



**CITY COUNCIL
MEETING AGENDA**

**November 22, 2022
9:00 AM**

Location: City Council Chambers, 408 N. Spokane Street, Post Falls, ID 83854

SPECIAL MEETING – 9:00 am City Council Chambers

CALL TO ORDER BY MAYOR JACOBSON

PLEDGE OF ALLEGIANCE

ROLL CALL OF CITY COUNCIL MEMBERS

Kerri Thoreson, Josh Walker, Joe Malloy, Nathan Ziegler, Lynn Borders, Kenny Shove

AMENDMENTS TO THE AGENDA

Final action cannot be taken on an item added to the agenda after the start of the meeting unless an emergency is declared that requires action at the meeting. The declaration and justification must be approved by motion of the Council.

DECLARATION OF CONFLICT, EX-PARTE CONTACTS AND SITE VISITS

The Mayor and members of the City Council have a duty to serve honestly and in the public interest. Where the Mayor or a member of the City Council have a conflict of interest, they may need to disclose the conflict and in certain circumstances, including land use decisions, they cannot participate in the decision-making process. Similarly, ex-parte contacts and site visits in most land use decisions must also be disclosed.

1. UNFINISHED BUSINESS/RETURNING ORDINANCES AND RESOLUTIONS

This section of the agenda is to continue consideration of items that have been previously discussed by the City Council and to formally adopt ordinances and resolutions that were previously approved by the Council. Ordinances and resolutions are formal measures considered by the City Council to implement policy which the Council has considered. Resolutions govern internal matters to establish fees and charges pursuant to existing ordinances. Ordinances are laws which govern general public conduct. Certain procedures must be followed in the adoption of both ordinances and resolutions; state law often establishes those requirements.

ACTION ITEMS:

- a. Idaho Department of Environmental Quality – Compliance Schedule

ADJOURNMENT

Questions concerning items appearing on this Agenda or requests for accommodation of special needs to participate in the meeting should be addressed to the Office of the City Clerk, 408 Spokane Street or call 208-773-3511. City Council and City commission meetings are broadcast live on Post Falls City Cable on cable

channel 1300 (formerly 97.103) as well as the City's YouTube Channel
(<https://www.youtube.com/c/CityofPostFallsIdaho>).

Mayor Ronald G. Jacobson

Councilors: Kerri Thoreson, Josh Walker, Joe Malloy, Nathan Ziegler, Lynn Borders, Kenny Shove

Mission

The City of Post Falls mission is to provide leadership, support common community values, promote citizen involvement and provide services which ensure a superior quality of life.

Vision

Post Falls, Idaho is a vibrant city with a balance of community and economic vitality that is distinguished by its engaged citizens, diverse businesses, progressive leaders, responsible management of fiscal and environmental resources, superior service, and a full range of opportunities for education and healthy lifestyles.

"Where opportunities flow and community is a way of life"

**CITY OF POST FALLS
AGENDA REPORT
UNFINISHED BUSINESS**

MEETING DATE: November 22, 2022

DATE: November 18, 2022

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Craig Borrenpohl, Utilities Manager

SUBJECT: Idaho Department of Environmental Quality – Compliance Agreement Schedule

ITEM AND RECOMMENDED ACTION: City Council reviews and authorizes the Mayor to sign the Compliance Agreement Schedule with the Idaho Department of Environmental Quality.

DISCUSSION: The Post Falls Water Reclamation Facility (WRF) discharges treated effluent to the Spokane River as authorized by the Idaho Pollutant Discharge Elimination System (IPDES) Permit ID0025852.

Permit Section I.D lays out a schedule of compliance and interim requirements to ensure the City is making progress towards meeting the final effluent limits of the Permit. Interim requirement one is an ongoing requirement the City continues to meet. Requirements two, three, and four have been completed. Interim requirement number five requires the City to provide EPA and DEQ with a written notice by November 30, 2022 that construction has been completed on the treatment facilities needed to achieve the final effluent limits. The construction referenced in the permit is the ongoing tertiary improvements project which has been under construction at the WRF since late 2020. Materials availability, labor shortages, and other discussed construction challenges have delayed progress on the project. City staff first notified DEQ in February 2022 that construction completion by the interim deadline was unlikely. Formal requests to extend the deadline were submitted in July and September 2022.

A Compliance Agreement Schedule (CAS) was deemed the most appropriate regulatory mechanism to provide additional construction time for the tertiary project. The attached document was negotiated between City and DEQ staff and provides regulatory relief from DEQ enforcement action while the City continues to make good faith efforts to complete construction as soon as practicable. The CAS moves the interim compliance date from November 30, 2022 to November 30, 2023. The CAS also extends interim permit requirement number six by one year to provide additional start up and optimization time for the new treatment systems.

