

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM**

IDAHO DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Plaintiff,

vs.

CITY OF BLACKFOOT, IDAHO,

Defendant.

Case No. CV06-24-2094

CONSENT JUDGMENT

Plaintiff, Idaho Department of Environmental Quality (“Department”) and Defendant, City of Blackfoot (“City”) hereby consent to the entry of the following Consent Judgment.

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to Idaho Code §§ 39-108 and 1-705.
2. This Court has personal jurisdiction over the City Pursuant to Idaho Code §§ 5-514(a) and (c) because, upon information and belief, the City has committed acts and omissions within the State of Idaho out which this cause of action arises, and which violate the laws of the State of Idaho. Additionally, the City owns real property within the State of Idaho, which is related to the subject matter involved in this action.
3. Venue is proper in this Court for this matter pursuant to Idaho Code §§ 39-108 and 5-404 because the violations and the causes of action alleged in the Complaint filed in this matter occurred and the action arose in the county in which this Consent Judgment has been issued.
4. The Complaint states claims upon which relief may be granted against the City.

5. For purposes of this Consent Judgment and the underlying Complaint, the City has waived all objections and defenses that it may have to the filing of the Complaint and the jurisdiction of the Court or to venue in this District and will not challenge the filing of the Complaint, the entry of this Consent Judgment or this Court's jurisdiction and authority to enter and enforce this Consent Judgment.

II. PARTIES BOUND

6. This Consent Judgment will apply and be binding upon the City. Unless otherwise agreed to by the Department, no change in ownership, corporate, or partnership status relating to the Wastewater Treatment Plant ("WWTP") or conveyance of title, easement, or other interest, including but not limited to any lease or transfer of assets or real or personal property, will alter the City's obligation to comply with the requirements of this Consent Judgment or to ensure compliance by any successor or assign.
7. The City will notify any prospective purchaser of the terms and conditions of this Consent Judgment and the current status of completion of the requirements of this Consent Judgment.
8. The City will provide notice to the Department of the offer for sale or transfer of the WWTP, and the identity of the purchaser or party to which the property will be transferred prior to closing of any sale or transfer of the property or any portion thereof.

III. BACKGROUND AND FINDINGS

For purposes of entry of this Consent Judgment, the Court finds as follows:

9. The City of Blackfoot, Idaho, is a person within the meaning of Idaho Code § 39-103(11) and IDAPA 58.01.25.010.61.

10. The City owns and operates a Wastewater Treatment Plant (“WWTP”) located at 2025 Riverton Road near Blackfoot, Idaho. The WWTP is a Publicly Owned Treatment Works POTW under IDAPA 58.01.25.010.67.
11. The WWTP discharges effluent containing pollutants into waters of the United States.
12. The discharge of pollutants from the WWTP is regulated by IPDES Permit number ID0020044 (“Permit”), which mandates, among other things, specific effluent limits, monitoring, reporting, and submittal to the Department of various documents or reports.
13. The WWTP has discharged the following effluent exceedances on the following dates or monitoring period end dates: December 31, 2022 – pH of 6.13 SU; December 31, 2022 – 48.35 lb/day of Phosphorus; May 31, 2023 – 54 mg/l of Solids; December 31, 2023 – 49.42 lb/day of Phosphorus; January 12, 2024 – Ph of 6.49 SU; November 8, 2024 – pH of 6.3 SU.
14. Monthly Discharge Monitoring Reports (“DMR”) submitted by the WWTP to the Department between February 2023 and August 2024 show non-receipt for a parameter with monitoring requirements violations; the late number of days span from 58-609 for Mercury and Cyanide, as required by the permit.
15. Monthly DMR submitted by the WWTP to the Department between December 2022 and August 2023 show non-receipt for a parameter with effluent limitations violations; the late number of days span from 425-668 for BOD; Solids; Nitrogen; and Phosphorus, as required by the permit.
16. The WWTP has discharged the following Sanitary Sewer Overflow (SSO) amounts on the following dates: March 29, 2023 – 1,000 gallons; June 20, 2023 – 100 gallons; September 20, 2023 – 500 gallons; May 26, 2024 – June 3, 2024 – 5,000 gallons.

