

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

ZWJ PROPERTIES, LLC, WIN HOLLOW
SUBDIVISION

Boise, Idaho

Respondent.

DOCKET NO. CWA-10-2021-0057

CONSENT AGREEMENT

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

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g).

1.2. Pursuant to CWA Section 309(g)(1)(A), 33 U.S.C. § 1319(g)(1)(A), EPA is authorized to assess a civil penalty against any person that has violated CWA Section 301, 33 U.S.C. § 1311, and/or any permit condition or limitation in a permit issued under CWA Section 402, 33 U.S.C. § 1342.

1.3. CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of Class II civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed \$22,584 per day for each day during which the violation continues, up to a maximum penalty of \$282,293. *See also* 85 Fed. Reg. 83820 (December 23, 2020) (2021 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to CWA Section 309(g)(1)(A) and (g)(2)(B), 33 U.S.C. § 1319(g)(1)(A) and (g)(2)(B), and in accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and ZWJ Properties, LLC (Respondent) agrees to issuance of, the Final Order attached to this Consent Agreement.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), execution of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (Complainant).

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CWA, together with the specific provisions of the CWA and implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

Statutory and Regulatory Framework

3.1. As provided in CWA Section 101(a), 33 U.S.C. § 1251(a), the objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

3.2. Section 301(a) of the CWA prohibits the discharge of pollutants by any person from any point source into waters of the United States except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342. 33 U.S.C. § 1311(a).

3.3. Section 502(12) of the CWA defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

3.4. Section 502(6) of the CWA defines “pollutant” to include, *inter alia*, solid waste, garbage, chemical wastes, rock, sand, dirt and industrial, municipal, and agricultural waste discharged into water. 33 U.S.C. § 1362(6).

3.5. Section 502(5) of the CWA defines “person” to include “an individual, corporation, partnership, [or] association” 33 U.S.C. § 1362(5).

3.6. Section 502(14) of the CWA defines “point source” to include, *inter alia*, “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, [or] container . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

3.7. Section 502(7) of the CWA defines “navigable waters” as “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). In turn, at the time of the violations, “waters of the United States” was defined to include, *inter alia*, all waters which were currently used, were used in the past, or may have been susceptible to use in interstate or foreign commerce, including all waters which were subject to the ebb and flow of the tide; tributaries to such waters; and wetlands adjacent to the foregoing waters. *See* 40 C.F.R. § 122.2 (1993).

3.8. Section 402(a) of the CWA provides that EPA may issue NPDES permits that authorize the discharge of any pollutant to navigable waters, but only in compliance with

Section 301 of the CWA, 33 U.S.C. § 1311, and such terms and conditions as EPA determines are necessary to carry out the provisions of the CWA. 33 U.S.C. § 1342(a).

3.9. Section 402(p)(2)(B) of the CWA requires an NPDES permit for storm water discharges associated with industrial activity. 33 U.S.C. § 1342(p)(2)(B).

3.10. EPA regulations provide that “industrial activity” includes small construction activity such as clearing, grading and excavation if the operation results in the disturbance of one or more acres of total land area or if the total area disturbed is part of a larger common plan of development or sale if the larger common plan will ultimately disturb one or more acres of land. 40 C.F.R. § 122.26(b)(15)(i).

3.11. On January 19, 2017, EPA issued the 2017 Construction General Permit (2017 General Permit), which authorizes “operators” of construction activities to discharge pollutants in accordance with the effluent limitations and conditions set forth therein. The 2017 General Permit became effective on February 16, 2017. EPA finalized a modification to the 2017 General Permit, which took effect on June 27, 2019. The modification does not affect pre-modification applicability of the 2017 General Permit. The 2017 General Permit expires on February 16, 2022.

General Allegations

3.12. Respondent is a Limited Liability Company licensed to do business in the State of Idaho and is therefore and a “person” under CWA Section 502(5), 33 U.S.C. § 1362(5).

3.13. At all times relevant to this action, Respondent operated at the construction site known as the Win Hollow Subdivision located at 3450 North Winsome Road in Boise, Idaho (Site).

