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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CWA-10-2016-0034
)	
Local Highway Technical Assistance)	CONSENT AGREEMENT AND
Council and Apollo, Inc.)	FINAL ORDER
)	
Burma Road, Kootenai County, Idaho)	
)	
Respondents.)	

I. STATUTORY AUTHORITY

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. 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 has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (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 issues, and the Local

Highway Technical Assistance Council and Apollo, Inc. (together, "Respondents") agree to issuance of, the Final Order contained in Part V of this CAFO.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

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

2.3. Part III of this CAFO 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 the implementing regulations that Respondents are alleged to have violated.

III. ALLEGATIONS

3.1. Respondent Local Highway Technical Assistance Council ("LHTAC") is an Idaho public agency established under the authority of Title 40, Chapter 24 of the Idaho State Code, and is a "person" as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5). LHTAC, when authorized through the limitations of a stewardship agreement with the Idaho Transportation Department (ITD), acts on behalf of local highway jurisdictions in the administration of transportation Federal-aid funded projects.

3.2. Respondent Apollo, Inc. (“Apollo” or “Contractor”) is a Washington State corporation registered to do business in the State of Idaho and is a “person” as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5). Additionally, as detailed in the State of Idaho Transportation Department Contract for the Burma Road Project, the Contractor is responsible for stormwater project management.

3.3 The Burma Road transportation project (“Project”), designated as Federal-aid Project Number STP-5723(100), is a linear construction project to improve, realign, reconstruct and pave a 2.8-mile gravel section of Burma Road from Highway 97 to Gotham Bay Road in Kootenai County, Idaho (hereinafter “Burma Road Project” or “Project”). The Burma Road Project involves the disturbance of approximately 28 acres and the excavation of an estimated 179,000 cubic yards of material, including the excavation of a number of slopes and hillsides located in the Project area. The purpose of the Project is to provide a safe, reliable transportation passageway for residents and the traveling public in a geographically complex area of rural North Idaho.

3.4. A portion of the Burma Road Project parallels Turner Creek which is a tributary to Lake Coeur d’Alene. Various unnamed tributaries to Turner Creek pass through the Project area, including some that are channeled through culverts that pass beneath Burma Road. The Burma Road Project contains multiple locations where stormwater runoff discharges to Turner Creek and the unnamed tributaries to Turner Creek. Turner Creek discharges to Turner Bay in Lake Coeur d’Alene. According to Respondents, the Turner Creek watershed historically produced turbid runoff into Turner Creek during rain events prior to Project construction. The “Coeur d’ Alene Lake Tributaries, 2008-2009 Nutrient Sediment Monitoring, Final Report,:

authored by the Idaho Department of Environmental Quality (IDEQ) documents elevated turbidity at the mouth of Turner Creek at Turner Bay during a rain event that “may have exceeded Idaho’s standard for turbidity during [this] rain-on-snow event.”

3.5. The unnamed tributaries to Turner Creek, Turner Creek and Lake Coeur d’Alene are waters of the United States as defined in 40 C.F.R. § 122.2, and navigable waters pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

3.6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source unless the discharge is authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires NPDES permits for stormwater discharges associated with industrial activity. A stormwater discharge associated with industrial activity is defined at 40 C.F.R. § 122.26(b)(14)(x) to include construction activities that disturb more than five acres, and construction activities that disturb less than five acres if such activities are part of a larger development plan that will ultimately disturb more than five acres.

3.7. On February 16, 2012, EPA issued a general permit for construction stormwater discharges titled the Construction General Permit (“CGP”). Operators of construction projects subject to NPDES permitting requirements can obtain coverage under the CGP by submitting a notice of intent (“NOI”) certifying that the operator meets the permit’s eligibility requirements and that they will comply with the terms and conditions of the CGP. Prior to submission of a NOI, an operator of a construction project must develop a site-specific Stormwater Pollution Prevent Plan (“SWPPP”) that describes, among other things, the nature of construction activities,

the sequencing and estimated dates of construction work, and the best management practices (“BMPs”) to control the discharge of pollutants, including erosion and sediment controls.

3.8. Respondent LHTAC is the administrator of the Burma Road Project responsible for the fiscal management and overall control of the Project, including decisions regarding the quality and acceptability of the work. Respondent Apollo is the contractor selected to construct the Burma Road Project and is also responsible for decisions regarding the quality and acceptability of the work.

