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2 **II. PRELIMINARY STATEMENT**

3 2.1. On November 21, 2007, EPA commenced this proceeding against Respondent
4 pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), by filing an administrative
5 complaint ("Complaint").

6 2.2. The Complaint alleged that Respondent's violations of the CWA had subjected
7 Respondent to penalties and proposed that Respondent be assessed an administrative civil
8 penalty.

9 2.3. The complete and jurisdictional basis for proposing the assessment of a civil
10 penalty is set forth in the Complaint and is incorporated herein by reference.

11 2.4. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and
12 40 C.F.R. § 22.38(b), the State of Alaska has been given an opportunity to consult with EPA
13 regarding the assessment of an administrative civil penalty against Respondent.

14 2.5. In accordance with Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A),
15 and 40 C.F.R. § 22.45, EPA has issued a public notice to inform the public of its intent to assess
16 administrative penalties against Respondent and to invite public comment. EPA has received no
17 public comments on this proceeding.
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19 **III. CONSENT AGREEMENT**

20 The parties to this action hereby stipulate as follows:

21 3.1. Respondent enters this Consent Agreement to compromise and settle the disputed
22 claims alleged in the Complaint without further proceedings in this matter.

23 3.2. Respondent admits the jurisdictional allegations in the Complaint.
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1 3.3. Respondent admits the specific factual allegations contained in the Complaint and
2 that Respondent is liable for the violations alleged in the Complaint.

3 3.4. Respondent expressly waives the right to contest the allegations contained in the
4 Complaint and to appeal the Final Order contained herein.

5 3.5. Pursuant to Section 309(g), 33 U.S.C. § 1319(g), EPA has determined and
6 Respondent agrees that an appropriate penalty to settle this action is in the amount of FIFTEEN
7 THOUSAND DOLLARS (\$15,000.00). This penalty amount has been agreed upon in
8 consideration of the statutory penalty factors identified in Section 309(g)(3) of the CWA, 33
9 U.S.C. § 1319(g)(3).

10 3.6. Respondent consents to the issuance of the Final Order recited herein and to
11 payment of the civil penalty cited in the foregoing paragraphs as follows:

12 3.6.1. Respondent consents to payment of the penalty referenced in Paragraph
13 3.5 in four (4) installments paid over twenty-four (24) months;

14 3.6.2. Respondent consents to payment of 3 % simple interest on the four
15 installments referenced in Paragraph 3.6.1;

16 3.6.2. Respondent consents to payment of the four installments as follows:

- 17 • The first installment of THREE THOUSAND SEVEN HUNDRED
18 SEVENTY ONE DOLLARS AND NINETY-NINE CENTS (\$3,786.99)
19 will be paid on the thirtieth (30th) day after the effective date of the
20 Final Order;
- 21 • The second installment of THREE THOUSAND NINE HUNDRED
22 SEVENTY-ONE DOLLARS AND NINETY-TWO CENTS (\$3,971.92)
23 will be paid two hundred forty (240) days after the first installment;
- 24 • The third installment of THREE THOUSAND EIGHT HUNDRED
25 NINETY-SEVEN DOLLARS AND NINETY-FIVE CENTS

1 (\$3,897.95) will be paid two hundred forty (240) days after the second
2 installment; and

- 3 • The fourth installment of THREE THOUSAND EIGHT HUNDRED
4 TWENTY-THREE DOLLARS AND NINETY SEVEN CENTS
5 (\$3,823.97) will be paid two hundred forty (240) days after the third
6 installment.

7 3.7. Payments under this CAFO shall be made by cashier's check or certified check,
8 payable to the order of "Treasurer, United States of America" and shall be delivered to the
9 following address:

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

15 Respondent shall note on the check the title and docket number of this case.

16 3.8. Respondent shall serve photocopies of the check described above on the Regional
17 Hearing Clerk and EPA at the following addresses:

18 Regional Hearing Clerk
19 U.S. Environmental Protection Agency
20 Region 10
21 1200 Sixth Avenue,
22 Suite 900 (Mail Stop ORC-158)
23 Seattle, Washington 98101

24 Chae Park
25 U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue,
Suite 900 (Mail Stop OCE-133)
Seattle, Washington 98101

3.9. If Respondent fails to pay the penalty assessed by this CAFO in full by the due
dates set forth in Paragraph 3.6, above, the entire unpaid balance of the penalty and accrued

1 interest shall become immediately due and owing. If such a failure to pay occurs, Respondent
2 may be subject to a civil action to collect the assessed penalty under the CWA, together with
3 additional interest, fees, costs, and penalties described below. In any collection action, the
4 validity, amount, and appropriateness of the penalty shall not be subject to review.

