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HEARINGS CLERK  
EPA -- REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. CWA-10-2015-0013
	)	
GORDON TRUCKING, INC.,	)	<b>CONSENT AGREEMENT AND</b>
	)	<b>FINAL ORDER</b>
	)	
Pacific, Washington	)	
	)	
Respondent.	)	

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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 Gordon

Trucking, Inc. ("Respondent") agrees 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 Respondent is alleged to have violated.

## **III. ALLEGATIONS**

3.1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the "discharge of a 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 Section 402 of the Act, 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. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.” Section 502(7) of the CWA, 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 Clean Water Act, 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 Act, 33 U.S.C. § 1342(p), specifies that an NPDES permit is required for any stormwater discharge “associated with industrial activity.” Section 402(p) also authorizes EPA to issue regulations that designate additional stormwater 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 4221-25. 40 C.F.R. § 122.26(b)(14)(xi).

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 Stormwater GP”) pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The

2010 Stormwater GP became effective on January 1, 2010, and has an expiration date of January 1, 2015. The 2010 Stormwater GP was modified with the new effective date of July 1, 2012, and maintains the January 1, 2015 expiration date. The 2010 Stormwater GP authorizes certain discharges of stormwater associated with industrial activity at permitted facilities.

3.9. The 2010 Stormwater GP requires facilities engaged in certain industrial activities to apply for coverage under the permit if stormwater 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 Stormwater GP.

3.10. Respondent is a corporation duly 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).

3.11. At all times relevant to this action, Respondent was the owner and/or operator of a trucking terminal for semi-trucks and trailers located in Pacific, Washington (“Facility”).

3.12. The Facility, which was under Respondent’s control at all times relevant to this action, discharged stormwater from retention ponds into Milwaukee Ditch. Milwaukee Ditch flows into White River, which ultimately flows into Puget Sound. At all times relevant to this action, the Facility’s stormwater discharges contained “pollutants” within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12).

3.13. Puget Sound is currently used, was used in the past, or may be susceptible to use in interstate and foreign commerce, and thus Puget Sound is a “navigable water” as defined in

Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and “water of the United States” as defined in 40 C.F.R. § 122.2.

3.14. 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.

3.15. At all times relevant to this CAFO, the Facility had coverage under the 2010 Stormwater GP (permit no. WAR004480).

3.16. Respondent violated the 2010 Stormwater GP between January 2010 and April 2013. Violations were discovered during an EPA inspection of the Facility on April 16, 2013, and upon EPA’s review of Respondent’s permit, Respondent’s stormwater pollution prevention plan (“SWPPP”), Respondent’s site inspection reports, Respondent’s annual reports, and Respondent’s discharge monitoring reports.

**Count 1: Failure to Develop and Implement an Adequate SWPPP**

3.17. Condition S3. of the 2010 Stormwater GP requires the Permittee to develop and implement a SWPPP for the permitted facility. Required SWPPP components specified by the GP include but are not limited to a site map, a detailed assessment of the facility, a detailed description of Best Management Practices (“BMPs”), and a sampling plan.

3.18. Condition S3.A.4.a. of the 2010 Stormwater GP requires the Permittee to modify the SWPPP if the owner/operator or the applicable local or state agency determines during inspections or investigations that the SWPPP is, or would be, ineffective in eliminating or significantly minimizing pollutants in stormwater discharges from the site.

3.19. Condition S3.A.6. of the 2010 Stormwater GP requires the Permittee to sign and certify all SWPPPs in accordance with Condition G2 each time it revises or modifies a SWPPP to comply with Conditions S3.A.4. (Update of the SWPPP), S7 (Inspections) or S8 (Corrective Actions).

3.20. At the time of EPA's April 16, 2013 inspection of the Facility, Respondent's SWPPP lacked a complete site map, a detailed assessment of the Facility, a detailed description of BMPs, and a sampling plan.

3.21. As of April 2013, Respondent had failed to update or modify its SWPPP since it was first completed in August 2008.

3.22. At the time of EPA's April 16, 2013 inspection of the Facility, Respondent's SWPPP lacked a signature and certification form.

3.23. At the time of EPA's April 16, 2013 inspection of the Facility, Respondent failed to develop and implement an adequate SWPPP in violation of Condition S3. of the 2010 Stormwater GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Count 2: Failure to Sample Each Distinct Point of Stormwater Discharge**

3.24. Condition S4.B.2.c. of the 2010 Stormwater GP states that the Permittee "shall sample each distinct point of discharge off-site except as otherwise exempt from monitoring as a 'substantially identical outfall' per S3.B.5.b." Substantially identical outfall means "two or more outfalls [that] discharge substantially identical effluents (based on similar industrial activities and site conditions)."

3.25. Condition S3.B.5. requires the Permittee to include a sampling plan as part of its SWPPP that identifies the points of discharge and documents the location of discharge points

that the Permittee does not sample because the pollutant concentrations are substantially identical to a discharge point being sampled.

3.26. At all times relevant to this action, Respondent discharged stormwater offsite from two distinct retention ponds, one located at the northern end of the property, and another located at the southern end.

3.27. At the time of EPA's April 16, 2013 inspection of the Facility, Respondent's sampling records indicated that the Facility only conducted stormwater sampling at one of the two retention ponds.

