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EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DOCKET NO. CWA-10-2008-0112

DON BROWN and BROWN
CONSTRUCTION COMPANY, INC.
Near Anchor Point, Alaska

**CONSENT AGREEMENT AND
FINAL ORDER**

Respondents.

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who in turn has re delegated this authority to the Regional Judicial Officer.

1.3. Pursuant to Sections 309(g)(1) and 309(g)(2)(B) of the CWA, 33 U.S.C. §§ 1319(g)(1) and 1319(g)(2)(B), and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA hereby issues, and Don Brown and Brown Construction Company, Inc. ("Brown Construction")

1 (collectively referred to as "Respondents") hereby agree to issuance of, the Final Order contained
2 in Part V of this CAFO.

3 **II. PRELIMINARY STATEMENT**

4 2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO
5 commences this proceeding which will conclude when the Final Order contained in Part V of
6 this CAFO becomes effective.

7 2.2. Part III of this CAFO contains a concise statement of the statutory and factual
8 basis for the alleged violations of the CWA.

9 **III. ALLEGATIONS**

10 3.1. Section 301(a) of the CWA, 33 U.S.C. § 1341(a), prohibits the discharge of
11 pollutants into waters of the United States by any person, except as authorized by a permit issued
12 pursuant to Section 402 or 404 of the CWA, 33 U.S.C. § 1342 or 1344. Each discharge of
13 pollutants from a point source that is not authorized by such a permit constitutes a violation of
14 Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

15 3.2. CWA Section 502(12), 33 U.S.C. § 1362(12), defines "discharge of a pollutant"
16 to include "any addition of any pollutant to navigable waters from any point source." CWA
17 Section 502(7), 33 U.S.C. § 1362(7), defines "navigable waters" as "waters of the United
18 States."

19 3.3. CWA Section 502(6), 33 U.S.C. § 1362(6), defines "pollutant" to include, *inter*
20 *alia*, dredged spoil, rock, sand, and biological materials.

21 3.4. 33 C.F.R. § 328.3, 40 C.F.R. §§ 122.2 and 232.2 define "waters of the United
22 States" to include waters subject to the ebb and flow of the tide, tributaries to those waters, and
23 wetlands adjacent to those tributaries.

1 3.5. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes EPA to require the
2 owner and operator of any point source to provide such information as may be reasonably
3 required in carrying out Section 402 of the CWA, 33 U.S.C. § 1342. Pursuant to Section 308(a),
4 EPA has promulgated National Pollutant Discharge Elimination System (“NPDES”) permit
5 application requirements. Among these application requirements are:

- 6 ▪ The requirement set forth in 40 C.F.R. § 122.21(a)(1) that “[a]ny person
7 who discharges or proposes to discharge pollutants ... must submit a
8 complete application to [EPA],” and
- 9 ▪ The requirement set forth in 40 C.F.R. § 122.26(c)(1) that “[d]ischarges of
10 storm water associated with industrial activity and with small construction
11 activity are required to apply for an individual permit or seek coverage
12 under a promulgated storm water general permit.”

13 3.6. CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), authorizes EPA to assess
14 administrative penalties against any person who has violated Section 301 or 308 of the CWA, 33
15 U.S.C. § 1311 or 1318.

16 3.7. Brown Construction is a corporation and thus is a “person” as defined in Section
17 502(5) of the CWA, 33 U.S.C. § 1362(5).

18 3.8. Don Brown is an individual and thus is a “person” as defined in Section 502(5) of
19 the CWA, 33 U.S.C. § 1362(5).

20 3.9. Respondents own and/or operate a material extraction and processing site near
21 Anchor Point, Alaska (“Site”). The Site consists of approximately 160 acres of real property.
22 The Site is located at South ½ of South ½ of Southeast ¼ of Northeast ¼ of Section 11,
23 Township 5 South, Range 15 West, Seward Meridian.

