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**BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:)	DOCKET NO. CWA 10-2008-0009
)	
Anthony Lerma,)	JOINT STIPULATIONS
)	
Anchorage, Alaska)	
)	
Respondent.)	

I. INTRODUCTION

In accordance with the Court's August 20, 2008, Order Scheduling Hearing, the parties to the above-captioned matter jointly stipulate to the following facts and exhibits.

II. STIPULATIONS

A. Facts

1. On or about November 2, 2005, Respondent acquired ownership of the Northern Harbor Estates property from Sunrise Homes, LLC. Northern Harbor Estates ("Site") is located at 5151 Lake Otis and East 52nd Avenue in Anchorage, Alaska.
2. The Site is at least one acre in size.
3. Respondent was constructing the Site as a residential development.
4. On or about March 27, 2006, Respondent submitted a "Notice of Intent" to seek coverage under the Construction General Permit (CGP).
5. Respondent was the "operator" on the Site, *i.e.*, he was the party who had operational control over construction plans and specifications at the Site, and the

JOINT STIPULATIONS - 1

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U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
(206) 553-1796

1 party who had day-to-day operational control of those activities at the project
2 which are necessary to ensure compliance with the CGP.

3 6. As of May 11, 2006, Respondent had not updated the Storm Water Pollution
4 Prevention Plan (SWPPP).

5 7. As of May 11, 2006, the SWPPP

6 i. was not signed by Respondent;

7 ii. did not identify all operators and their areas of control (*i.e.*, the SWPPP
8 identified Northern Harbor, LLC as the operator instead of Respondent);

9 iii. did not clearly show the location of storm water discharges;

10 iv. did not depict the location of materials or equipment storage;

11 v. did not include dates for major grading activities, temporary construction
12 cessation, or initiation of stabilization practices;

13 vi. was not revised to reflect the existence or use of an earthen berm built at
14 the Site;

15 vii. did not describe the intended sequence and timing of construction
16 activities at the Site that would disturb soils;

17 viii. did not identify sources of non-storm water discharges; and

18 ix. did not include the required Endangered Species Act documentation.

19 8. As of June 27, 2007, the SWPPP had not been modified or updated.

20 9. As of May 11, 2006, a storm drain located near Laurel Street did not have any
21 controls.

22 10. As of May 11, 2006 inspection, an earthen berm, which appeared to be utilized to
23 prevent discharges of storm water from the Site, was breached at several points.

24 11. As of June 27, 2007, straw bales and silt fences, utilized as storm water pollution
25 controls on the Site, had breaches, contained gaps, or were collapsed.

///

///

1 **B. Exhibits**

2 **Complainant's Exhibit (CX) – 1 May 11, 2006 Inspection Report.**

3 **CX – 2 Respondent's Storm Water Pollution Prevention Plan.**

4 **CX – 3 Notice of Intent, Anthony Lerma, Operator.**

5 **CX – 4 June 27, 2007 Inspection Report.**

6 **CX – 5 Satellite image of Respondent's construction site.**

7 **CX – 6 Satellite image of Respondent's construction site with elevation contour**
8 **lines.**

9 **CX – 7 Satellite image of Respondent's construction site relative to Campbell**
10 **Creek and Cook Inlet.**

11 **CX – 11 Precipitation data for Anchorage, Alaska.**

12 **CX – 12 Construction General Permit – Fact Sheet.**

13 **CX – 13 Construction General Permit.**

14 **CX – 14 Resume of Lloyd B. Oatis.**

15 **CX – 15 Anthony Lerma Quit Claim Deed.**

16 **CX – 16 Property Appraisals, Municipality of Anchorage, Alaska.**

17 **CX – 17 Resume of Mark Schroeder.**

18 **CX – 18 Restoring ecological function and value to aquatic resources in the Little**
19 **Campbell Creek watershed, by Mark Schroeder, May 17, 2005.**

20 **CX – 19 Turbidity Monitoring in Little Campbell Creek, Summer 2005, by Mark**
21 **Schroeder, November 2005.**

22 **CX – 20 Frequency and Distribution of Fish Kills in Little Campbell Creek, July –**
23 **September 2005, by Mark Schroeder, Final Draft January 2006.**

24 **CX – 21 Storm water system map, Municipality of Anchorage, Alaska.**

25 **CX – 22 As-built designs for storm sewer line leading to Campbell Creek.**

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- CX - 23 Municipality of Anchorage, Stop Work Order, issued to Anthony Lerma.
 - CX - 24 Photographs of Anthony Lerma's construction site and of a storm sewer outfall leading to Campbell Creek, taken by Cherie Northon.
 - CX - 25 Resume of Kristine Karlson.
 - CX - 26 Letter with attachments from Ankur Tohan to David Shoup requesting additional financial information (July 3, 2008).
 - CX - 27 Financial information received from David Shoup, on behalf of Anthony Lerma (July 17, 2008).
 - CX - 28 Expert Report of Lloyd B. Oatis (July 30, 2008).

