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**BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

THE AMALGAMATED SUGAR  
COMPANY LLC,  
Boise, Idaho

Respondent.

**DOCKET NO. CWA-10-2015-0094**

**CONSENT AGREEMENT**

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement 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. Pursuant to Section 309(g)(1) and (g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) 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 The Amalgamated Sugar Company LLC (Respondent) agrees to issuance of, the Final Order attached to this Consent Agreement (Final Order).

**II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (Complainant) has been delegated the authority pursuant to Section 309(g) of the CWA,

33 U.S.C. § 1319(g), to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed.

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 Background**

3.1. The CWA prohibits the “discharge of any pollutants by any person” except, inter alia, as authorized by a National Pollutant Discharge Elimination System (NPDES) permit. CWA § 301(a), 33 U.S.C. § 1311(a); CWA § 402, 33 U.S.C. § 1342.

3.2. The CWA defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source” and defines “navigable waters” to include “waters of the United States.” CWA § 502(7),(12), 33 U.S.C. § 1362(7),(12).

3.3. The CWA defines a “pollutant” to include, inter alia, rock, sand, cellar dirt, biological materials, dredged spoil, and solid waste discharged into water. CWA § 502(6), 33 U.S.C. § 1362(6).

3.4. The CWA defines “point source” to include, inter alia, “any pipe, ditch, channel, tunnel, conduit, well, [or] discrete fissure ... from which pollutants are or may be discharged.” CWA § 502(14), 33 U.S.C. § 1362(14).

3.5. Waters of the United States include waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; all interstate waters; and tributaries to those waters. 40 C.F.R. § 122.2.

3.6. The CWA specifies that stormwater discharge “associated with industrial activity” (industrial stormwater) includes the discharge from any conveyance which is used for collecting and processing or raw materials storage areas at an industrial plant. Industrial stormwater is a type of pollutant. CWA § 402(p), 33 U.S.C. § 1342(p); 40 C.F.R. §§ 122.26(a)(1)(ii), 122.26(b)(14).

3.7. EPA may issue an NPDES permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the Act and conditions that EPA determines are necessary. CWA § 402, 33 U.S.C. § 1342.

3.8. An NPDES permit is required for any stormwater “discharge associated with industrial activity.” CWA § 402(p)(2)(B), 33 U.S.C. § 1342(p)(2)(B); 40 C.F.R. § 122.26(a)(1)(ii).

3.9. Pursuant to Section 402(p) of the CWA, EPA promulgated regulations for the NPDES permit requirements for industrial stormwater discharges at 40 C.F.R. § 122.26.

3.10. EPA issues NPDES Multi-Sector General Permits for Stormwater Discharges Associated with Industrial Activity (MSGPs) to authorize certain discharges of stormwater associated with industrial activities, provided that appropriate stormwater controls are designed, installed, and maintained, in conformance with the permit criteria. CWA § 402(p), 33 U.S.C. § 1342(p).

3.11. To be authorized to discharge under an applicable MSGP, the discharger must first “prepare and submit a complete and accurate Notice of Intent” (NOI), following the requirements specified by that MSGP, in which the applicant certifies that the applicant meets

the eligibility criteria and will comply with the conditions and requirements set forth in that MSGP.

3.12. Authorization to discharge under Permit No. IDR050000 (2008 MSGP) was available to facilities with industrial activity in the State of Idaho, except for facilities in Indian Country, for the period of September 29, 2009 through September 29, 2013.

3.13. On September 30, 2013, coverage under the 2008 MSGP was administratively continued until a new MSGP was issued. All violations alleged within this Consent Agreement occurred during the time when the 2008 MSGP was in effect.

3.14. Permittees authorized to discharge industrial stormwater under the provisions of the 2008 MSGP are required to implement control measures that reduce and/or eliminate pollutants in stormwater to the extent achievable using control measures that are technologically available and economically practicable and achievable in light of the best industry practice. 2008 MSGP § 2.

### **Factual Background**

3.15. At all times relevant to this action, Respondent was a limited liability company organized under the laws of the State of Delaware, and therefore a “person” within the meaning of the CWA. CWA § 502(5), 33 U.S.C. § 1362(5).

3.16. At all times relevant to this action, Respondent owned a facility (Facility), located in Paul, Idaho, where Respondent manufactures sugar for human consumption from sugar beets.

3.17. Respondent manufactured sugar from sugar beets, conducting industrial activity within Standard Industrial Classification (SIC) code 2063, and Manufacturing Major Group 20, Food and Kindred Products. 40 C.F.R. § 122.26(b)(14)(xi).

3.18. The CWA defines stormwater associated with industrial activity (industrial stormwater) as a type of pollutant. 40 C.F.R. § 122.26(b)(14).