3.14. At all times relevant to this action, Respondent was authorized to discharge stormwater containing pollutants from the Site in accordance with the effluent limitations and conditions contained in the 2017 General Permit, NPDES Tracking No: IDR1000LG (Permit).

3.15. The 10-acre Site is surrounded by steep slopes on the west, north, and east sides. The Site slopes to the southeast allowing storm water runoff to flow into two storm drains at the base of North Winsome Road (hereinafter, storm drains). The storm drains discharge to Crane Creek, a perennial stream that flows to the Boise River.

3.16. The storm drains constitute “point sources” within the meaning of Section 502(14) of the CWA.

3.17. Storm water associated with industrial activity, including construction activity, is a pollutant within the meaning of Section 502(6) of the CWA.

3.18. Crane Creek flows to the Boise River. The Boise River flows to the Snake River, which flows to the Columbia River, and eventually to the Pacific Ocean. Crane Creek is a tributary to the Boise River. The Boise River is a tributary to the Snake River, a traditional navigable water. Accordingly, Crane Creek is a “water of the United States” pursuant to the regulations that were in effect at all times relevant to the violations alleged herein and is therefore a “navigable water” within the meaning of Section 502(7) of the CWA. 33 U.S.C. § 1362(7).

3.19. Respondent discharged pollutants from a point source into waters of the United States at the Site, within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

Violations

3.20. The Permit establishes, *inter alia*, authorized and prohibited discharges, effluent limitations, inspection, monitoring, corrective action and training requirements, as well as the

requirement to develop, implement, and maintain a Storm Water Pollution Prevention Plan (SWPPP).

3.21. On April 9, 2018, EPA received a complaint that sediment-laden stormwater runoff was coming from the Site. On April 10, 2018, authorized EPA personnel conducted an inspection of the Site to investigate the complaint and evaluate the Permit and CWA compliance at the Site. During the inspection, the EPA inspector reviewed Respondent's records, including the Site's SWPPP, reviewed records provided by the City of Boise's Sediment and Erosion Control Program, and conducted two follow-up inspections on October 9, 2018 and February 14, 2019.

3.22. As described below, from August 1, 2017 through May 13, 2019, Respondent violated CWA Section 301, 33 U.S.C. § 1311, and the conditions and/or limitations of its Permit.

Count 1 – Prohibited Discharge

3.23. Part 1.3 of the Permit identifies prohibited non-stormwater discharges. Part 1.3.1 prohibits wastewater from washout of concrete, unless managed by an appropriate control as described in Part 2.3.4 of the Permit.

3.24. Respondent discharged uncontrolled wastewater from washout of concrete on or about January 24, 2019, in violation of Part 1.3.1 of the Permit.

Count 2 – Inadequate Stormwater Controls

3.25. Part 2.1 of the Permit requires the operator to design, install, and maintain stormwater controls required in Parts 2.2 and 2.3 to minimize the discharge of pollutants in stormwater from construction activities. Part 2.2.10.a of the Permit requires the operator to minimize sediment discharges from the Site by installing inlet protection measures that remove

sediment from discharges prior to entry into any storm drain inlet that carries stormwater flow from the Site to a water of the United States.

3.26. Respondent failed to install inlet protection on the storm drains, which discharge stormwater directly to Crane Creek, a water of the United States, in violation of Parts 2.1 and 2.2.10.a of the Permit. As a result, Respondent also failed to minimize the discharge of pollutants in stormwater from construction activities, and discharged turbid stormwater that entered the storm drains on at least the following seven occasions: January 9, 2018; March 14, 2018; March 23, 2018; April 9, 2018; October 9, 2018, February 13, 2019; and February 25, 2019, in violation of Part 2.1 of the Permit.

Count 3 – SWPPP Violations

3.27. Part 7.2.6 of the Permit requires the operator to include in the SWPPP a description of stormwater controls that will be implemented. Part 7.2.6.a.iv requires that for each of the Part 2.2 erosion and sediment control effluent limits, Part 2.3 pollution prevention effluent limits, and Part 2.4 construction dewatering effluent limits, as applicable to the Site, the operator must include in the SWPPP the projected schedule for stormwater control installation and/or implementation.