24 3.10. The receiving waters for any discharges of pollutants from the Site are Two
25 Moose Creek and its adjacent wetlands. The wetlands abut and are hydrologically connected to
Two Moose Creek. Two Moose Creek is a tributary of the Anchor River which flows into Cook
Inlet. Cook Inlet is subject to the ebb and flow of the tide and is susceptible to use in interstate

1 and foreign commerce; thus, Cook Inlet is a “navigable water” as defined in Section 502(7) of
2 the CWA, 33 U.S.C. § 1362(7), and is a “water of the United States” as defined in 40 C.F.R.
3 §§ 122.2 and 232.2 and 33 C.F.R. § 328.3. Therefore, the Anchor River, Two Moose Creek and
4 the adjacent wetlands are “navigable waters” as defined in Section 502 (7) of the CWA, 33
5 U.S.C. § 1362(7), and are “waters of the United States” as defined in 40 C.F.R. §§ 122.2 and
6 232.2 and 33 C.F.R. § 328.3.

7 **A. Discharge Without an NPDES Permit**

8 3.11. On or about October 20, 2004 and October 29, 2004, Respondents discharged
9 water containing, among other things, sediment, sand, and gravel, from the gravel pit at the Site
10 into Two Moose Creek via a ditch.

11 3.12. The ditch that conveyed water from the gravel pit to Two Moose Creek
12 constitutes a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C.
13 § 1362(14), and 40 C.F.R. § 122.2.

14 3.13. By discharging the water from the gravel pit into waters of the United States,
15 Respondents engaged in the “discharge of pollutants” from a point source within the meaning of
16 Sections 301(a) and 502(12) of the CWA, 33 U.S.C. §§ 1311(a) and 1362(12).

17 3.14. The discharge of water from the gravel pit was not authorized by an NPDES
18 permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Therefore, Respondents
19 violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

20 3.15. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R.
21 Part 19, Respondents are liable for civil penalties not to exceed \$11,000 per day for each day
22 during which the violation continues, up to a maximum amount of \$157,500.

1 **B. Failure to Apply for NPDES Permit**

2 3.16. As owners/operators of the Site, Respondents were required to apply for an
3 individual NPDES permit or submit a Notice of Intent to obtain coverage under a general permit
4 before discharging from the gravel pit at the Site.

5 3.17. Prior to discharging, Respondents failed to apply for an individual NPDES
6 permit or submit a Notice of Intent to obtain coverage under a general permit.

7 3.18. On or about September 13, 2005, Respondents obtained coverage under
8 General Permit No. AKR05*### (“Multi-Sector General Permit”), Tracking No. AKR05A019.

9 3.19. Respondents’ failure to timely apply for an NPDES permit placed
10 Respondents in violation of the requirements imposed pursuant to Section 308 of the CWA, 33
11 U.S.C. § 1318. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. Part
12 19, Respondents are liable for civil penalties not to exceed \$11,000 per day for each day during
13 which the violation continues, up to a maximum amount of \$157,500.

14 **C. Unauthorized Discharge of Fill Material**

15 3.20. On or about October 20, 2004 and October 29, 2004, Respondents operated or
16 directed the operation of certain heavy earthmoving equipment which was used to discharge
17 gravel and other materials into approximately 6.6 acres of jurisdictional wetlands at the Site.

18 3.21. The gravel and other materials constitute “fill material” and/or “dredged
19 materials” within the meaning of 40 C.F.R. § 232.2 and “pollutant[s]” within the meaning of
20 Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 232.2.

21 3.22. The heavy earthmoving equipment referenced in Paragraph 3.20, above, are a
22 “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

1 3.23. By causing dredged and fill material to enter waters of the United States,
2 Respondents engaged in the "discharge of pollutants" from a point source within the meaning of
3 Sections 301 and 502(12) of the CWA, 33 U.S.C. §§ 1311 and 1362(12).

4 3.24. Respondents' discharges of dredged and/or fill material were not authorized by a
5 permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344. Therefore, Respondents
6 violated Section 301 of the CWA.

