEC Enforcement Tracking number of this Agreement; and (iii) be delivered to the Alaska Department of Law, Attn: Steven G. Ross, 1031 W. 4<sup>th</sup> Avenue, Suite 200, Anchorage, AK 99501.

b. If the Payment Amount is not made on time, or if any negotiable instrument presented or tendered for such payment is not honored, CBJ shall pay an additional \$1,000 per day until the Payment Amount is received by ADEC. In any action or proceeding to collect any amount due under this Agreement, the validity, amount, and appropriateness of any amount due under Section II (Recovery of Administrative Fees, Costs, and Expenses), or Section III (Payment Terms and Conditions), shall not be subject to review. In any action or proceeding brought to enforce any provision of this Agreement, or collect any amount due under this Agreement, the successful party shall be entitled to recover reasonable actual attorneys' fees, costs, and interest, in addition to any other available remedy available.

25. Covenant Not to Sue. Provided CBJ fully and timely complies with the terms and conditions of this Agreement, the State shall not institute any legal or other enforcement action or proceedings against CBJ arising from the violations alleged in Section I (Findings and Conclusions) above.

#### IV. ADDITIONAL TERMS AND CONDITIONS

26. Modifications. This Agreement may not be modified except by a written agreement signed by authorized representatives of the CBJ, ADEC, and ADOL.

27. Rule of Law/Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska. Jurisdiction for any action to enforce this Agreement shall be the Anchorage Superior Court for the State of Alaska.

28. Severability. It is the intent of the Parties that the terms, provisions, and conditions of this Agreement are completely severable. Should any part of this Agreement be declared by a court with applicable jurisdiction to be void, invalid, or unenforceable, all other terms, provisions, and conditions of this Agreement shall remain



in full force and effect to the fullest extent allowed by law, notwithstanding any such determination of invalidity or unenforceability.

29. **Rules of Construction.** This Agreement has been freely negotiated between the Parties, without any enticement, duress, or pressure. Any rule of construction (judicial or otherwise) that a document should be more strictly construed against the drafter thereof shall not apply to any term, condition, or provision of this Agreement.

30. **Headings.** The headings in this Agreement are for ease of reference only and shall not limit or otherwise affect the interpretation of any of the provisions, including terms and conditions, contained in this Agreement.

31. **No Waiver.** A failure by ADEC to enforce any provision of this Agreement on one or more occasions shall not be construed as a waiver or any way affect ADEC's right to insist upon strict performance of the same or other provision of this Agreement on any other occasion or in the future.

32. **Parties Bound.** This Agreement shall apply and be binding upon CBJ, its officers, employees, agents, successors and assigns, and upon all persons and entities acting on its behalf.

33. **No Admission of Liability.** The Parties have entered into this Agreement to resolve and settle a disputed matter and thereby to avoid the uncertainty and expense of a formal civil enforcement proceeding. By entering into this Agreement, CBJ neither admits nor denies the allegations in Section I (Findings and Conclusions) of this Agreement and nothing in this Agreement shall constitute or be construed as an admission of liability or wrongdoing on the part of CBJ, except to the extent necessary to enforce this Agreement.

34. **Time of the Essence.** Time is of the essence as to each and every provision set forth in this Agreement.

35. **Computation of Time Periods.** Unless otherwise provided herein, all references to dates in this Agreement shall be to calendar days. If a deadline falls or occurs on a Saturday, Sunday, or legal holiday recognized by the State of Alaska, the deadline shall be extended only until the next day which is not a Saturday, Sunday, or legal holiday.

36. **Payment Default.** At the sole option of ADEC, this Agreement may be considered null and void if the payment required to be made by CBJ under Section II (Payment Amount) is not made on time, time being of the essence.

37. Understanding of Terms/Voluntary Agreement. Each party acknowledges and represents that it has had the opportunity to consult with an attorney if the party so chooses, has carefully read and understands the scope and effect of the provisions of this Agreement, and has freely and voluntarily entered into this Agreement.

38. Signatory Authority. Each individual signing this Agreement on a party's behalf certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such party to this document.

39. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes hereof, a facsimile copy of a signature page hereto shall be deemed to be an original.

40. Effective Date. The effective date ("Effective Date") of this Agreement is the date of the last signature, below, on this Agreement by an authorized representative of CBJ, ADEC, or ADOL

41. Entire Agreement. This Agreement is a full, complete, and entire expression of the intent of the Parties with respect to the subject matter of this Agreement. No other agreement or representation, express or implied, has been made by either party with respect to the subject matter of this Agreement.

**[SIGNATURE PAGES FOLLOW]**

Signature Page for Settlement Agreement in:

*In the Matter of the State of Alaska, Department of Environmental Conservation  
and the City and Borough of Juneau*

DATED: 8-27-15

DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION


By: Michelle Hale  
Michelle Hale, Director  
Division of Water

Signature Page for Settlement Agreement in:

*In the Matter of the State of Alaska, Department of Environmental Conservation  
and the City and Borough of Juneau*

DATED: August 27, 2015

CRAIG W. RICHARDS  
ATTORNEY GENERAL  
STATE OF ALASKA

By:   
\_\_\_\_\_  
Steven G. Ross  
Assistant Attorney General

Signature Page for Settlement Agreement in:

*In the Matter of the State of Alaska, Department of Environmental Conservation  
and the City and Borough of Juneau*

DATED: August 10, 2015

CITY AND BOROUGH OF JUNEAU

By: Kimberly A Kiefer  
city manager

Print Name: Kimberly A Kiefer

ACKNOWLEDGMENT

I, Kimberly A Kiefer, hereby certify that I am a responsible official for the City and Borough of Juneau ("CBJ") and that I have the authority to enter into this Agreement on behalf of CBJ and to otherwise legally bind CBJ. I hereby acknowledge that I have freely and voluntarily entered into this agreement with the State of Alaska on behalf of the Respondent.

SUBSCRIBED AND SWORN to before me this 10 day of August, 2015.

Veeraya R Mercer  
Notary Public, State of Alaska  
My commission expires: June 15, 2019

