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EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	
	)	DOCKET NO. CWA-10-2014-0123
	)	
MASTER PRECASTER, INC. and	)	<b>CONSENT AGREEMENT AND</b>
NORTHWEST PRECAST, LLC	)	<b>FINAL ORDER</b>
PUYALLUP, WASHINGTON	)	
	)	
Respondents.	)	

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**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 Master

Precaster, Inc. and Northwest Precast, LLC (“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. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant” by any person into navigable waters of the United States, except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that a state with an approved NPDES program may issue permits for the

discharge of pollutants into waters of the United States upon such specific terms and conditions as the state may prescribe.

3.2. CWA Section 502(12), 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.” CWA Section 502(7), 33 U.S.C. § 1362(7), defines “navigable waters” as “waters of the United States.” EPA’s regulations define “waters of the United States” to 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.

3.3. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, dredged spoil, rock, sand, chemical wastes and industrial waste.

3.4. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term “point source” to include any “pipe, ditch, channel, tunnel, or conduit ... from which pollutants are or may be discharged.”

3.5. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), specifies that an NPDES permit is required for any storm water discharge “associated with industrial activity.” Section 402(p) also authorizes EPA to issue regulations that designate additional storm water discharge sources and establish a comprehensive program to regulate these additional sources.

3.6. EPA’s regulations define “storm water discharge associated with industrial activity” to include discharges associated with facilities under Standard Industrial Classification 32. 40 C.F.R. § 122.26(b)(14)(ii).

3.7. The State of Washington has a federally approved NPDES permit program administered by the Washington Department of Ecology (“Ecology”).

3.8. In October 2009, Ecology reissued the Washington Industrial Stormwater General Permit (“2010 Storm Water GP”) pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The 2010 Storm Water GP became effective on January 1, 2010 and has an expiration date of January 1, 2015. The 2010 Storm Water GP was modified with the new effective date of July 1, 2012. The 2010 Storm Water GP authorizes certain discharges of storm water associated with industrial activity at permitted facilities.

3.9. The 2010 Storm Water GP requires facilities engaged in certain industrial activities to apply for coverage under the permit if storm water from the facility discharges to a surface water body, or to a storm sewer system that discharges to a surface water body. Permittees are required to comply with the conditions and requirements set forth in the applicable Storm Water GP.

3.10. Respondent, Master Precaster, Inc. is a corporation organized under the laws of the State of Washington and is therefore a “person” as defined under Section 502(5) of the CWA, 33 U.S.C. § 1362(5). Respondent, Northwest Precast, LLC, currently does business as Master Precaster, Inc.

3.11. Respondent, Northwest Precast, LLC is a limited liability company organized under the laws of the State of Idaho and is therefore a “person” as defined under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.12. Respondent, Northwest Precast, LLC, owns and operates a manufacturing facility (“Facility”) located in Puyallup, Washington.

3.13. The Facility, which was under Respondents’ control at all times relevant to this action, discharges stormwater offsite into the Puyallup River. The Facility’s stormwater

discharges contain “pollutants” within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12).

3.14. The Puyallup River is currently used, was used in the past, or may be susceptible to use in interstate and foreign commerce. Accordingly, the Puyallup River is a “navigable water” as defined in CWA Section 502(7), 33 U.S.C. § 1362(7), and is a “water of the United States” as defined in 40 C.F.R. § 122.2.

3.15. The Facility is a point source within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2. In the alternative, the Facility contains point sources.

3.16. At all times relevant to this CAFO, Respondent, Master Precaster, Inc. had coverage under the 2010 Storm Water GP at the Facility.

3.17. Respondents violated the 2010 Storm Water GP numerous times between January 2010 and January 2014. Violations of the 2010 Storm Water GP were discovered during an EPA inspection of the Facility on January 23, 2014 and EPA’s review of Respondents’ storm water pollution prevention plan (“SWPPP”).

**Count 1: Failure to Comply with SWPPP Requirements**

3.18. Section S3.B.4.b.i.2.d. of the 2010 Storm Water GP requires the permittee to keep all dumpsters under cover while not in use. In January 2014, there were six dumpsters found uncovered and not in use during inspection.

3.19. Section S3.B.4.b.i.4 of the 2010 Storm Water GP requires the permittee to use secondary containment. In January 2014, there were three areas found without secondary containment during inspection.

3.20. Section S3.A.1 and S3.B.4.b.i.5 of the 2010 Storm Water GP requires the permittee to implement a SWPPP that includes employee training. The permittee is required to train employees annually, at a minimum. Respondents failed to train employees in 2012 and 2013.

3.21. Section 3.1 of the SWPPP as required by Section S3.A.1 of the 2010 Storm Water GP requires the permittee to post warning signs on or adjacent to storm drain inlets where practicable. In January 2014, there were no warning signs found posted on storm drains during inspection.