3.9. The Burma Road Project is a construction activity expected to disturb greater than five acres and is subject to NPDES stormwater permitting requirements. Respondents, as operators of the Burma Road Project, prepared a site-specific SWPPP and submitted a NOI to obtain coverage under the CGP on February 11, 2013. Respondents are co-permittees under CGP permit number IDR120000. According to Respondents, the SWPPP was prepared in consultation with the Idaho Department of Environmental Quality and was grounded in the best erosion and sediment control management practices approved by the Idaho Transportation Department in the Best Management Practices Manual (ITD Manual).

3.10. Section 2 of the CGP imposes effluent limitations applicable to discharges from a construction site and establishes specific requirements intended to limit pollutant exposure to stormwater and to control stormwater runoff, erosion and sedimentation. Section 2.1.1.2 of the CGP requires that stormwater controls, including stabilization measures, be designed to account for the expected amount, frequency, intensity and duration of precipitation, and to account for the nature of stormwater runoff including factors such as slopes and site drainage features. Section 2.1.1.4 of the CGP requires that all erosion and sediment controls be maintained in

effective operation condition, periodically inspected, and any identified problems be repaired or necessary modifications implemented immediately after discovery.

3.11. Section 3 of the CGP imposes a general requirement that discharges from a construction site be controlled to meet applicable water quality standards. If such discharges are not controlled to meet water quality standards, the permit requires the implementation of corrective actions pursuant to section 5 of the CGP.

3.12. Section 5 of the CGP provides that corrective actions are actions necessary to repair, modify or replace stormwater controls or to remedy a permit violation. If stormwater controls are damaged, Section 5.2.1. requires that repair of controls typically be completed within seven days of discovery. If stormwater controls are ineffective to properly control runoff, erosion or sedimentation, or to prevent exceedances of water quality standards, Section 5.2.1 also requires the installation and operation of new or modified stormwater controls.

3.13. Due to existing site terrain the Burma Road Project involved a number of roadway cuts and the excavation of existing hillsides and slopes. Prior to the start of construction the presence of seepages on slopes were identified along the planned realignment route, and evidence of shallow slope failures were observed in the Project area. Section 3.1 of the SWPPP states that "[b]ecause the existing conditions include a combination of over steepened cut slopes and seeps or runoff water and, culverts draining down steep poorly compacted fill slopes, there are special requirements to the contract." For disturbance caused by slope excavation or cuts and pursuant to the ITD BMP Manual, Sections 5.1 and 5.2 of the SWPPP call for the immediate application of soil tackifier followed by hydro seeding as stabilization measures for recently disturbed soils.

3.14. The contract requirements for the Burma Road Project provide further detail on the stabilization measures to be used on slopes in the Project area. Specifically, the identified temporary stabilization measure for all slopes is the application of seedable soil binder without seed to be completed within seven days of the disturbance. In addition, for slopes with a grade greater than two horizontal to one vertical (2:1), a final stabilization measure of seed-impregnated bonded fiber matrix ("BFM") would be applied during a seeding window originally scheduled for October 30 to November 30, 2013.

3.15. Work on the Burma Road Project started on or around April 1, 2013, with the installation of silt fencing and fiber wattles as perimeter sediment and erosion controls. Work to clear the Project area commenced on or around April 15, 2013, and was completed on or around July 10, 2013. Work to excavate the Project area commenced on or around June 11, 2013. As clearing and excavation work continued throughout the Project area, and pursuant to the SWPPP hydromulch and tackifier were applied as slope stabilization measures starting on or around May 5, 2013.

3.16. As early as August 2, 2013, Respondents' Stormwater Compliance Inspection Report (SCIR) number 30, conducted by Apollo and the project consultant inspector, documented that heavy rainfall was washing away the applied hydromulch at stations throughout the Project area, and recommended that hydromulch be reapplied to areas where it had washed off. This same day, turbidity monitoring between stations 100 and 77 recorded an elevation in turbidity levels of 134 nephelometric turbidity units ("NTU").

3.17. In waters designated for cold water aquatic life, including Turner Creek, the tributaries to Turner Creek and Lake Coeur d'Alene, Idaho's water quality standard for turbidity is no more than 50 NTU above background. IDAPA 58.01.02.250(2)(e).