7 3.25. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. Part
8 19, Respondents are liable for civil penalties not to exceed \$11,000 per day for each day during
9 which the violation continues, up to a maximum amount of \$157,500.

10 **IV. CONSENT AGREEMENT**

11 4.1. For purposes of this proceeding, Respondents admit the jurisdictional allegations
12 contained in this CAFO.

13 4.2. Respondents expressly waive any right to contest the allegations and to appeal the
14 Final Order set forth in Part V, below.

15 4.3. Respondents neither admit nor deny the specific factual allegations contained in
16 Parts III of this CAFO.

17 4.4. As required under Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA
18 has taken into account the nature, circumstances, extent and gravity of the alleged violations, as
19 well as the Respondents' economic benefit of noncompliance, ability to pay, Respondents'
20 agreement to perform a Supplemental Environmental Project ("SEP"), and such other matters as
21 justice may require. After considering all of these factors, EPA has determined and Respondents
22 agree that an appropriate penalty to settle this action is in the amount of Nineteen Thousand
23 Dollars [REDACTED]

1 4.5. Respondents consent to issuance of the Final Order set forth in Part V, below,
2 agree to pay the total civil penalty set forth in Paragraph 4.4, above, within thirty (30) days of the
3 effective date of this Final Order, and agree to the performance of the SEP described herein.

4 4.6. Payment under this CAFO shall be made by cashier's check or certified check,
5 payable to the order of "Treasurer, United States of America" and delivered to the following
6 address:

7 U.S. Environmental Protection Agency
8 Fines and Penalties
9 Cincinnati Finance Center
 PO Box 979077
 St. Louis, MO 63197-9000

10 Respondents shall note on the check the title and docket number of this action.

11 4.7. Respondents shall serve photocopies of the check described in Paragraph 4.6,
12 above, on the Regional Hearing Clerk and the EPA Region 10 Office of Ecosystems, Tribal and
13 Public Affairs at the following addresses:

14 Regional Hearing Clerk
15 U.S. Environmental Protection Agency
16 Region 10
17 1200 Sixth Avenue, Suite 900, ORC-158
 Seattle, WA 98101

18 U.S. Environmental Protection Agency, Region 10
19 Office of Ecosystems, Tribal and Public Affairs
20 Attn: Phil North
 1200 Sixth Avenue, Suite 900, ETPA-083
 Seattle, WA 98101

21 4.8. If Respondents fail to pay the penalty assessed by this CAFO in full by the due
22 date set forth in Paragraph 4.5, above, the entire unpaid balance of penalty and accrued interest
23 shall become immediately due and owing. If Respondents fail to pay the penalty assessed,
24 Respondents may be subject to a civil action to collect the assessed penalty under the CWA,
25

1 together with interest, fees, costs, and additional penalties described below. In any collection
2 action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

3 4.9. If Respondents fail to pay any portion of the penalty assessed by this CAFO in
4 full by the due date set forth in Paragraph 4.5, above, Respondents shall be responsible for
5 payment of the amounts described below:

6 4.9.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C.
7 § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate
8 established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the
9 effective date of the Final Order set forth in Part V, below, provided, however, that no
10 interest shall be payable on any portion of the assessed penalty that is paid within thirty
11 (30) days of the effective date of the Final Order.

12 4.9.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to
13 Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondents fail to pay on a
14 timely basis the amount of the penalty set forth in Paragraph 4.4, above, Respondents
15 shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for
16 collection proceedings and a quarterly nonpayment penalty for each quarter during which
17 such failure to pay persists. Such nonpayment penalty shall be in an amount equal to
18 twenty percent (20%) of the aggregate amount of Respondents' penalties and nonpayment
19 penalties which are unpaid as of the beginning of such quarter.