3.19. Respondent submitted a NOI to EPA for coverage under the 2008 MSGP for the Facility on August 28, 2013, which identified Respondent as the operator.

3.20. On August 28, 2013, EPA issued a letter to Respondent, granting Respondent coverage under the 2008 MSGP. Respondent's coverage went into effect on September 27, 2013 and was assigned NPDES Tracking No. IDR05CW74.

3.21. The Snake River, a tributary to the Columbia River, is a "navigable water" and "waters of the United States," and is subject to the jurisdiction of the Clean Water Act. CWA § 311, 33 U.S.C. § 1321; CWA § 502(7), 33 U.S.C. § 1362(7); 33 C.F.R. § 328.3(a); 40 C.F.R. §§ 110.1, 232.2.

3.22. A drainage and irrigation canal called "Main Drain" flows through the Facility. The Main Drain always has water flowing in it, and flows into the Snake River, approximately 18 miles downriver from the Facility.

3.23. EPA conducted an inspection at the Facility on September 24, 2014 to evaluate, *inter alia*, the treatment and disposal of stormwater in accordance with the CWA, the regulations promulgated under the CWA at 40 C.F.R. § 122.26 and the 2008 MSGP.

#### **Count 1**

3.24. On September 28, 2013, Respondent released approximately 20,000 gallons of non-contact cooling water from a pump room, down an embankment, and into the Main Drain.

3.25. Respondent submitted a letter to EPA, documenting the unauthorized release.

3.26. Non-contact cooling water is not stormwater, and is explicitly excluded from

coverage under Section 8.U.2.1. of the 2008 MSGP.

3.27. Respondent did not submit an NPDES permit application or have an NPDES permit to authorize the cooling water discharge.

3.28. On September 28, 2013, Respondent did not have an NPDES permit or other authorization for the discharge of non-contact cooling water into waters of the United States.

3.29. **Violation:** Respondent violated Section 301(a) of the CWA, as Respondent's September 28, 2013, discharge of pollutants from a point source into navigable waters of the United States was not authorized by a NPDES permit. CWA § 301(a), 33 U.S.C. § 1311(a).

### **Count 2**

3.30. Section 5.1.2 of the 2008 MSGP required Respondents to prepare a Stormwater Pollution Prevention Plan (SWPPP) that clearly shows, *inter alia*, impervious surfaces, structural controls, drainage canals, stormwater conveyances (ditches, swales, pipes), and railroad lines at the Facility.

3.31. At the time of the Inspection, Respondent's SWPPP did not properly depict the impervious surfaces, structural controls, drainage canals, stormwater conveyances, or railroad lines present at the Facility.

3.32. At the time of the Inspection, Respondent's SWPPP depicted a facility boundary which did not include the land application field.

3.33. **Violation:** Respondents violated Section 5.1.2 of the 2008 MSGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a), when Respondent prepared a SWPPP which did not adequately depict the facility, such as by failing to depict the locations of outer boundaries of the Facility or impervious surfaces, structural controls, drainage canals, stormwater conveyances, or

railroad lines within the Facility.

### Count 3

3.34. Sections 4.1.1 and 5.1.5.2 of the 2008 MSGP required Respondents to prepare a SWPPP which documented the Respondent's inspection schedule for Routine Facility Inspections.

3.35. At the time of the Inspection, Respondent's SWPPP did not properly include the schedule or criteria which are used to determine when Routine Facility Inspections would be conducted.

3.36. **Violation:** Respondent violated Sections 4.1.1 and 5.1.5.2 of the 2008 MSGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a), when Respondents failed to properly document the Respondent's inspection schedule for Routine Facility Inspection within the Respondent's SWPPP.

### Count 4

3.37. Section 2.1.2.4 of the 2008 MSGP required Respondents to "minimize the potential for leaks, spills and other releases that may be exposed to stormwater ..." by implementing "preventative measures such as barriers between material storage and traffic areas, secondary containment provisions, and procedures for material storage and handling."

3.38. At the time of the Inspection, the fuel line at the TranSystems fueling station was located outside of secondary containment, with visible staining of the ground near the fuel line. The TranSystems fueling station is within the Facility boundaries, and within the area covered under the 2008 MSGP.

3.39. **Violation:** Respondents violated Section 2.1.2.4 of the 2008 MSGP and Section

301(a) of the CWA, 33 U.S.C. § 1311(a), when Respondents failed to maintain its fuel line within secondary containment.

#### **Count 5**

3.40. Section 2.1.2.5 of the 2008 MSGP required Respondents to implement erosion or sediment controls to “stabilize exposed areas and contain runoff using structural and/or non-structural control measures to minimize onsite erosion and sedimentation, and the resulting discharge of pollutants.”

3.41. At the time of the Inspection, a section of the berm adjacent to the Main Drain located to the east of the TranSystems sand and salt storage bunker was degraded and no longer provided adequate erosion and sediment control. The road adjacent to the berm was an exposed dirt road.