3.18. Starting on or around September 24, 2013, the Project area received approximately 1.1-inches of rainfall during a 24-hour period. A stormwater inspection conducted by Apollo and the project consultant inspector observed the first turbid stormwater discharge from the Project area to Turner Creek on September 24 and 25, 2013 (SCIR #39). Turbidity monitoring in Turner Creek recorded exceedances of the state water quality turbidity standard. On September 24, 2013, Apollo prepared and LHTAC submitted to the Idaho Department of Transportation ("ITD") a notice of potential violation of the CGP. The notice stated that based on a review of turbidity monitoring reports from September 19 to September 24, 2013, it can be determined that turbidity was greater than 50 NTU above background levels. Pursuant to the CGP, Respondents implemented corrective actions including installation of a geotextile fabric and rock check dams to address the turbid discharge.

3.19. On or around September 28 to 29, 2013, the Project area experienced another storm event totaling approximately one and one-half inches. Project areas that had been previously stabilized were becoming saturated and erosion control BMPs on slopes at various locations were beginning to deteriorate (SCIR #40, conducted by Apollo and #41 conducted by Apollo and the project consultant inspector). Inlet protections were observed to be losing effectiveness and sediment was collecting in ditches and entering most of the culverts in the Project area. The corrective action selected was to perform maintenance on existing BMPs and to apply new BMPs including erosion blankets, Fiber Reinforced Matrix ("FRM") (finished slopes

in place of BFM), and BFM (unfinished slopes in place of mulch mixture), to slopes and the use of smaller rock to more effectively catch sediment at inlets.

3.20. On September 29, 2013, Apollo prepared and LHTAC submitted to the ITD a notice of potential violation of the CGP. The notice described the erosion control deterioration on the slopes and noted the inability of some of the installed BMPs to prevent sedimentation to Turner Creek. The notice also stated that visual inspections and turbidity monitoring had determined a violation of the water quality standard for turbidity. Turbidity monitoring logs for September 28, 2013 identified turbidity levels up to 387 NTU above background. On September 30, 2013, a plume of turbid water was observed in Turner Bay in Lake Coeur d'Alene and monitoring detected turbidity levels at 43 NTU above background.

3.21. In response to rapidly deteriorating site conditions, on October 2, 2013, Respondents selected a corrective action consisting of the application of rock mulch between the base of Project area slopes and the edge of the roadway and identified a corrective action completion date of October 8, 2013 (SCIR #43 conducted by Apollo, LHTAC and the project consultant inspector). On October 9, 2013, Respondents documented that the application of rock mulch had not been completed by October 8, 2013, and selected additional corrective actions to be completed by October 16, 2013, including maintenance of silt fences and wattles throughout the Project area (SCIR #44 conducted by Apollo and the project consultant inspector). On October 16, 2013, Respondents noted that the maintenance of silt fences and wattles identified during the previous inspection had not been completed for all identified stations in the Project area (SCIR #45 conducted by Apollo, LHTAC and the project consultant inspector).

3.22. On October 8, 2013, and pursuant to CGP requirements, Apollo prepared and LHTAC submitted to ITD a notice of potential violation associated with a storm event of approximately 0.65 inches of precipitation; bringing the 14 day accumulation to 3.9 inches of rain. The notice stated that based on visual inspections and turbidity monitoring a discharge exceeding the water quality standard for turbidity had occurred.

3.23. Following the stabilization problems experienced in late September and early October 2013, Apollo hired Resource Planning Unlimited, Inc. ("RPU") to assess the Project area and review erosion control and stabilization measures. In a site visit dated October 10, 2013, RPU noted the presence of seeps appearing in areas that had recently been stabilized with hydromulch and tackifier. RPU concluded that separation fabric and rock should be placed on slopes where seeps were apparent to prevent mass soil erosion. In a subsequent report dated October 30, 2013, RPU noted that hillside seeps continuing in certain areas were likely to pose a problem of mass wasting, which was identified as a concern due to their proximity to stormwater culverts. According to Respondents, all known seeps were excavated and lined with fabric and rock in a timely manner.

3.24. Construction on the Burma Road Project area stopped for the winter shutdown period on October 15, 2013 pursuant to the stormwater management program. The condition of the Project as of October 30, 2013 was described as 0.1 disturbed acres, 12.9 temporarily stabilized acres and 15 permanently stabilized acres (SCIR #47 conducted by Apollo and the project consultant inspector).

3.25. A stormwater inspection conducted by Apollo Inc. on November 4, 2013, identified the need to implement corrective action to repair and secure plastic sheeting applied to

slopes between stations 11+00 and 13+00 (SCIR #48). A stormwater inspection conducted on November 13, 2013, stated that the corrective action had not been completed because slope failures between these stations were still in need of repair but did not explain why implementation of the corrective action was infeasible or document a schedule for implementing the corrective action as soon as practicable (SCIR #51 conducted by Apollo and the project consultant inspector).