3.28. On January 9, 2018, the storm drains had no inlet protection, as required by Part 2.2.10.a of the Permit, and Respondent failed to include in its SWPPP a projected schedule for inlet protection installation, in violation of Part 7.2.6 of the Permit.

3.29. Part 7.2.2 of the Permit requires the operator to identify the personnel (by name or position) that are part of the stormwater team and identify each member's individual responsibilities, including which members are responsible for conducting inspections.

3.30. Respondent failed to identify in its SWPPP any member of the stormwater team, by name or position, and failed to identify the individual responsibilities of the stormwater team, in violation of Part 7.2.2 of the Permit.

3.31. Part 7.2.3 of the Permit requires the operator to describe in the SWPPP the nature of the construction activities. Specifically, Part 7.2.3.f.i of the Permit requires the operator to include a description and projected schedule for the commencement of construction activities in each portion of the Site, including clearing and grubbing, mass grading, demolition activities, site preparation (i.e., excavating, cutting and filling), final grading, and creation of soil and vegetation stockpiles requiring stabilization.

3.32. Respondent failed to provide in its SWPPP any start or end dates for any phase of construction activities, in violation of Part 7.2.3.f.i of the Permit.

3.33. Part 7.2.4 of the Permit requires that the SWPPP contain a legible map, or series of maps, to provide a visual depiction of where construction activities are occurring in relation to the boundaries of the property. Respondent failed to include in its SWPPP, a site map that contains all of the required elements.

a. Part 7.2.4.b.ii of the Permit requires that the SWPPP site map(s) show approximate slopes before and after major grading activities and must note any steep slopes. Respondent failed to include in its SWPPP site map the approximate slope before and after major grading activities and failed to note areas with steep slopes, in violation of Part 7.2.4.b.ii of the Permit.

b. Part 7.2.4.c of the Permit requires that the SWPPP site map(s) show the locations of all waters of the United States within and one mile downstream of the Site's discharge point and must identify if any of the waters are listed as impaired, or are identified as a Tier

2, Tier 2.5, or Tier 3 water. Respondent failed to identify in its SWPPP site map waters of the United States, including Crane Creek, within and one mile downstream of the Site's discharge point, in violation of Part 7.2.4.c of the Permit.

c. Part 7.2.4.f of the Permit requires that the SWPPP site map(s) show the drainage patterns of stormwater and authorized non-stormwater before and after major grading activities. Respondent failed to include in its SWPPP site map the drainage patterns of stormwater and authorized non-stormwater before and after major grading activities, in violation of Part 7.2.4.f of the Permit.

d. Part 7.2.4.g.i requires that the SWPPP site map(s) show stormwater and authorized non-stormwater discharge locations, including the locations where stormwater and/or authorized non-stormwater will be discharged to storm drain inlets. Respondent failed to identify in its SWPPP site map the locations that stormwater and/or authorized non-stormwater would be discharged to storm drains, in violation of Part 7.2.4.g.i of the Permit.

3.34. Part 6 of the Permit outlines specific training requirements for individuals who, in the course of their duties, are responsible for ensuring compliance with the Permit (i.e., the "stormwater team"). Part 7.2.8 of the Permit requires the operator to include in the SWPPP documentation that the required personnel were trained, or will be trained, in accordance with Part 6.

3.35. Appendix H of Respondent's SWPPP includes a SWPPP training log to record and document training information. Appendix H of Respondent's SWPPP was blank and Respondent failed to otherwise include in its SWPPP any record that the required personnel had been, or would be, trained in accordance with Part 6, in violation of Parts 6 and 7.2.8 of the Permit.

3.36. Part 7.4.1.a of the Permit requires the operator to modify the SWPPP, including the SWPPP site map(s), within seven (7) days whenever changes are made to the construction plans, stormwater controls, or other activities at the Site that are no longer accurately reflected in the SWPPP. Part 7.4.2 of the Permit requires the operator to retain records showing the dates of all such SWPPP modifications and that the records include the name of the person authorizing each change.