3.42. **Violation:** Respondents violated Section 2.1.2.5 of the 2008 MSGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a), when Respondents failed to adequately maintain erosion and sediment controls along a segment of the Main Drain.

#### **IV. TERMS OF SETTLEMENT**

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

4.2. **Penalty:** Pursuant to 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 Respondent's economic benefit of noncompliance, ability to pay, and other relevant



factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle the alleged violations is \$24,000.

4.3. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.2 within 30 days of the effective date of the Final Order. 40 C.F.R. § 22.31(c).

4.4. 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  
PO Box 979077  
St. Louis, MO 63197-9000

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

4.5. Concurrent with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.4 on the Regional Hearing Clerk and EPA Compliance Officer at the following addresses:

Candace Smith, Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, M/S ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101  
Smith.candace@epa.gov

Chae Park, Compliance Officer  
U.S. Environmental Protection Agency  
Region 10, M/S OCE-133  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101  
Park.chae@epa.gov

4.6. Except as described in Subparagraph 4.7.2, below, each party shall bear its own fees and costs in bringing or defending this action.

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. If such a failure to pay occurs, Respondent may be subject 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.* Interest shall accrue from the effective date of the Final Order, at the rate established by the Secretary of the Treasury, and applied to any portion of the assessed penalty which remains unpaid 30 days after the effective date of the Final Order. CWA § 309(g)(9), 33 U.S.C. § 1319(g)(9); 31 U.S.C. § 3717(a)(1); 40 C.F.R. § 13.11(a)(3).

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 Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.2, 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. *Federal Tax.* The penalty described in Paragraph 4.2, including any additional costs incurred under Paragraph 4.7, represent an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes. 26 U.S.C. § 162(f).

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 the terms and conditions of this document.

4.10. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in the Final Order.

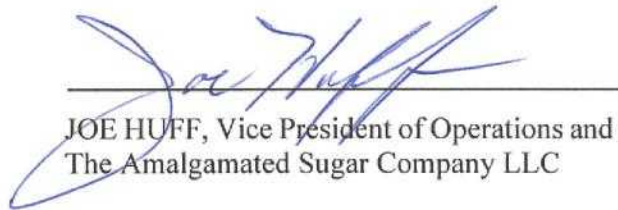
4.11. The provisions of this Consent Agreement and Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.12. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

FOR RESPONDENT:

4/29/2015

  
\_\_\_\_\_  
JOE HUFF, Vice President of Operations and Chief Operating Officer  
The Amalgamated Sugar Company LLC

DATED:

FOR COMPLAINANT:

5/4/2015

  
\_\_\_\_\_  
EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement

**BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

THE AMALGAMATED SUGAR  
COMPANY LLC,  
Boise, Idaho

Respondent.

**DOCKET NO. CWA-10-2015-0094**

**FINAL ORDER**

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.

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

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order 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 Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

1.4. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any

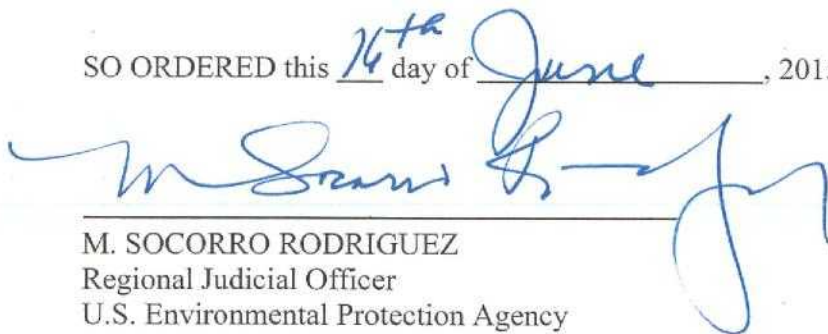
issue of fact or law set forth in this Final Order, including, but not limited to, any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

1.5. Pursuant to 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 Respondent.

1.6. 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 Respondent. 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.

1.7. This Final Order shall become effective upon filing.

SO ORDERED this 16<sup>th</sup> day of June, 2015.



M. SOCORRO RODRIGUEZ  
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 the Matter of: The Amalgamated Sugar Company LLC, Boise, Idaho Docket No.: CWA-10-2015-0094**, was filed with the Regional Hearing Clerk and 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:

Chris Bellovary  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Suite 900  
Seattle, Washington 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:

Scott Blickenstaff  
The Amalgamated Sugar Company LLC  
1951 South Saturn Way  
Suite 100  
Boise, Idaho 83709

DATED this 19<sup>th</sup> day of June, 2015, Candace H. Smith  
Signature

Candace H. Smith  
Regional Hearing Clerk  
EPA Region 10