17. The required surveillance and inspection activities for Significant Industrial Users (“SIUs”) of the WWTP show that the 2021 Pretreatment Compliance Inspection Report states Premier Technology was not inspected during the 2020 pretreatment year; the 2022 Pretreatment Compliance Inspection Report confirmed that Premier Technology and Basic American Ingredients were not inspected; and the 2023 Pretreatment Annual Report Review noted that there was no documented surveillance monitoring for Premier Technology.
18. To resolve these matters, including continuing effluent exceedances as stated in this Consent Judgment, without further litigation or controversy, and without admission of any fact or law, the parties agree to the following terms and actions:

THEREFORE, it is ORDERED, ADJUDGED, and DECREED:

IV. COMPLIANCE REQUIREMENTS

19. To resolve the violations alleged in the Complaint and ongoing violations of the effluent limitations established by the Permit, the City shall undertake the following:
- a. Continue to comply with all terms and conditions found in the Permit, except as otherwise expressly provided for in the attached Agreement Schedule and this Consent Judgment.
 - b. Achieve compliance with effluent limitations and Permit conditions by completing the tasks by the dates contained in the Agreement Schedule, attached as Exhibit A and incorporated by reference.
 - c. Provide written verification to the Department that the tasks and upgrades listed in the Agreement Schedule are completed, and the WWTP is achieving effluent limits for the violations listed in the Complaint filed in this case.

V. PENALTIES

20. Pursuant to Idaho Code §§ 39-108(5) and 39-175E, the City has accrued a civil penalty of \$568,050 for past and continuing violations as listed in the Complaint filed in the above-entitled case. Due to good faith and unique factors as listed in the Complaint and this Consent Judgment, the penalty has been reduced to an adjusted total penalty of \$284,025. Of this amount, the City must pay the Department \$56,805 for the alleged violations within fifteen (15) calendar days of the effective date of this Judgment. The remaining adjusted total penalty amount of \$227,220 will be held in abeyance and administered consistent with the Stipulated Penalty provisions specified in this Consent Judgment. Payment will be made to:

Fiscal Office
Idaho Dept. of Environmental Quality
1410 N. Hilton
Boise, ID 83706

a. Stipulated Penalties: In the event that the City fails to comply with any of the requirements appearing in this Consent Judgment and attached Agreement Schedule, the City will be in violation of this Judgment and may be subject to stipulated penalties, in the Department's discretion, up to the remaining adjusted total penalty of \$227,220. The City must provide the stipulated penalty payment to the Department within thirty (30) days of receiving written notice from the Department. Stipulated penalty payments will be made to the Department's Fiscal Office as listed above. Payment of the stipulated penalty does not relieve the City of any of its obligations under this Judgment and does not preclude the Department from seeking any other relief available under law and equity.

b. Supplemental Environmental Project: The City may undertake a Supplemental Environmental Project ("SEP") to settle up to seventy-five percent (75%) of the penalty amount. The SEP must be in conformance with Idaho Code § 39-108(5)(b) and DEQ Policy Statement

PS20-13, “Supplemental Environmental Projects.” SEP proposals must be submitted to the Department for review and approval no later than thirty (30) days from the effective date of this Judgment. Any approved SEP proposal must be completed as soon as possible but in no event longer than three (3) years from the effective date of this Consent Judgment.

VI. COST OF SUIT

21. Each Party to this action will bear its own costs and attorney’s fees.
22. In the event this Court subsequently determines that the City has violated the terms of this Consent Judgment, the City will be liable to the Department for any costs, attorney’s fees, or other expenses incurred by the Department in any action or proceeding against the City for non-compliance with this Judgment.

VII. EFFECT OF SETTLEMENT

23. Each Party hereto warrants that it is not relying on any warranties, representations, statements, or promises of the other Party concerning any facts, matters, or events which are the subject of this Consent Judgment and the releases herein, except as expressly set forth in this Consent Judgment.
24. In the event any term of this Consent Judgment is held to be invalid or unenforceable by a court, the remaining terms of the Consent Judgment will remain in force.
25. Nothing herein will be construed to bar, alter, or limit the ability of the Department to pursue, and the Department expressly reserves the right to pursue any legal or equitable, judicial, or administrative relief to it to remedy any violation of the terms of this Consent Judgment.
26. This Consent Judgment does not relieve the City of its obligation to comply with any of the provisions of the EPHA, I.C. §§ 39-101, *et. seq.*, the Department’s Rules, including the IPDES rules, IDAPA 58.01.25, or other applicable local, State or Federal law. The Department retains

all authority and reserves all rights to take any actions authorized by law to protect human health and the environment. This Consent Judgment does not affect the right of the Department or the State of Idaho to pursue appropriate relief for any violations not specifically addressed in this Judgment.

27. Nothing in this Consent Judgment, including the City's actions undertaken pursuant to this Judgment, will be construed as an admission of fact or law except for the purpose of enforcing this Consent Judgment.