20 4.10. Respondents shall complete a SEP, which the parties agree is intended to secure
21 significant environmental restoration and protection, pursuant to the following conditions:

22 4.10.1. Within sixty (60) days of the effective date of the Final Order contained in
23 Part V, below, Respondents shall prepare all necessary documents, pay all transfer fees,
24
25

1 and transfer to Moose Habitat, Inc., at no cost, title to approximately 8.4 acres of land
2 abutting Two Moose Creek that is currently part of the Site (the "transferred property");

3 4.10.2. Within one hundred twenty (120) days of the effective date of the Final
4 Order contained in Part V, below, Respondents shall ensure that Moose Habitat records
5 the conveyance of the transferred property;

6 4.10.3. Respondents shall cooperate and exercise due diligence to ensure that the
7 transferred property is placed under the management of Moose Habitat, Inc., or its
8 successor, for the purpose of protecting the transferred property in perpetuity as a wetland
9 conservation area. The steps to be taken by Respondents shall include, as appropriate,
10 drafting of the conveyance documents to include covenants regarding the use and
11 management of the property. The obligations of Respondents shall be satisfied when they
12 execute and deliver to Moose Habitat, Inc. a statutory warranty deed conveying title
13 satisfactory to Moose Habitat, Inc.

14 4.11. The total value of land transferred by Respondents shall be not less than Ninety
15 Thousand Dollars (\$90,000.00).

16 4.12. With regard to the SEP, Respondents hereby certify to the following, as of the
17 date of this Consent Agreement:

18 4.12.1. That all cost information provided to EPA in connection with EPA's
19 approval of the SEP is complete and accurate and represents a fair estimate of the costs
20 necessary to implement the SEP (e.g., the certified appraisal of the transferred property);

21 4.12.2. That Respondents are not required to perform or develop the SEP by any
22 federal, state, or local law or regulations and are not required to perform or develop the
23 SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
24
25

1 4.12.3. That the SEP is not a project that Respondents were planning or intending
2 to construct, perform, or implement other than in settlement of the claims resolved in this
3 Consent Agreement;

4 4.12.4. That Respondents have not received, and are not negotiating to receive,
5 credit for the SEP in any other enforcement action; and

6 4.12.5. That Respondents will not receive any reimbursement for any portion of
7 the SEP from any other person.

8 4.13. Respondents shall submit a SEP Completion Report to EPA no later than thirty
9 (30) days following completion of the SEP. Failure by Respondents to submit a complete and
10 accurate SEP Completion Report shall be deemed a violation of this CAFO and shall subject
11 Respondents to stipulated penalties pursuant to Paragraph 4.16 of this CAFO. The SEP
12 Completion Report shall contain the following information:

13 4.13.1. A detailed description of the SEP as implemented. The description shall
14 include copies of the documents effecting the transfer of the transferred property;

15 4.13.2. An itemization of costs incurred by Respondents in implementing the
16 SEP;

17 4.13.3. A description of any problems encountered during the SEP and the
18 solution thereto; and

19 4.13.4. Certification that the SEP has been fully implemented pursuant to this
20 CAFO.

21 4.14. In order to determine the adequacy of SEP completion or eligibility of SEP costs,
22 EPA may, in its sole discretion, require information in addition to that described in the preceding
23 paragraph. Defendants shall provide such information.

1 4.15. Following receipt of the SEP Completion Report described in Paragraph 4.13,
2 above, EPA will do one of the following:

3 4.15.1. Approve the SEP Completion Report;

4 4.15.2. Reject the SEP Completion Report, notify Respondents, in writing, of the
5 deficiencies in the Report, and grant Respondents an additional thirty (30) days in which
6 to correct any deficiencies; or

7 4.15.3. Disapprove the SEP Completion Report and seek stipulated penalties in
8 accordance with Paragraph 4.16 in this CAFO.