ITEM / PROJECT PREVIOUSLY REVIEWED BY COUNCIL ON:

Water Reclamation Facility Upgrade – Recommendation of Award – 6/16/20
Amendment #3 to the Professional Services Agreement – 4/21/20
Wage Compliance Agreement – 4/7/20
Hawley Troxell Engagement Letter – 2/4/20
Tertiary Project Update, 60% Design – 7/2/19
Tertiary Project Update, 30% Workshop – 11/6/18
Membrane Equipment and UV Equipment Bid Awards – 11/6/18
Tertiary Project Financing, SRF Loan – 1/16/18

Tertiary Project Workshop – 3/6/18
Water Reclamation Facility Design Contract with J-U-B – 3/6/18
Pilot Project Results – 1/2/18
Pilot Project Update, Sole Source Procurement – 4/4/17
Agreement for Membrane Pilot Study Electrician Services – 1/3/17
Tertiary Pilot Enclosure – 11/1/16
Tertiary Membrane Pilot Testing, Agreement with J-U-B – 6/20/16

APPROVED OR DIRECTION GIVEN: Council Approved Items noted Above

FISCAL IMPACT OR OTHER SOURCE OF FUNDING: The Compliance Agreement Schedule will not increase the total project cost.

BUDGET CODE:

SUPPORTING DOCUMENTS: Idaho Department of Environmental Quality Compliance Agreement Schedule

IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF

City of Post Falls)	COMPLIANCE
408 N Spokane Street)	AGREEMENT SCHEDULE
Post Falls, ID 83854)	Idaho Code § 39-116A
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FINDINGS AND CONCLUSIONS

1. Pursuant to the Idaho Environmental Protection and Health Act (EPHA), Idaho Code §§ 39-108 and 39-116A, the Department of Environmental Quality (Department) enters into this Compliance Agreement Schedule with City of Post Falls (Respondent) located in Post Falls, Kootenai County, Idaho.
2. The Respondent owns and operates a water reclamation facility in Post Falls, Idaho, under Idaho Pollutant Discharge Elimination System (IPDES) Permit ID0025852 (Permit). The Respondent is governed under IDAPA 58.01.25, "Rules Regulating the Idaho Pollutant Discharge Elimination System Program" for the discharge.

On September 7, 2022, the Respondent informed the Department that because of the SARS-CoV-2 pandemic, utility operations, facility construction, materials procurement, labor availability, and other factors had impacted construction on the water reclamation facility, and therefore, the Respondent would not be able to complete the interim tasks outlined in Part I.D.5 and Part I.D.6 of the Permit within the specified timeframes. Therefore, the Respondent requested to enter into this Compliance Agreement Schedule with the Department for regulatory relief and an extension of the timeframes outlined in Parts I.D.5 and I.D.6 of the Permit.

For purposes of meeting the final effluent limits for CBOD₅ in Part I.C.3 of the Permit, the facility has demonstrated compliance with the final effluent limits of Part I.B.1 Table 1 of the Permit based on data from 2017-2022. This data showed the seasonal average value over the five years to be 116.7 lb/day and the maximum average seasonal value to be 133.7 lb/day. The final seasonal average effluent limit for CBOD₅ is 255 lb/day. Therefore, the provisions of this Compliance Agreement Schedule only apply to meeting the final effluent limits for total phosphorus.

3. The Department has evaluated the factors in Idaho Code § 39-116A(4) and finds that a Compliance Agreement Schedule is an appropriate mechanism to achieve compliance with the final total phosphorus effluent limits in the Permit and be protective of human health and the environment. Granting an additional one year from the original date of November 30, 2024, to achieve compliance with the final

total phosphorus effluent limits in Part I.C.3 of the Permit ensures a reasonable opportunity for the Respondent to be able to complete the tasks outlined in Part I.D.5 and I.D.6 of the Permit (Paragraphs 5 and 6 of this Compliance Agreement Schedule).

4. To resolve this matter without litigation or further controversy, the Respondent agrees to the provisions of this Compliance Agreement Schedule.