3.28. Discharges from the north and south retention ponds were not determined to be "substantially identical," nor were the two retention ponds identified or documented as "substantially identical" in the Facility's SWPPP.

3.29. Although Respondent believed that it could sample either point of discharge, for at least nine quarters between January 2011 and March 2013, Respondent failed to conduct quarterly sampling of each distinct point of stormwater discharge in violation of Condition S4.B.2.c. of the 2010 Storm Water GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a). Respondent also failed to include in its SWPPP Sampling Plan documentation of why each discharge point was not sampled in violation of Condition S3.B.5. of the 2010 Storm Water GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Count 3: Failure to Adequately Conduct and Document Visual Inspections**

3.30. Condition S7.A.1. of the 2010 Stormwater GP requires the Permittee to conduct and document visual inspections of the site each month.

3.31. Condition S7.B. specifies the mandatory components for each inspection, including but not limited to observations made at stormwater sampling locations and areas where stormwater associated with industrial activity is discharged off-site; observations for the presence of floating materials, visible oil sheen, discoloration, turbidity, odor, etc. in the stormwater discharge(s); observations for the presence of illicit discharges; a verification that the site map in the SWPPP reflects current conditions; and an assessment of all BMPs that have been implemented.

3.32. As of April 2013, Respondent's site inspection reports showed that Respondent's monthly inspections lacked many of the mandatory components specified by Condition S7. of the 2010 Stormwater GP, including but not limited to required observations and an assessment of all BMPs.

3.33. For at least 39 consecutive months between January 2010 and March 2013, Respondent failed to adequately document its monthly visual inspections in violation of Condition S7. of the 2010 Stormwater GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Count 4: Failure to Take and Implement Required Corrective Actions**

3.34. Condition S8.D. of the 2010 Stormwater GP requires that a Permittee who exceeds an applicable benchmark value (for a single parameter) for any three quarters during a calendar year complete a Level Three Corrective Action. A Permittee required to take a Level Three Correction Action must: (1) review the SWPPP and ensure that it fully complies with Permit Condition S3; (2) make appropriate revisions to the SWPPP to include additional Treatment BMPs and include additional operational and/or structural source control BMPs if necessary; (3) sign and certify the revised SWPPP; (4) summarize the Level Three Corrective

Actions in the Annual Report; and (5) fully implement the revised SWPPP as soon as possible, but no later than September 30th of the following year.

3.35. Respondent was notified in a May 10, 2012 letter from Ecology that it had exceeded the applicable benchmark values for copper and turbidity and was therefore required to complete a Level Three Correction Action by September 30, 2012.

3.36. At the time of EPA's April 16, 2013 inspection of the Facility, Respondent had not yet instituted any of the steps required to complete a Level Three Correction Action.

3.37. For at least six months from October 2012 to March 2013, Respondent failed to implement adequate Level Three Corrective Actions in violation of Condition S8.D. of the 2010 Storm Water GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### **IV. CONSENT AGREEMENT**

4.1. Respondent admits the jurisdictional allegations of this CAFO.

4.2. Respondent neither admits nor denies 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 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 this action is \$50,000.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

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

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

4.6. Respondent 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-158  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Steven Potokar  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-133  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

4.7. If Respondent fails 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 Respondent 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 Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.3, 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. 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 Respondent certifies that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this document.

4.10. The undersigned representative of Respondent also certifies that, as of the date of Respondent's signature of this CAFO, Respondent has 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. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.

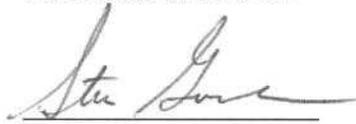
4.13. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

11/14/14

FOR RESPONDENT:

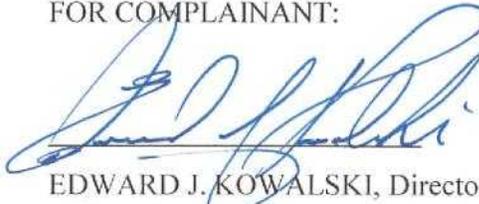


STEVE GORDON, Chief Operating Officer  
Gordon Trucking, Inc.

DATED:

11/20/2014

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. Respondent is 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

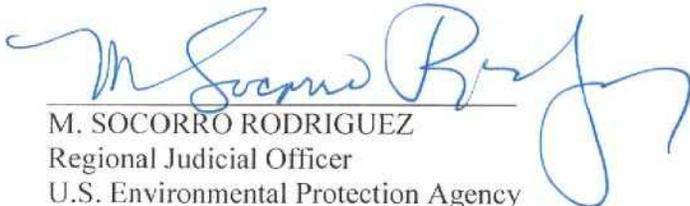
appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

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 Respondent.

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 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.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 2nd day of December, 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: Gordon Trucking, Inc., DOCKET NO.: CWA-10-2015-0013** was served on the addressees in the following manner on the date specified below:

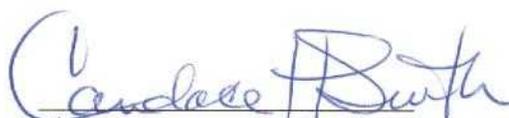
The undersigned certifies that a true and correct copy of the document was delivered to:

Leah Brown  
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:

Steven Gordon  
151 Steward Road NW  
Pacific, WA 98047

DATED this 4<sup>th</sup> day of Dec., 2014



Signature

Candace Smith  
Regional Hearing Clerk  
EPA Region 10