VIII. FORCE MAJEURE

28. The City will cause all work or required reporting to be performed within the time limits set forth herein, unless performance is delayed by events which constitute a force majeure. For the purposes of this Consent Judgment, a force majeure is an event arising from circumstances beyond the reasonable control of the City which delays the performance of any obligations required by this Judgment. Increases in costs will not be considered an event of force majeure. The City will notify the Department within three (3) calendar days after any event which the City contends is a force majeure through the Department's E-Permitting System. Such notification will describe the anticipated length of the delay, the cause or causes of the delay, the measures taken or to be taken by the City to minimize the delay, and the timetable by which these measures will be implemented. The City will have the burden of demonstrating that the event is a force majeure. The decision of whether an event is a force majeure will be made by the Department, subject to dispute resolution under this Consent Judgment. Said decision will be immediately communicated by the City in writing. If a delay is attributable to a force majeure, the time-period for performance under this Consent Judgment will be extended, in writing, by the amount of time that is attributable to the event constituting the force majeure.

IX. DISPUTE RESOLUTION

29. The parties agree to attempt, in good faith, to resolve through informal dispute resolution methods any dispute arising under this Consent Judgment. If such informal resolution is not successful within 30 days, either party may seek resolution of the dispute by the Court.

X. NOTICES AND SUBMISSIONS

30. Unless otherwise provided herein, notifications to, or communications with the Department will be deemed submitted on the date they are sent by facsimile, electronic mail, or postmarked and sent by mail service.

31. Unless otherwise directed by the Department, all communication required to be sent to the Department will be addressed to:

Roy Henson
IPDES Program
Idaho Department of Environmental
Quality 444 Hospital Way, #300
Pocatello, ID 83201

32. Unless otherwise directed by the City, all communication required to be sent to the City will be addressed to:

Marc Carroll
Mayor, City of Blackfoot
157 N. Broadway
Blackfoot, ID 83221

XI. RETENTION OF JURISDICTION

33. The Court will retain jurisdiction to enforce the terms of this Consent Judgment and to resolve any disputes arising hereunder until the Judgment has been satisfied and the Consent judgment is terminated in accordance with the provisions of this Judgment.

XII. MODIFICATION

34. Except as specifically provided for herein, there will be no modifications or amendments of this Consent Judgment without written agreement of the Parties to this Consent Judgment and approval by this Court.

XIII. PUBLIC COMMENT

35. This Consent Judgment shall be lodged with the Court for a period of not less than thirty (30) Days for the Department's public notice and comment process in accordance with Idaho Code § 39-108(b)(9) and IDAPA 58.01.25.500.04.c. After consideration of public comments, the Department reserves the right to withdraw or withhold its consent if the comments regarding the Consent Judgment disclose facts or considerations indicating that this Consent Judgment is inappropriate, improper, or inadequate.

XIV. EFFECTIVE DATE

36. This Consent Judgment will take effect on the date it is entered by the Court.

XV. TERMINATION AND DISMISSAL

37. The parties, through their counsel, agree that upon completion of the actions required by this Consent Judgment, they will file a stipulated motion requesting that the Court terminate this Consent Judgment and dismiss the Complaint with prejudice, consistent with the terms set forth in the stipulation.

XVI. SIGNATORIES AND SERVICE

38. Each undersigned representative of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Judgment and to execute and legally bind such Party to this Consent Judgment.

39. The Parties consent to the entry of this Consent Judgment without further notice.

40. The Parties further agree not to oppose entry of this Consent Judgment by this Court or to challenge any provision of this Judgment.

41. The City need not file an answer or other responsive pleading to the Complaint in this action unless or until the Court expressly declines to enter this Consent Judgment, in which case the City's responsive pleading to the Complaint would be due in the timeframe set forth in the Idaho Rules of Civil Procedure or in an order of this Court.

THE UNDERSIGNED PARTIES enter into this Consent Judgment in Ada County case number CV06-24-2094.

FOR THE STATE OF IDAHO:

JESS BYRNE
Director, Idaho Department of Environmental Quality
Date: _____

Reviewed and approved as to form:

BRENT KING
Deputy Attorney General, Idaho Attorney General's Office
Counsel for the State
Date: _____

FOR THE CITY:

MARC CARROLL
Mayor, City of Blackfoot
Date: _____

Reviewed and approved as to form:

GARRETT H. SANDOW
Counsel for the City

DATED: _____

BY THE COURT

Honorable Darren B. Simpson

EXHIBIT A

IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF

AGREEMENT SCHEDULE

City of Blackfoot WWTP)
2025 Riverton Road)
Blackfoot, ID 83221)
_____)

In accordance with the Consent Judgment, City of Blackfoot WWTP (City) is required to complete the following activities and submit any necessary documentation to the Department of Environmental Quality (Department) using the Idaho Pollutant Discharge Elimination System (IPDES) E-Permitting System by the specified due date for each milestone, unless otherwise specified.