3.37. Respondent included in its SWPPP a site map identified as the “Winsome Place ESC Plan.” The “Winsome Place ESC Plan” site map illustrated the Site with all appropriate Best Management Practices (BMPs) installed; however, Respondent failed to indicate when or whether any BMP had been or would be installed, repaired, or removed. Specifically, the site map showed straw wattles, the concrete washout area, and the construction staging area, none of which were present at the time EPA’s April 10, 2018 inspection, in violation of Parts 7.4.1.a and 7.4.2 of the Permit.

3.38. Appendix I, Part I.11 of the Permit provides that the SWPPP, including changes to the SWPPP, inspection reports, and any other compliance documentation required under the Permit, must be signed by and certified by the project operator(s) or a duly authorized representative. Section I.11.2 describes the formal requirements for designating a “duly authorized representative,” including the requirement to include a signed and dated written authorization in the SWPPP.

3.39. Respondent included in its SWPPP the following statement: “Authority to implement this SWPPP will be given to John Cloninger (Superintendent) by Zeke Johnson (Project Manager) prior to the start of construction as noted on the signed delegation of authority form in Appendix D.” However, at the time of EPA’s April 10, 2018 inspection Appendix D

was blank and Respondent otherwise failed to include in its SWPPP a signed “Delegation of Authority” authorizing John Cloninger to sign and certify SWPPP documents on behalf of Zeke Johnson. Accordingly, John Cloninger, who signed and certified inspection reports and other compliance documentation, did so in violation of Appendix I, Part I.11 of the Permit.

Count 4 – Erosion and Sediment Control Violations

3.40. Part 2.2.4 of the Permit requires the operator to minimize sediment track out by restricting vehicle use to designated exit points and using appropriate stabilization techniques at all points that exit onto paved roads.

3.41. Respondent failed to adequately restrict vehicle access and minimize sediment track out on January 9, 2019, when a large vehicle drove onto the Site and tracked sediment onto the road, in violation of Part 2.2.4 of the Permit. On March 11, 2019, a City of Boise Erosion and Sediment Control Program inspector observed and documented additional sediment track out, in violation of Part 2.2.4 of the Permit.

3.42. Part 2.2.7 of the Permit requires the operator to minimize steep slope disturbances.

3.43. Respondent performed clearing and grubbing activities in August and September 2017, which stripped steep slopes of vegetation, but Respondent took no steps to minimize the disturbance of steep slopes surrounding the Site. The entire Site, including steep slopes, was open and exposed to environmental conditions throughout the months of highest precipitation in the Boise area, in violation of Part 2.2.7 of the Permit.

3.44. Part 2.2.10.b of the Permit requires the operator to clean, or remove and replace, inlet protection as sediment accumulates, the filter becomes clogged, and/or performance of the protection is compromised.

3.45. The inlet protection on the storm drains was covered in mud or was full of debris on April 10, 2018, May 13, 2018, and February 14, 2019, in violation of Part 2.2.10.b of the Permit.

3.46. Part 2.2.12.c of the Permit requires that if the operator installs a sediment basin or similar impoundment, the basin or impoundment must be designed to provide storage for either the calculated volume of runoff from a 2-year, 24-hour storm or 3,600 cubic feet per acre drained.

3.47. Respondent relied on multiple sediment basins to manage stormwater runoff. Respondent calculated an aggregate storage volume for the multiple basins and failed to take into account or adequately document the retention capacity for each basin, in violation of Part 2.2.12.c of the Permit.

Count 5 – Pollution Prevention Violations

3.48. Part 2.3.4 of the Permit requires the operator to direct waste water from washing applicators and/or containers used for concrete into a leak-proof container or leak-proof and lined pit designed so that no overflows can occur due to inadequate sizing or precipitation.

3.49. From March 11, 2019 through at least March 25, 2019, concrete washout was uncontained or overflowing containment at the Site, in violation of Part 2.3.4 of the Permit.

Count 6 – Inspection Violations

3.50. Part 4.2 of the Permit requires the operator to inspect the Site at least every seven calendar days, or once every 14 calendar days and within 24 hours of a storm event of 0.25 inches or greater of rainfall or the occurrence of runoff from snowmelt sufficient to cause a discharge. Part 4.7 of the Permit requires the operator to complete an inspection report within 24 hours of completing any site inspection.

