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BEFORE THE HEARINGS CLERK  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY EPA REGION 10

In the Matter of:	)	
	)	DOCKET NO. CWA-10-2010-0065
	)	
GARCO CONSTRUCTION, INC.	)	CONSENT AGREEMENT AND
Whidbey Island Naval Air Station	)	FINAL ORDER
Oak Harbor, 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 IV 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 (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 Garco Construction, Inc. (“Respondent”) agrees to issuance of, the Final Order contained in Part IV of this CAFO.

**II. PRELIMINARY STATEMENT**

2.1 On January 12, 2010, EPA initiated this proceeding against Respondent pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), by issuing an Administrative Complaint (“Complaint”).

2.2. The Complaint alleged that Respondent's violations of the CWA had subjected Respondent to civil penalties.

2.3. The complete factual and jurisdictional basis for proposing the assessment of a civil penalty is set forth in the Complaint and is incorporated herein by reference.

### **III. CONSENT AGREEMENT**

3.1. Respondent admits the jurisdictional allegations in the Complaint.

3.2. For purposes of this Consent Agreement, Respondent neither admits nor denies the specific factual allegations in the Complaint. Respondent does not admit liability for the violations alleged in the Complaint. The parties acknowledge that this consent agreement is the result of good faith negotiations, the implementation of which will avoid prolonged and protracted litigation between the parties.

3.3. 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, before the taking of any testimony, without any admission by Respondent to any of the non-jurisdictional allegations in the Complaint, without the adjudication of any issue of law or fact, and in compromise of the claims made in the Complaint, EPA has determined that an appropriate penalty to settle this action is \$34,000.00, and Respondent agrees to pay said assessment in settlement in accordance with Paragraph 3.2 above.

3.4. Respondent agrees to pay the total amount set forth in Paragraph 3.3 within thirty days of the effective date of the Final Order.

3.5. 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 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.

3.6. Respondent must serve photocopies of the check described in Paragraph 3.5 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

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

3.7. If Respondent fails to pay the assessment set forth in Paragraph 3.3 of this CAFO in full by the due date set forth in Paragraph 3.4, the entire unpaid balance of the assessment 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.

3.7.1. 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 IV, provided however, that no interest shall be payable on any portion of the assessed penalty that is paid within thirty days of the effective date of the Final Order.

3.7.2. 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 3.3, 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 twenty percent of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

3.8. The assessed penalty described in Paragraph 3.3, including any additional costs incurred under Paragraph 3.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

3.9. 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.

3.10. Except as described in Subparagraph 3.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

3.11. Acknowledging that this Consent Agreement constitutes the final settlement of all claims in the Complaint, Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part IV.

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

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

DATED:

8.19.2010

FOR RESPONDENT:

Hollis Barnett

Signature

Print Name: Hollis Barnett

Title: VP

DATED:

8/19/2010

FOR COMPLAINANT:

Edward J. Kowalski

EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement

#### **IV. FINAL ORDER**

4.1. The terms of the foregoing Parts I-III are ratified and incorporated by reference into this Final Order. Therefore, Respondent is ordered to comply with the terms of settlement.

4.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in the Complaint. 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.

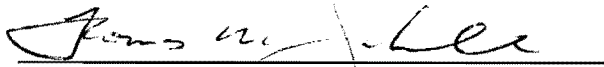
4.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Washington Department of Ecology has been given the opportunity to

consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

4.4. 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 issued public notice of the Complaint within thirty days following proof of service and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. EPA received no comments on the Complaint.

4.5. This Final Order shall become effective upon filing.

SO ORDERED this 24<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: Garco Construction, Inc., Docket No.: CWA-10-2010-0065** was filed with the Regional Hearing Clerk on August 24, 2010.

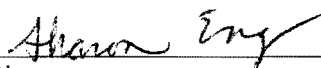
On August 24, 2010, the undersigned certifies that a true and correct copy of the document was delivered to:

Jennifer Byrne, Esquire  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, ORC-158  
Suite 900  
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the U.S. mail certified/return receipt on August 24, 2010, to:

Garco Construction, Inc.  
Attn: Janelle Umek  
4114 East Broadway Ave.  
Spokane, Washington 99202

DATED this 24<sup>th</sup> day of August 2010.

  
\_\_\_\_\_  
Signature  
Print Name: Sharon Eng  
Regional Hearing Clerk  
EPA Region 10