E-Permitting Notification Requirement for Engineering Submittals:

For Requirements 7 (Preliminary Engineering Report), 8 (Updated O&M Manual), and 10 (Plans & Specifications), the Permittee shall submit a notification via the E-Permitting system confirming that the required documents have been provided directly to DEQ Regional Office engineering staff. Due to the size and format of these engineering submittals, the full documents shall not be uploaded into E-Permitting.

The notification shall include:

- i. The applicable requirement number associated with the submittal,
 - ii. The title of the submitted deliverable,
 - iii. The date the document was transmitted to the Regional Office, and
 - iv. The method of delivery
1. By August 31, 2025, Perform Industrial Pretreatment Program (IPP) compliance sampling of each Significant Industrial User (SIU), and a minimum of three (3) times per year, per issued Notice of Deficiency (NOD)
 2. By December 31, 2025, Submit an updated Quality Assurance Project Plan (QAPP) that addresses Discharge Monitoring Report (DMR) and monitoring deficiencies through operator training
 3. By December 31, 2025, Submit a revised Emergency Response Plan (ERP)
 4. By January 10, 2026, Submit a funding strategy and Letter of Interest (LOI) for DEQ funding
 5. By January 20, 2026 and every January 20 and July 20 thereafter, Submit semiannual progress reports

At a minimum, each semiannual progress report shall include:

- i. A summary of all significant activities performed to accomplish each Consent Judgment requirement;
- ii. A detailed description of any issues encountered, including the actions taken to return to and maintain compliance with the Permit;
- iii. An account of any missed deadlines and associated corrective actions that have been or will be undertaken to maintain the timeline of this Consent Judgment;
- iv. A summary of future actions and a description of the milestones that will be targeted for the next semiannual report.

6. By August 30, 2026, Submit a funding roadmap that explores alternative sources of funding for Phases 3-6
7. By October 31, 2026, Submit a Preliminary Engineering Report (PER) for Phase 3
8. By October 31, 2026, Submit an updated O&M manual, including SOPs for levels of permitted effluents and process upset response

At a minimum, each written update on collection system planning activities shall include:

- i. A summary of all significant activities performed to accomplish each activity associated with Phases 3-6;
- ii. A detailed description of any issues encountered, including the actions taken to accomplish each activity associated with Phases 3-6;
- iii. A summary of future actions, including a description of the specified milestone(s), whether established in this Consent Judgment or recognized within the City's internal policies, that correspond with measures intended to accomplish each activity associated with Phases 3-6.

9. By August 31, 2027, Submit a written update on Phase 4 project planning and funding status
10. By April 30, 2028, Submit Plans & Specifications (P&S) for Phase 3
11. By March 31, 2029, Submit a notification of construction start for Phase 3

At a minimum, each written update on collection system planning activities shall include:

- i. A summary of all significant activities performed to accomplish each activity associated with Phases 5-6;
- ii. A detailed description of any issues encountered, including the actions taken to accomplish each activity associated with Phases 5-6;
- iii. A summary of future actions, including a description of the specified milestone(s), whether established in this Consent Judgment or recognized within the City's internal policies, that correspond with measures intended to accomplish each activity associated with Phases 5-6.

12. By April 30, 2030, Submit a written update on Phases 5-6 project planning and funding status

13. By March 31, 2031, Submit a statement of substantial completion for Phase 3 upgrades

14. By October 31, 2031, Achieve final effluent compliance and submit certification

Paragraph	Requirement	Deadline
1	Perform IPP compliance sampling of each SIU, and a minimum of three times per year, per NOD	August 31, 2025
2	Submit an updated QAPP that addresses DMR and monitoring deficiencies through operator training	December 31, 2025
3	Submit a revised ERP	December 31, 2025
4	Submit a funding strategy and LOI for DEQ funding	January 10, 2026
5	Submit semiannual progress reports	January 20, 2026, and every January 20 and July 20 thereafter
6	Submit a funding roadmap that explores alternative sources of funding for Phases 3-6	August 30, 2026
7	Submit a PER for Phase 3	October 31, 2026
8	Submit an updated O&M manual, including SOPs for levels of permitted effluents and process upset response	October 31, 2026
9	Submit a written update on Phase 4 project planning and funding status	August 31, 2027
10	Submit P&S for Phase 3	April 30, 2028
11	Submit a notification of construction start for Phase 3	March 31, 2029
12	Submit a written update on Phases 5-6 project planning and funding status	April 30, 2030
13	Submit a statement of substantial completion for Phase 3 upgrades	March 31, 2031
14	Achieve final effluent compliance and submit certification	October 31, 2031