AGREEMENT SCHEDULE

5. Construction Complete. The Respondent must complete construction on the facilities to achieve final effluent limits (Part I.D.5 of the Permit) by November 30, 2023. In addition, notification documenting that construction has been completed to achieve compliance with Part I.C.3 of the Permit must be submitted to the Department through the IPDES E-Permitting system.
6. Meet Final Effluent Limits for Total Phosphorus. The Respondent must achieve compliance with the final total phosphorus effluent limits of Part I.B.1 Table 1 of the Permit by November 30, 2025 (Part I.D.6 of the Permit). In addition, a written report providing details of a completed start up and optimization phase of the new treatment system must be submitted to the Department thorough the IPDES E-Permitting system. The report must include two years of effluent data for total phosphorus demonstrating that final effluent limits can be achieved (Part I.D.6 of the Permit). The two years of data do not have to consistently meet the final effluent limits but demonstrate that at the end of the optimization period final effluent limits will be met.
7. Progress Reports. Submit a progress report to the Department that outlines the progress made toward achieving compliance with the final total phosphorus effluent limits through the IPDES E-Permitting system by November 30th of each calendar year that this Compliance Agreement schedule is in effect (Part I.D.7 of the Permit). This requirement is not subject to the review and approval process specified in Paragraph 13 of this Compliance Agreement Schedule. At a minimum, the report must include:
 - a. An assessment of the previous year of effluent data and comparison to the interim effluent limits
 - b. A report on progress made toward meeting the final effluent limits
 - c. Further actions and milestones targeted for the upcoming year
8. All terms and conditions set forth in this Compliance Agreement Schedule will be completed as soon as possible but no later than November 30, 2025 (Table 1).
9. The Respondent will continue to abide by all other terms and conditions of the Permit not expressly addressed in this Compliance Agreement Schedule.

Table 1. Compliance Agreement Schedule requirements and deadlines.

Requirement	Paragraph	Deadline
Construction Complete	5	November 30, 2023
Meet Final Effluent Limits for Total Phosphorus	6	November 30, 2025
Progress Reports	7	November 30th ¹

¹ Date applies to each calendar year the Compliance Agreement Schedule is in effect.

INSPECTIONS

10. Pursuant to Idaho Code § 39-108 and this Compliance Agreement Schedule, the Department may conduct inspections or site visits that the Department determines necessary to verify compliance with all applicable requirements in this Compliance Agreement Schedule.

CORRESPONDENCE

11. All correspondence sent by the Respondent to the Department regarding this Compliance Agreement Schedule must be addressed to:

Engineering Manager
Idaho Department of Environmental Quality
2110 Ironwood Parkway
Coeur d’Alene, ID 83814

12. All correspondence sent by the Department to the Respondent regarding this Compliance Agreement Schedule should be addressed to:

Post Falls City Hall
408 N Spokane Street
Post Falls, ID 83854
Attn. Craig Borrenpohl, Utilities Manager
cborrenpohl@postfalls.gov

DOCUMENT SUBMITTALS

13. Unless a different process is specified herein or in rule or statute, the following document submittal and review process (Submittal Review Process) will be followed regarding document submittals required of this Compliance Agreement Schedule. This process must be followed until the Department approves the document or the document review time frame expires, whichever comes first.

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- A. After receipt of a submittal from the Respondent, the Department will 1) notify the Respondent in writing that the document is approved or 2) notify the Respondent in writing of any deficiencies in the document. If the Department notifies the Respondent of deficiencies in the document, the Respondent must submit a revised document to resolve those deficiencies within thirty (30) calendar days of receipt of the Department's notice.
 - B. The Submittal Review Process may be repeated until the Department notifies the Respondent the document is approved. However, the submittal must receive the Department's approval within one hundred eighty (180) calendar days from the due date for the first submittal of the document, unless the Department provides the Respondent with a written extension of the one hundred eighty (180) calendar daytime frame. The failure of the Respondent to obtain the Department approval of a submittal within such time frames will constitute a violation of this Compliance Agreement Schedule.
 - C. If the date on which a submittal or other communication is due falls on a Saturday, Sunday, or federal holiday, the submission deadline is the next business day.
 - D. Each document approved by the Department under the Submittal Review Process, or otherwise submitted and approved pursuant to this Compliance Agreement Schedule, is incorporated into and enforceable as a part of this Compliance Agreement Schedule.
 - E. All submittals required of the Respondent pursuant to this Compliance Agreement Schedule may be submitted to the Department through the IPDES E-Permitting system, via email, or mailed.

STANDARD PROVISIONS

14. This Compliance Agreement Schedule does not relieve the Respondent from its obligation to comply with any of the provisions of EPHA, any provision of Permit ID0025852 issued to the Respondent, or other applicable local, state, or federal laws and regulations.
15. This Compliance Agreement Schedule binds the Respondent and its successors and assignees to this Compliance Agreement Schedule, until the terms of the Compliance Agreement Schedule are met to the Department's satisfaction, and the Department terminates it in writing.
16. If the Respondent fails to comply with the terms of this Compliance Agreement Schedule, the Department may seek and obtain, in any appropriate district court,

specific performance of the Compliance Agreement Schedule and other relief as authorized in the EPHA.