9 If EPA elects to exercise Paragraphs 4.15.2 or 4.15.3, above, EPA shall allow Respondents the
10 opportunity to object in writing to the notification of deficiency or disapproval given pursuant to
11 this paragraph within ten (10) days of receipt of such notification. EPA and Respondents shall
12 have an additional thirty (30) days from the receipt by EPA of the notification of objection to
13 reach agreement. If agreement cannot be reached on any issue within this thirty (30) day period,
14 EPA shall provide a written statement of its decision to Respondents, which decision shall be
15 final and binding upon Respondents. Respondents agree to comply with any requirements
16 imposed by EPA as a result of any deficiency. In the event the SEP is not completed as
17 contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by
18 Respondents to EPA in accordance with Paragraph 4.16.

19 4.16. In the event that Respondents fail to comply with any of the terms or provisions
20 of this CAFO relating to the performance of the SEP, Respondents shall be liable for stipulated
21 penalties according to the following provisions:

22 4.16.1. Except as providing in subparagraph 4.16.2, below, for a SEP that has not
23 been completed satisfactorily pursuant to this CAFO, Respondents shall pay a stipulated
24 penalty to the United States in the amount of \$54,000.

1 4.16.2. If the SEP is not completed satisfactorily, but Respondents: (i) made a
2 good faith and timely effort to complete the project; and (ii) certify, with supporting
3 documentation, that at least ninety percent (90%) of the amount of money which was
4 required to be spent was expended on the SEP, Respondents shall not be liable for any
5 stipulated penalties.

6 4.16.3. If the SEP is satisfactorily completed, but Respondents spend less than the
7 ninety percent (90%) of the amount of money required to be spent for the project,
8 Respondents shall pay a stipulated penalty to the United States in the amount of \$7,200.

9 4.16.4. If the SEP is satisfactorily completed, and Respondents spent at least
10 ninety percent (90%) of the amount required to be spent for the project, Respondents shall
11 not be liable for any stipulated penalty.

12 4.16.5. For failure to timely submit the SEP Completion Report required by
13 Paragraph 4.13, above, Respondents shall pay a stipulated penalty in the amount of
14 \$100.00 for each day after the report is due until it is submitted.

15 4.17. The determination of whether the SEP has been satisfactorily completed and
16 whether Respondents have made a good faith, timely effort to implement the SEP shall be in the
17 sole discretion of EPA.

18 4.18. Respondents shall pay stipulated penalties within fifteen (15) days of receipt of a
19 written demand by EPA for payment of such penalties. Stipulated Penalties shall be paid in
20 accordance with the provisions of Paragraphs 4.6 and 4.7, above. Interest, attorney fees, costs
21 for collection proceedings, and nonpayment of penalties shall accrue as described in Paragraph
22 4.9, above.

1 4.19. Respondents agree that EPA may inspect the transferred property at any time in
2 order to confirm that the SEP is being undertaken in conformity with the representations made
3 herein.

4 4.20. Any press release or similar public statement, whether oral or in writing, that is
5 made by Respondents for distribution to the public and that makes reference to the SEP shall
6 include the following language: "This project was undertaken in connection with the settlement
7 of an enforcement action taken by the U.S. Environmental Protection Agency for violations of
8 the Clean Water Act."

9 4.21. All reports and submissions required by this CAFO shall be made to:

10 U.S. Environmental Protection Agency, Region 10
11 Office of Ecosystems, Tribal and Public Affairs
12 Attn: Rebecca Chu
13 1200 Sixth Avenue, Suite 900, ETPA-083
14 Seattle, WA 98101

15 In all documents or reports including, without limitation, the SEP Completion Report submitted
16 to EPA pursuant to this CAFO, Respondents shall, by a corporate officer if Respondent is a
17 corporation, sign and certify under penalty of law that the information contained in such
18 document or report is true, accurate, and not misleading by signing the following statement:

19 I certify under penalty of law that I have examined and am familiar with
20 the information submitted in this document and all attachments and that,
21 based on my inquiry of those individuals immediately responsible for
22 obtaining the information, I believe that the information is true, accurate,
23 and complete. I am aware that there are significant penalties for submitting
24 false information, including the possibility of fines and imprisonment.