3.26. Following the start of the winter shutdown period, during a stormwater inspection conducted on November 8, 2013, Respondents observed that unstabilized areas were increasing and that applied BFM or FRM was not sufficient to hold slopes at number of stations throughout the Project area (SCIR #50 conducted by Apollo and the project consultant inspector). To address the unstabilized areas and areas where BFM or FRM was no longer effective, Respondents selected placement of rock as a corrective action to be completed by November 13, 2013. On November 13, 2013, Respondents documented that corrective actions to repair slope failures identified during the previous inspection were actively being worked on for all identified slopes but had not been completed (SCIR #51 conducted by Apollo and the project consultant inspector). On November 18, 2013, Respondents documented the completion of corrective actions for all slope failures identified during the two previous inspections (SCIR #50 and #51), but observed that two new slope failures were beginning to appear and were monitored (SCIR #52, conducted by Apollo). On November 20, 2013, in addition to the two prior slope failures, Respondents documented new slope failures at an additional eight stations but did identify corrective actions or set out a schedule to address any of the ten observed slope failures (SCIR #53 conducted by Apollo and the project consultant inspector). On November 27, 2013,

Respondents documented that sloughing and slope failures were evident throughout the Project area and selected application of reinforced plastic sheeting and sandbags as a corrective action to be completed by December 2, 2013 (SCIR #54 conducted by Apollo and the project consultant inspector).

3.27. On January 15, 2014, Respondents observed that numerous slope failures throughout the Project area had expanded and worsened (SCIR #65 conducted by Apollo and the project consultant inspector). Respondents concluded that permanent stabilization measures including rock mulching or slope drains were necessary to stabilize the slopes but stated that due to weather conditions no corrective action was practical at the time.

3.28. On January 22, 2014, Respondents documented the completion of repairs to stabilize slopes at two stations, and a decision not to implement repair actions to stabilize a third slope (71+40) which was described as likely to fail in the near future (SCIR #66 conducted by Apollo and the project consultant inspector). On January 29, 2014, Respondent documented that slope 71+40 had not been repaired and additional planning was being conducted with the Idaho Department of Transportation to identify a permanent stabilization solution (SCIR #67 conducted by Apollo and the project consultant inspector). The January 29 inspection report also identified slope failures around the junction of Litten Lane and Burma Road that required corrective action, but no corrective action or completion date was identified due to a stated need to complete a modification to the SWPPP and according to the respondents pending a design modification consultation with ITD. According to Respondents, as of February 5 weather conditions including snow and frozen ground prevented corrective action. Respondent did not

explain why it was infeasible to complete corrective action for station 71+40 or Litten Lane or provide a schedule to implement corrective action as soon as practicable.

3.29. On February 17, 2014, Respondents concluded that the FRM and BRM slope stabilization measures were not operating effectively and were failing throughout the Project area (SCIR #70, conducted by Apollo Inc.). The February 17 inspection report noted that corrective actions had been started but had not been completed to address previously identified slope failures (station 71+40 and Litten Lane), documented additional slope failures at three stations (47+50, 62+40 and 67+40), and identified a corrective action completion date of February 24, 2014 for the slope failures.

3.30. On February 19, 2014, Respondents observed that FRM and BFM applied as a slope stabilization measure was losing or had lost its effectiveness and was being washed away, exposing bare soil at stations throughout the Project area (SCIR #71 conducted by Apollo and the project consultant inspector). Respondents concluded that corrective action was required to address the failed BFM stabilization measure and to address saturated slopes showing signs of failure throughout the Project area. However, these corrective actions were described as not being the highest priority and no completion dates were identified. According to Respondents the highest priority slope repair work began again as weather permitted on February 21.

3.31. On March 4 and 5, 2014, an increase in temperature and a storm event of approximately one and one-half inches of rain rapidly melted snow accumulation on the ground resulting in a flood event. On March 5, 2014, Respondents observed that temporary erosion control measures on slopes throughout the Project area were failing and that applied BFM had lost effectiveness (SCIR #74 conducted by Apollo and the project consultant inspector). The

rain-on-snow event resulted in high flow throughout the Project area, causing a number of check dams to fail and wash away. On March 6, 2014, Respondent observed that due to severe weather events conditions throughout the Project area were worsening and identified a series of corrective actions to control runoff, redefine conveyance ditches, address inlet and outlet protections, and repair failed slopes and stabilization measures (SCIR #75 conducted by Apollo and the project consultant inspector).

