



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 10

1200 Sixth Avenue, Suite 900, Seattle, Washington 98101

EXPEDITED SETTLEMENT AGREEMENT

Docket Number: CWA-10-2009-0005, NPDES No. Unpermitted

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HEARINGS CLERK  
EPA - REGION 10

U.S. EPA, Region 10

In the Matter of: J. Foote Excavation, Inc.

Docket No.: CWA-10-2009-0005

P.O. Box 979077

St. Louis, MO 63197-9000

J. Foote Excavation, Inc. ("Respondent") is a "person," within the meaning of Section 502(5) of the Clean Water Act ("Act"), 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

Attached is an "Expedited Settlement Offer Worksheet Deficiencies Form" ("Form"), which is incorporated by reference. By its signature, Complainant ("EPA") finds that Respondent is responsible for the deficiencies specified in the Form.

Respondent had an unauthorized discharge of storm water in violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311, and/or failed to comply with its National Pollutant Discharge Elimination System ("NPDES") storm water permit issued under Section 402 of the Act, 33 U.S.C. § 1342.

EPA finds, and Respondent admits, that Respondent is subject to Section 301(a) of the Act, 33 U.S.C. § 1311, and that EPA has jurisdiction over any "person" who "discharges pollutants" from a "point source" to "waters of the United States." Respondent neither admits nor denies the deficiencies specified in the Form.

EPA is authorized to enter into this Consent Agreement and Final Order ("Agreement") under the authority vested in the Administrator of EPA by Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and by 40 C.F.R. § 22.13(b). The parties enter into this Agreement in order to settle the civil violation(s) alleged in this Agreement for a penalty of [redacted]. Respondent consents to the assessment of this penalty, and waives the right to: (1) contest the finding(s) specified in the Form; (2) a hearing pursuant to Section 309(g)(2) of the Act, 33 U.S.C. § 1319(g)(2); and (3) appeal pursuant to Section 309(g)(8), 33 U.S.C. § 1319(g)(8).

Additionally, Respondent certifies, subject to civil and criminal penalties for making a false statement to the United States Government, that any deficiencies identified in the Form have been corrected. Respondent shall submit a written report with this Agreement detailing the specific actions taken to correct the violations cited herein.

Respondent certifies that it has submitted a bank, cashiers, or certified check, with case name and docket number noted, for the amount specified above, payable to the "Treasurer, United States of America," via certified mail, to:

This Agreement settles EPA's civil penalty claims against Respondent for the Clean Water Act violation(s) specified in this Agreement. EPA does not waive its rights to take any enforcement action against Respondent for any other past, present, or future civil or criminal violation of the Act or of any other federal statute or regulation. EPA does not waive its right to issue a compliance order for any uncorrected deficiencies or violation(s) described in the Form. EPA has determined this Agreement to be appropriate.

This Agreement is binding on the parties signing below and effective upon filing with the Regional Hearing Clerk.

APPROVED BY EPA:

Kimberly A. Ogle Date: 6/27/08  
Kimberly A. Ogle  
Manager, NPDES Compliance Unit

APPROVED BY RESPONDENT:

Name (print): JAY BARRETT  
Title (print): CEO  
Signature: Jay Barrett Date: 7/28/08

More than 40 days have elapsed since the issuance of public notice pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and EPA has received no comments concerning this matter.

Having determined that this Agreement is authorized by law, IT IS SO ORDERED:

Richard G. McAllister Date: 11/9/08  
Richard G. McAllister  
Regional Judicial Officer, Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **EXPEDITED SETTLEMENT AGREEMENT** in **In the Matter of: J. Foote Excavation, Inc., DOCKET NO.: CWA-10-2009-0005**, was filed with the Regional Hearing Clerk on November 17, 2008.

On November 17, 2008 the undersigned certifies that a true and correct copy of the document was delivered to:

David Allnutt  
US Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
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 November 17, 2008, to:

J. Foote Excavation  
Jay Barnett, President  
1720 Industrial Drive  
Sandpoint, ID 83864

DATED this 17<sup>th</sup> day of November 2008.



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Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 10**  
1200 Sixth Avenue  
Seattle, Washington 98101

November 17, 2008

Attn of: ORC-158

**CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Mr. Jay Barnett, President  
J. Foote Excavation, Inc.  
1720 Industrial Drive  
Sandpoint, ID 83864

Re: In the Matter of: J. Foote Excavation, Inc. &  
Docket No. CWA-10-2009-0005

Dear Mr. Baker:

I have enclosed a copy of the fully executed Expedited Settlement Agreement that resolves the matter referenced above.

Please note that the docket number has been changed to reflect that the Expedited Settlement Agreement was signed by the Regional Administrator after the new fiscal year began.

Thank you for your cooperation in resolving this matter.

Sincerely,

A handwritten signature in black ink that reads "Margaret B. Silver". The signature is written in a cursive style with a long, sweeping underline.

Margaret B. Silver  
Associate Regional Counsel

Enclosure