5 3.10. If Respondent fails to pay any portion of the penalty assessed by this CAFO in
6 full by the due dates set forth in Paragraph 3.6, above, Respondent shall be responsible for
7 payment of the amounts described below:

8 3.10.1. Interest. Pursuant to CWA Section 309(g)(9), 33 U.S.C. 1319(g)(9), any
9 unpaid portion of the assessed penalty shall bear interest at a rate established by the
10 Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the
11 Final Order set forth in Part IV, below, provided, however, that no interest shall be
12 payable on any portion of the assessed penalty that is paid within thirty (30) days of the
13 effective date of the Final Order.

14 3.10.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to
15 CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely
16 basis the amount of the penalty set forth in Paragraph 3.5, above, Respondent shall pay
17 (in addition to any assessed penalty and interest) attorneys fees and costs for collection
18 proceedings and a quarterly nonpayment penalty for each quarter during which such
19 failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty
20 percent (20%) of the aggregate amount of Respondent's penalties and nonpayment
21 penalties which are unpaid as of the beginning of such quarter.
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1 3.11. The penalty described in Paragraph 3.5, above, including any additional costs
2 incurred under Paragraph 3.10, above, represents an administrative civil penalty assessed by
3 EPA and shall not be deductible for purposes of federal taxes.

4 3.12. The undersigned representative of Respondent certifies that he or she is fully
5 authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this
6 document.

7 3.13. Except as described in Subparagraph 3.10.2, above, each party shall bear its own
8 costs in bringing or defending this action.

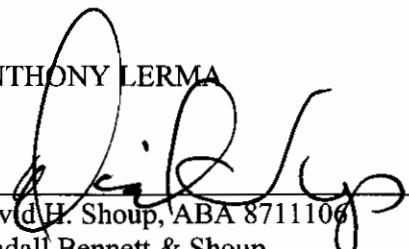
9 3.14. The provisions of this CAFO shall bind Respondent and his agents, servants,
10 employees, successors, and assigns.

11 3.15. The above provisions are STIPULATED AND AGREED upon by Respondent
12 and EPA.
13

14
15 **FOR RESPONDENT**
16 DATED:

17 10/20/08

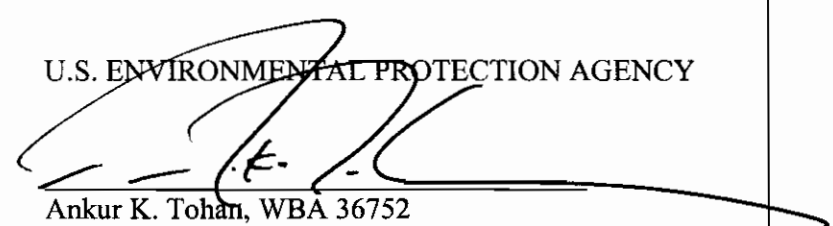
18 ANTHONY LERMA

19 
20 David H. Shoup, ABA 8711106
21 Tindall Bennett & Shoup
22 Counsel for Anthony Lerma.

23 **FOR COMPLAINANT**
24 DATED:

25 10/27/08

U.S. ENVIRONMENTAL PROTECTION AGENCY


Ankur K. Tohan, WBA 36752
Assistant Regional Counsel
Counsel for Complainant

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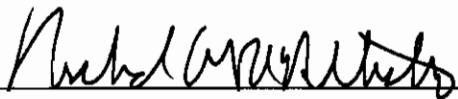
IV. FINAL ORDER

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

4.2. This CAFO shall constitute a settlement by EPA of all claims for civil penalties pursuant to the CWA for the particular violations alleged in the Complaint. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA, the CWA regulations, and/or any permits issued thereunder.

4.3. This Final Order shall become effective upon filing.

SO ORDERED this 27th day of October, 2008.



RICHARD G. McALLISTER
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Anthony Lerma, DOCKET NO.: CWA-10-2008-0009** was filed with the Regional Hearing Clerk on October 27, 2008.

On October 27, 2008 the undersigned certifies that a true and correct copy of the document was delivered to:

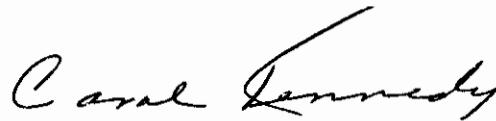
Ankur Tohan, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on October 27, 2008, to:

David Shoup
Tindall Bennett and Shoup PC
508 W 2nd Ave., 3rd Floor
Anchorage, AK 99501

Judge Barbara A. Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave., NW
Washington, DC 20460-2001

DATED this 27th day of October 2008.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10