17. If any event occurs that causes or may cause delay in the achievement of any requirement of this Compliance Agreement Schedule, the Respondent must notify the Department in writing within ten (10) calendar days of the date the Respondent knew, or should have known, of the delay.
 - A. Any notice under this paragraph will describe in detail the date of the event that causes or may cause the delay, the event that causes the delay, the anticipated length of the delay, all anticipated consequences of the delay, measures taken by the Respondent to prevent or minimize the delay, and a timetable by which those measures will be implemented.
 - B. The Respondent will use all reasonable measures to avoid or minimize any such delay. If the Department determines that the delay or anticipated delay in achieving any requirements of this Compliance Agreement Schedule has been or will be caused by circumstances beyond the reasonable control of the Respondent, the Department may grant an extension for a period equal to the length of the delay.
 - C. The burden of proving that any delay is caused by circumstances beyond the reasonable control of the Respondent rests wholly with the Respondent.
18. If the Respondent wishes to seek an extension of any deadline contained in this Compliance Agreement Schedule, it must make a written request to the Department. The written extension request must explain the reasoning for the request and state the length of extension requested. Any extension provided by the Department will be in writing, in response to the request.
19. If the Respondent violates the terms of this Compliance Agreement Schedule, the Department will provide written notice to the Respondent describing the violation. No later than ten (10) calendar days after receiving the notification, the Respondent must reply to the Department in writing to explain the violation and provide a date in which the violation will be cured, to the Department's satisfaction.
20. A waiver or decision by the Department to not enforce any provision, term, condition, or requirement of this Compliance Agreement Schedule does not constitute a waiver of any other provision, term, condition, or requirement.
21. Each person signing this Compliance Agreement Schedule certifies they have the authority to sign for the party represented and to bind that party to its terms.

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22. In case any provision or authority of this Compliance Agreement Schedule or the application of this Compliance Agreement Schedule to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Compliance Agreement Schedule will remain in force and will not be affected.
 23. If the Respondent sells, offers for sale, or otherwise transfers ownership of the Facility Property (or any portion thereof) before termination of this Compliance Agreement Schedule and termination thereof, the Respondent must notify any prospective purchaser of the terms and conditions of this Compliance Agreement Schedule and the current status of completion of the requirements of this Compliance Agreement Schedule. The Respondent must also provide notice to the Department of the offer for sale and identify new owners at least ten (10) calendar days before closing any sale or transfer of the Facility Property or any portion thereof.
 24. Sale or transfer of the Facility Property or any portion thereof by the Respondent does not relieve the Respondent of its obligation to complete the terms and conditions of this Compliance Agreement Schedule unless appropriate arrangements are made with the purchaser or receiver of the Facility Property for assignment of the obligations of this Compliance Agreement Schedule and the Department consents in writing to the assignment of the obligations of this Compliance Agreement Schedule to the new owner.
 25. This Compliance Agreement Schedule sets forth the entire agreement related to the subject matter of this Compliance Agreement Schedule and may not be modified without written consent of all parties.
 26. This Compliance Agreement Schedule does not affect the right of the Department or the State of Idaho to pursue appropriate relief for any other violation of law, including civil penalties, injunctive or other equitable relief, or criminal sanctions.
 27. The Respondent agrees that this Compliance Agreement Schedule will be admissible as evidence in any proceeding to enforce this Compliance Agreement Schedule.
 28. Pursuant to Idaho Code § 39-116A, the Department and the Respondent may meet annually to reassess the necessity and appropriateness of this Compliance Agreement Schedule. the Respondent will contact the Department to schedule a meeting.
 29. If this Compliance Agreement Schedule is signed and agreed to with an electronic signature by either party, the electronic signature will have the same legal and evidentiary effect as a handwritten signature.

EFFECTIVE DATE AND TERMINATION

30. The effective date of this Compliance Agreement Schedule is the date of the signature by the Department Director.

31. Upon request by the Respondent, this Compliance Agreement Schedule may be terminated if the Department determines that all Compliance Agreement Schedule requirements are complete.

DATED THIS _____ day of _____, 2022

RONALD JACOBSON
Mayor, Authorized Representative of City of Post Falls

DATED THIS _____ day of _____, 2022

JESS BYRNE
Director, Idaho Department of Environmental Quality