25 4.22. The penalty described in Paragraph 4.4, above, including any additional costs
incurred under Paragraph 4.9, above, represents an administrative civil penalty assessed by EPA
and shall not be deductible for purposes of federal taxes. For Federal income tax purposes,

1 Respondents shall neither capitalize into inventory nor deduct any costs or expenditures incurred
2 in performing the SEP described in Paragraph 4.10, above.

3 4.23. The undersigned representatives of Respondents certify that they are fully
4 authorized to enter into the terms and conditions of this CAFO and to bind Respondents to this
5 document.

6 4.24. Except as described in Subparagraph 4.9.2, above, each party shall bear its own
7 costs in bringing or defending this action.

8 4.25. The provisions of this CAFO shall bind Respondents and their agents, servants,
9 employees, successors, and assigns.

10 4.26. The above provisions are STIPULATED AND AGREED upon by Respondents
11 and EPA.

12 DATED: BROWN CONSTRUCTION COMPANY, INC.:

13
14 7/28/08

13
14 

15 Don Brown
16 President
17 For Respondent Brown Construction Company, Inc.

18 DATED: DON BROWN:

19
20 7/28/08

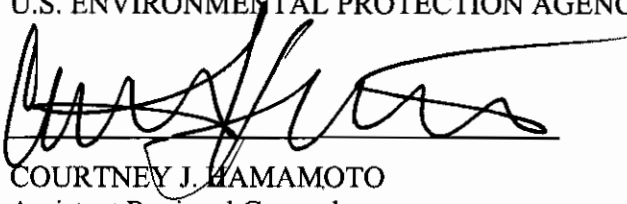
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21 Don Brown

1 DATED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

2
3 8/1/08


4 COURTNEY J. HAMAMOTO
5 Assistant Regional Counsel
6 For Complainant

7 **V. FINAL ORDER**

8 5.1. The terms of the foregoing Parts I-IV are hereby ratified and incorporated by
9 reference into this Final Order. Respondents are hereby ordered to comply with the foregoing
10 terms of the settlement.

11 5.2. This CAFO shall constitute a settlement by EPA of all claims for civil penalties
12 pursuant to the CWA for the violations alleged in Parts III, above. In accordance with 40 C.F.R.
13 § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue
14 appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.
15 This CAFO does not waive, extinguish, or otherwise affect Respondents' obligations to comply
16 with all applicable provisions of the CWA, applicable CWA regulations, and/or any permits
17 issued thereunder.

18 5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and
19 40 C.F.R. § 22.38(b), the Alaska Department of Environmental Conservation has been given the
20 opportunity to consult with EPA regarding the assessment of the administrative civil penalty
21 against Respondents.

22 5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), EPA
23 has published public notice of its intent to assess an administrative penalty against Respondents
24 and to invite public comment in accordance with 40 C.F.R. § 22.45. More than forty (40) days
25

1 have elapsed since the issuance of this public notice, and EPA has received no petition to set
2 aside the Consent Agreement contained herein.

3 5.5. This Final Order shall become effective upon filing.

4 SO ORDERED this 19th day of September 2008.

5
6 

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

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Don Brown and Brown Construction Company, Inc., DOCKET NO.: CWA-10-2008-0112** was filed with the Regional Hearing Clerk on September 19, 2008.

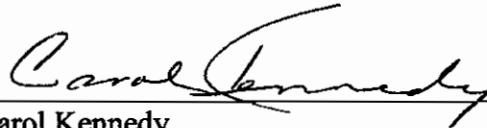
On September 19, 2008 the undersigned certifies that a true and correct copy of the document was delivered to:

Courtney Hamamoto, 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 September 19, 2008, to:

Don Brown
Brown Construction Company, Inc.
P.O. Box 1313
Kenai, AK 99611

DATED this 19th day of September 2008.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10