10
11 **FOR RESPONDENT**

12 DATED: ANTHONY LERMA.

13
14 October 10, 2008

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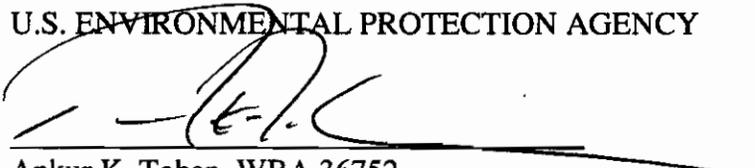
David H. Shoup, ABA 8711106 *fax*
Tindall Bennett & Shoup *(see attached email)*
Counsel for Anthony Lerma.

17 **FOR COMPLAINANT**

18 DATED: U.S. ENVIRONMENTAL PROTECTION AGENCY

19
20
21
22
23
24
25

October 10, 2008



Ankur K. Tohan, WBA 36752
Assistant Regional Counsel
Counsel for Complainant

JOINT STIPULATIONS - 4

DOCKET NO. CWA 10-2008-0009

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
(206) 553-1796

Printed by: Ankur Tohan



"David Shoup"
<shoup@tindall-law.com>
10/09/2008 06:07 PM

To Ankur Tohan/R10/USEPA/US@EPA
.cc
bcc
Subject RE: Lerma joint stips

Ankur,

Based on your representation that this stipulation is the same language as the earlier one with respect to the paragraphs included, it is fine with me and you are authorized to sign it for me. David Shoup

-----Original Message-----

From: Tohan.Ankur@epamail.epa.gov [mailto:Tohan.Ankur@epamail.epa.gov]
Sent: Thursday, October 09, 2008 3:21 PM
To: David Shoup
Subject: Lerma joint stips

David,

I've attached a copy of the joint stipulation. I took out Facts 12-14 as well as Park's and Martich's memos. If the document is acceptable to you, please send me an email indicating I can sign on your behalf so that we can file this document tomorrow.

(See attached file: Joint Stipulations_2008.10.10_Lerma-FINAL.doc)

I'll try calling you before I leave the office tonight to following up on the ability to pay issue.

Thanks,

Ankur Tohan
Assistant Regional Counsel
U.S. EPA, Region 10
1200 Sixth Avenue, Suite 900 (ORC-158)
Seattle, Washington 98101
206.553.1796 (phone)
206.553.0163 (fax)
tohan.ankur@epa.gov

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"David Shoup"
<shoup@tindall-l
aw.com>

10/09/2008 02:08
PM

Ankur Tohan/R10/USEPA/US@EPA

To

cc

Subject

Printed by: Ankur Tohan



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<shoup@tindall-law.com>
10/09/2008 06:07 PM

To Ankur Tohan/R10/USEPA/US@EPA
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bcc

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Ankur Tohan
Assistant Regional Counsel
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Seattle, Washington 98101
206.553.1796 (phone)
206.553.0163 (fax)
tohan.ankur@epa.gov

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"David Shoup"
<shoup@tindall-l
aw.com>
10/09/2008 02:08
PM

To
Ankur Tohan/R10/USEPA/US@EPA
cc
Subject

Ankur:

Regarding the stipulation, I meant we are stipulating to 1-11, but not to 12-14.

Regarding the documents, my only objections are to the memos of Park and Matich.

I have an important oral argument this afternoon, so I won't have time to draft a new stipulation and get it to you. If you have time, why don't you draft it and e-mail me a copy, and assuming it's consistent with our discussions I will electronically authorize you to sign it for me, or if you can e-mail it I can sign it and pdf it back to you. Let me know. Regards, David Shoup,

1 **CERTIFICATE OF SERVICE**

2 I certify that the foregoing "JOINT STIPULATIONS" was filed and sent to the following
3 person, in the manner specified, on the date below:

4 Original and one copy, hand-delivered:

5 Carol Kennedy, Regional Hearing Clerk
6 U.S. Environmental Protection Agency, Region 10
7 1200 Sixth Avenue, Mail Stop ORC-158
8 Seattle, WA 98101

9 A true and correct copy, by first class mail:

10 David Shoup
11 Tindall Bennett & Shoup PC
12 508 W 2nd Ave, 3rd Floor
13 Anchorage, AK 99501

14 Judge Barbara A. Gunning
15 Office of Administrative Law Judges
16 U.S. Environmental Protection Agency
17 Mail Code 1900L
18 1200 Pennsylvania Ave., NW
19 Washington, DC 20460-2001

20 Dated: Oct. 10, 2008

Margot DuBey

21 _____
22 U.S. EPA Region 10
23
24
25