3.32. Monitoring conducted on March 5 and 6, 2014, by Apollo Inc., documented highly turbid discharges and on March 6 noted that discharges exceeded state water quality standards. The discharges from the flood event were in addition to stream bank erosion that extended well above the ordinary high water mark that was observed and documented throughout the Turner Creek system. The stream bank erosion also contributed to sedimentation of the creek. In compliance with the CGP, a notice of potential violation of the CGP was prepared by Apollo Inc. and submitted by LHTAC to ITD on March 5, 2014. The notice documented visibly turbid discharges to Turner Creek, the unnamed tributaries to Turner Creek and Lake Coeur d'Alene. Data collected on March 5, 2014 showed turbidity levels of 262 NTU at Turner Creek's confluence with Lake Coeur d'Alene. Data collected on March 6, 10 and 14, 2014, recorded turbidity levels at 76 NTU, 386 NTU and 790 NTU above background respectively.

3.33. On March 19, 2014, per EPA and ITD agreed protocol, Respondents provided an assessment of conditions in the Project area following the rain-on-snow event that occurred on March 4 and 5, 2014, and subsequent heavy rainfall that occurred March 9-11, 2014. The assessment observed that temporary erosion control measures on slopes throughout the Project

area had failed, due to the recent weather events the FRM and BFM had lost effectiveness, and a number of check dams had washed away or were covered with sediment (SCIR #78, conducted by Resource Planning Unlimited Inc. and the project consultant inspector).

3.34. On March 25, 2014, EPA conducted an announced inspection of the Burma Road Project to determine compliance with the CGP. The EPA Inspector observed slope failures and efforts to correct the failures throughout the entire length of the Project area. The Inspector noted that areas where FRM and BFM had separated from slope faces had been covered with plastic sheeting to minimize erosion. With the exception of the Litten Lane slope, saturated soils had been excavated from slopes where the worst seepage and slope failures had occurred. Respondents informed the EPA Inspector that the Litten Lane slope was too unstable to safely implement a long term solution at the time. As a temporary measure, Respondents stabilized the relevant portion of the Project site by placing ecology blocks at the base of the Litten Lane slope to prevent saturated soil from sloughing onto Litten Lane. The Inspector observed that hydromulch applied to the Litten Lane slope on the day of the inspection was already showing signs of failure by the end of the day. The Inspector requested that EPA be provided with weekly updates of progress to stabilize slopes in the Project area.

3.35. In a letter dated May 23, 2014, Respondent LHTAC informed EPA that temporary and permanent stabilization measures were in place and functioning as intended and that no violation of water quality standards had been observed in the last two months. According to Respondents, more than \$1,300,000 was spent from September 2013 through May 23, 2014 on efforts to stabilize the Burma Road Project site.

3.36. On June 17, 2014, Respondents prepared and submitted a potential notice of violation of the CGP for exceeding the water quality standard for turbidity. This exceedance of water quality standards was also described in a letter from Respondent LHTAC to EPA.

3.37. The paving of Burma Road was completed on September 16, 2014.

3.38. On October 6, 2014, EPA conducted an unannounced inspection of the Burma Road Project. On the date of the inspection, Respondents were completing work on final BMPs for the Project, including the placement of fiber rolls, FRM, rock and completion of soil walls. EPA's Inspector observed that many of the slopes that were unsuccessfully stabilized with FRM in the fall of 2013 and winter of 2014 were now stabilized with rock armoring. The EPA inspector observed that slopes in the Litten Lane continued to exhibit signs of failure with no vegetative growth or rock armoring. Respondents explained that a final engineered solution was still being developed for Litten Lane. Ecology blocks that had been placed at the base of the Litten Lane slope in March of 2013 remained in place and continued to effectively contain slope erosion from the exposed slope.

**Alleged Violation 1
(Violation of Section 2.1.1.2 of the CGP)**

3.39. Paragraphs 3.1 to 3.38 are realleged and incorporated herein by reference.

3.40. Section 2.1.1.2 of the CGP requires that stormwater controls be designed to account for the expected amount, frequency, intensity and duration of precipitation, and to account for the nature of stormwater runoff including factors such as slopes and site drainage features.