3.51. Respondent failed to conduct and/or document inspections of the Site at an appropriate interval on at least the following eight occasions, in violation of Parts 4.2 and 4.7 of the Permit.

Date Inspection Required	Actual Inspection Date
10/31/2017	11/13/2017
11/27/2017	12/12/2017
1/3/2018 1/17/2018 1/31/2018 2/14/2018 2/28/2018	3/15/2018
4/7/2018	4/9/2018

Count 7 – Failure to Take and Adequately Document Corrective Action

3.52. Part 5 of the Permit describes conditions that require the operator to take corrective action. Part 5.1.3 of the Permit requires the operator to take corrective action if its discharges are causing an exceedance of applicable water quality standards. Part 5.1.4 requires the operator to take corrective action if a discharge prohibited by Part 1.3 occurs. Part 5.4 requires that for each corrective action taken an operator must complete a corrective action report that within 24 hours of identifying the corrective action condition, documents the specific corrective action condition and the date and time it was identified, and within 24 hours of completing the corrective action, documents the actions taken to address the condition.

3.53. Respondent discharged concrete washout January 24, 2019, in violation of Part 1.3.1 of the Permit. Respondent discharged turbid stormwater causing an exceedance of applicable water quality standards on at least the following four occasions: January 9, 2018; March 14, 2018; March 23, 2018; and April 7, 2018. The discharge of concrete washout and each turbid stormwater discharge triggered corrective action under Part 5.1 of the Permit and therefore a corrective action report under Part 5.4 of the Permit. However, Respondent failed to

produce a corrective action report for any discharge, in violation of Part 5 of the Permit.

Respondent also failed to produce a correction action report for a damaged silt fence that the EPA inspector observed during EPA's April 10, 2018 inspection, in violation of Part 5 of the Permit.

Count 8 – Failure to Post Adequate Notice

3.54. Part 1.5 of the Permit requires the operator to post a sign or other notice of permit coverage at a safe, publicly accessible location in close proximity to the Site. The notice must be located so that it is visible from the public road that is nearest to the active part of the construction site, and it must use a font large enough to be readily viewed from a public right-of-way. At a minimum, the notice must include the NPDES Permit ID; a contact name and phone number for obtaining additional construction site information; the Uniform Resource Locator (URL) for the SWPPP (if available), or the statement: “If you would like to obtain a copy of the Stormwater Pollution Prevention Plan (SWPPP) for this site, contact the EPA Regional Office at *[include the appropriate CGP Regional Office contact information found at <https://www.epa.gov/npdes/contact-us-stormwater#regional>];*” and the statement “If you observe indicators of stormwater pollutants in the discharge or in the receiving waterbody, contact the EPA through the following website: <https://www.epa.gov/enforcement/report-environmental-violations>.”

3.55. At the time of EPA's April 10, 2018 inspection, the notice of permit coverage at the Site was illegible and failed to include all of the required elements, in violation of Part 1.5 of the Permit.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations contained in this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), the EPA has taken into account “the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.” After considering all of these factors as they apply to this case, EPA has determined that an appropriate penalty to settle this action is \$62,000.

4.4. Respondent consents to the assessment of the civil penalty set forth in Paragraph 4.3 and agrees to pay the total civil penalty within 30 days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check or certified check must be payable to the order of “Treasurer, United States of America” and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent must note on the check the title and docket number of this action.

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U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 155, 11-C07
Seattle, Washington 98101

4.6. Respondent must serve photocopies of the check, or proof of other payment method described in Paragraph 4.5, on the Regional Hearing Clerk and EPA Region 10

Compliance Officer at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, WA 98101
R10_RHC@epa.gov

Stacey Kim
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue, Suite 155
Seattle, WA 98101
kim.stacey@epa.gov

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

a. Interest. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within 30 days of the effective date of the Final Order.

b. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty

shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and

nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this Consent Agreement, Respondent has corrected the violation(s) alleged in Part III above.

4.11. Except as described in Subparagraph 4.7.b., above, each party shall bear its own costs in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

DATED:

FOR RESPONDENT:

ZEPHANIAH W. JOHNSON
ZWJ Properties, LLC

FOR COMPLAINANT:

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