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BEFORE THE HEARINGS CLERK  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 10

In the Matter of:	)	
	)	DOCKET NO. CWA-10-2010-0169
	)	
MICHAEL OTA AND STACEY OTA,	)	CONSENT AGREEMENT AND
Sumner, Washington	)	FINAL ORDER
	)	
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 redelegate this authority to the Regional Judicial Officer in EPA Region 10.

1.3. 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 the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Michael and Stacey Ota (“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 22.45(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 Director of the Office of Ecosystems, Tribal and Public Affairs, 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 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 implementing regulations that Respondents are alleged to have violated.

### **III. ALLEGATIONS**

3.1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants to navigable waters by any person, except as authorized by a permit issued pursuant to Section 402 or 404 of the Act, 33 U.S.C. § 1342 or 1344. Each discharge of pollutants from a point source that is not authorized by such a permit constitutes a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

3.2. Respondents are “persons” within the meaning of Sections 301(a) and 502(5) of the Act, 33 U.S.C. §§ 1311(a) and 1362(5).

3.3. At the time of the unauthorized discharges, Respondent Michael Ota was the majority owner of real property located at 3201 West Valley Highway, Sumner, Washington in Pierce County; and located within Section 14, Township 20 North, Range 4 East, Willamette Meridian. This property is bounded by West Valley Highway on the west. This property hereinafter is referred to as the “Site.” Respondent Michael Ota transferred ownership of the Site to Generation V, LLC in June 2008.

3.4. Respondent Stacey Ota performed and/or supervised land clearing operations and side-casting activities at the Site. Respondent Stacey Ota is the Managing Member of Generation V, LLC.

3.5. The Site contains wetlands and ditches that are “waters of the United States” within the meaning of 33 C.F.R. § 328.3(a) and 40 C.F.R. § 232.2.

3.6. The Site is adjacent to Jovita Creek as “adjacent” is defined in 33 C.F.R. § 328.3(c). Jovita Creek is a tributary of the White River. The White River flows into the Puyallup River which in turn flows into Commencement Bay and Puget Sound. Each of these water bodies is a “navigable water” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and “waters of the United States” within the meaning of 40 C.F.R. § 232.2.

3.7. On or about July 2005 and in the fall of 2005, at times more fully known to Respondents, Respondents and/or persons acting on their behalf discharged dredged and/or fill material (hereinafter referred to as “fill material”) into approximately 3.98 acres of wetlands at the Site.

3.8. Respondents and/or persons acting on their behalf used heavy equipment to place fill material into the adjacent wetlands at the Site. The heavy equipment used to fill the wetlands is a “point source” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

3.9. The fill material that Respondents and/or persons acting on their behalf caused to be discharged included, among other things, dirt, spoil, rock, and sand, each of which constitutes a “pollutant” within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).

3.10. By causing such fill material to enter waters of the United States, Respondents engaged in the “discharge of pollutants” from a point source within the meaning of Sections 301 and 502(12) of the Act, 33 U.S.C. §§ 1311 and 1362(12).

3.11. Respondents’ discharges of fill material described above were not authorized by any permit issued pursuant to Section 402 or 404 of the Act, 33 U.S.C. § 1342 or 1344, and Respondents are therefore in violation of Section 301 of the Act, 33 U.S.C. § 1311.

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

4.1. Respondents admit the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondents neither admit nor deny the specific factual allegations contained in Part III of 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 EIGHTEEN THOUSAND DOLLARS (\$18,000).

4.4. Respondents agree to pay the total civil penalty set forth in Paragraph 4.3 within thirty (30) days of the effective date of the Final Order.

4.5. Payment under this CAFO must be made by cashier's check or certified check payable to the order of "Treasurer, United States of America" and delivered via United States mail to the following address:

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

Respondents must note on the check the title and docket number of this action. Respondents may also pay the penalty electronically online or by wire transfer in accordance with instructions provided by EPA.

4.6. Respondents must deliver via United States mail a photocopy of the check described in Paragraph 4.5 to 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

Krista Rave-Perkins  
Aquatic Resources Unit  
Office of Ecosystems, Tribal and Public Affairs  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ETPA-083  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

4.7. If Respondents fail to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 4.4, 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 within thirty (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 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 twenty percent (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 representative 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. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.11. Respondents expressly waive any right to contest the allegations and waive any right to appeal the Final Order set forth in Part V.

4.12. The provisions of this CAFO shall bind Respondents and their agents, servants, employees, successors, and assigns.

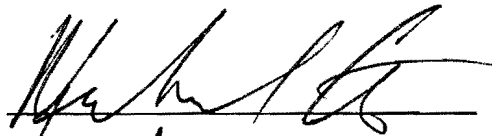
4.13. The above provisions are STIPULATED AND AGREED upon by Respondents and EPA Region 10.

DATED:

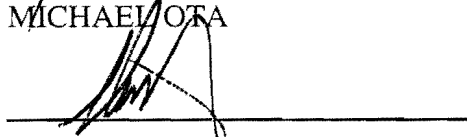
June 22, 2010

June 22, 2010

FOR RESPONDENTS:



MICHAEL OTA



STACEY OTA

DATED:

6/28/2010

FOR COMPLAINANT:

Richard B. Parkin

RICHARD B. PARKIN, Acting Director  
Office of Ecosystems, Tribal and Public Affairs

**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.

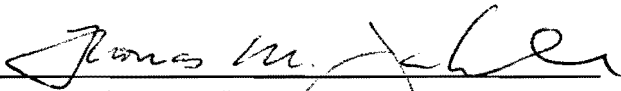
5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable 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 State 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 13<sup>th</sup> day of August, 2010.

  
THOMAS M. JAHNKE  
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: Michael Ota and Stacey Ota**, **DOCKET NO. CWA-10-2010-0169** was filed with the Regional Hearing Clerk on 8/16, 2010.

On Aug. 16, 2010 the undersigned certifies that a true and correct copy of the document was delivered to:

Deborah E. Hilsman, Esquire  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
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 on Aug. 16, 2010 to:

Mary J. Urback  
Attorney at Law  
12417 12<sup>th</sup> Street East  
Edgewood, WA 98372-1454

DATED this 16<sup>th</sup> day of Aug. 2010.

Sharon Eng  
~~Carol Kennedy~~ Sharon Eng  
Regional Hearing Clerk  
EPA Region 10