3.41. EPA alleges that Respondents violated section 2.1.1.2 of the CGP in September 2013, October 2013, November 2013, January 2014, February 2014 and March 2014. Violations

of section 2.1.1.2 of the CGP are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

**Alleged Violation 2
(Violation of Section 3.1 of the CGP)**

3.42. Paragraphs 3.1 to 3.38 are realleged and incorporated herein by reference.

3.43. Section 3 of the CGP requires that discharges from a construction site be controlled to meet applicable water quality standards.

3.44. EPA alleges that Respondents violated section 3.1 of the CGP on August 2, 2013; September 24, 2013; September 25, 2013; September 28, 2013; September 29, 2013; September 30, 2013; October 8, 2013; March 5, 2014; March 6, 2014; March 10, 2014; March 19, 2014; and June 17, 2014. Violations of section 3.1 of the CGP are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

**Alleged Violation 3
(Violation of Section 5.2.1 of the CGP)**

3.45. Paragraphs 3.1 to 3.38 are realleged and incorporated herein by reference.

3.46. Section 5.2.1. of the CGP requires the complete installation and operation of new or modified stormwater controls to correct controls that are not in accordance with the effluent limitations of the CGP or that are not effective in controlling the discharge to meet applicable water quality standards by no later than seven calendar days from the time of discovery.

3.47. EPA alleges that Respondents violated section 5.2.1 of the CGP on October 9, 2013; October 16, 2013; November 11, 2013; November 25, 2013; and January 29, 2014. Violations of section 5.2.1 of the CGP are enforceable under section 309(g) of the CWA, 33 U.S.C. § 1319(g).

IV. CONSENT AGREEMENT

4.1. Respondents admit the jurisdictional allegations of this CAFO.

4.2. Respondents neither admit nor deny the other allegations contained in this CAFO.

4.3. As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as well as Respondents' economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondents agree that an appropriate penalty to settle this action is \$86,000.

4.4. Respondents agree to pay the total civil penalty set forth in Paragraph 4.3 pursuant to the following two-part installment payment schedule:

Installment Payment Due Date	Principal	Interest	Total
Installment 1: 30 days from the effective date of the Final Order in Part V of this CAFO	\$43,000		\$43,000
Installment 2: 6 months from effective date of the Final Order in Part V of this CAFO	\$43,000	\$215	\$43,215

4.5. Payment under this CAFO must be made by a cashier's check or certified check 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

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

4.6. Respondents must serve photocopies of the check described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Chris Gebhardt
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-101
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

4.7. If Respondents fail to pay the penalty assessed by this CAFO 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 Respondents 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.

4.7.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 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.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondents fail to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondents 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

Respondents' 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 Respondents certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondents to this document.

4.10. The undersigned representatives of Respondents also certify that, as of the date of Respondents' signature of this CAFO, Respondents have corrected the violation(s) alleged in Part III above.

4.11. Except as described in Subparagraph 4.7.2, above, each party shall bear its own costs in bringing or defending this action.

4.12. Respondents expressly waive any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

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

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

DATED:

1/14/16

FOR RESPONDENT Local Highway Technical Assistance
Council:



Jeff Miles, Administrator

DATED:

FOR RESPONDENT Apollo, Inc:

David Haight, Operations Manager

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

DATED:

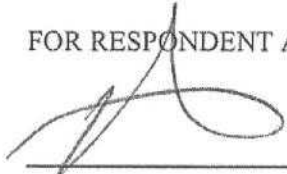
FOR RESPONDENT Local Highway Technical Assistance
Council:

Jeff Miles, Administrator

DATED:

FOR RESPONDENT Apollo, Inc:

1/20/16



David Haight, Operations Manager

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

DATED:

FOR RESPONDENT Local Highway Technical Assistance
Council:

Jeff Miles, Administrator

DATED:

FOR RESPONDENT Apollo, Inc:

David Haight, Operations Manager

DATED:

FOR COMPLAINANT:

1/31/2016



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

V. FINAL ORDER

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

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. 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 Respondents' obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

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

5.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondents. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 25th day of January, 2014.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: LHTAC and Apollo, Inc., DOCKET NO.: CWA-10-2016-0034** was served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Alex Fidis
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, 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 to:

Jeff Miles, Administrator
Local Highway Technical Assistance Council
3330 Grace Street
Boise, ID 83703

David Haight, Operations Manager
1133 West Columbia Drive
PO Box 7305
Kennewick, WA 99336

L. Michael Bogert, Esquire
Parsons Behle & Latimer
800 West Main Street, Suite 1300
Boise, ID 83702

DATED this 25 day of January, 2016



Signature

Teresa Luna
Regional Hearing Clerk
EPA Region 10