3.22. Section S3.B.3 of the 2010 Storm Water GP requires the permittee to identify individuals with SWPPP responsibility. During January 2014 inspection, inspectors found that although Respondents had identified individuals with SWPPP responsibility, those individuals no longer worked at the Facility.

**Count 2: Failure to Comply with Sampling Requirements**

3.23. Section S4.B.1.a of the 2010 Storm Water GP requires the permittee to conduct quarterly sampling of the discharge. Between 2010 and 2013, Respondents failed to sample at least four quarters. Specifically, Respondents failed to sample in Quarter 2 and Quarter 3 of 2010 and in Quarter 1 and Quarter 3 of 2013.

3.24. Section S4.B.1.d of the 2010 Storm Water GP requires the permittee to obtain representative samples. In 2013, Respondents failed to obtain a representative sample in Quarter 4.

3.25. Section S4.C of the 2010 Storm Water GP requires the permittee to ensure that the analytical methods used to meet sampling requirements outlined in the permit conform to

certain specified guidelines. In Quarter 4 of 2013, Respondents failed to ensure that the methods used to sample for pH complied with the specified guidelines as required by the 2010 Storm Water GP.

**Count 3: Failure to Comply with Inspection and Reporting Requirements**

3.26. Section S7.A.1 and Section S9.C.1 of the 2010 Storm Water GP require the permittee to conduct monthly inspections of the Facility and to retain copies of the inspection reports. Between 2010 and 2013, Respondents failed to inspect and/or retain records on the following occasions: 12 months in 2010; one month (January) in 2011; and six months in 2013 (January, February, May, October, November and December).

3.27. Section S9.B.1 of the 2010 Storm Water GP requires the permittee to submit a complete and accurate annual report to Ecology. In 2011 and 2012, Respondents failed to submit an accurate annual report as required by the 2010 Storm Water GP.

3.28. Section S9.B.1 of the 2010 Storm Water GP requires the permittee to submit a complete and accurate annual report to Ecology no later than May 15<sup>th</sup> of each year. In 2012, Respondents failed to submit a timely annual report as required by the 2010 Storm Water GP.

3.29. Under CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), EPA may assess an administrative penalty when EPA finds that “any person ... has violated any permit condition or limitation ... in a permit issued” pursuant to CWA Section 402, 33 U.S.C. § 1342. Consequently under CWA 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, Respondents are liable for the administrative assessment of civil penalties for violations at the Facility in an amount not to exceed \$16,000 per day for each violation that occurred after January 12, 2009, up to a maximum of \$177,500.

**IV. CONSENT AGREEMENT**

4.1. Respondents admit the jurisdictional allegations of this CAFO.

4.2. Respondents neither admit nor deny the specific factual 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 \$25,600.

4.4. Respondents agree to pay the total civil penalty set forth in Paragraph 4.3 by October 15, 2014.

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:

By U.S. Postal Mail:

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

By UPS, Federal Express or overnight mail:

U.S. Bank Government Lockbox 979077  
U.S. EPA Fines and Penalties  
1005 Convention Plaza  
St. Louis, MO 63101

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:

Docket Number CWA-10-2014-0123  
Consent Agreement and Final Order  
In the Matter of: Master Precaster, Inc. and  
Northwest Precast, LLC  
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U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101  
(206) 553-1037

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Chae Park  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-133  
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 by October 15, 2014.

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 representatives 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 representative of Respondents also certifies 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 waive 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:

7.26.14

FOR RESPONDENT:



TIM MCGOURTY, Owner  
Northwest Precast, LLC dba  
Master Precaster, Inc.

DATED:

7.26.14

FOR RESPONDENT:

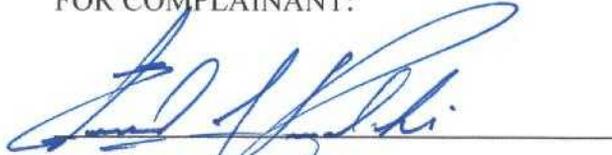


TIM MCGOURTY, Owner  
Northwest Precast, LLC

DATED:

7/30/2014

FOR COMPLAINANT:



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 Washington Department of Ecology 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 31<sup>st</sup> day of July, 2014.

  
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 **In the Matter of: Master Precaster Inc. and Northwest Precast, LLC, DOCKET NO.: CWA-10-2014-0123** 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:

Stephanie Ebright  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-158  
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:

Tim McGourty, Owner  
Northwest Precast, LLC  
313 W. Overland Road  
Boise, Idaho 83705

DATED this 1<sup>st</sup> day of Aug, 2014



Signature

Candace Smith  
Regional Hearing Clerk  
EPA Region 10