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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)	DOCKET NO. CWA-10-2009-0041
)	
X ROAD DEVELOPMENT, INC.,)	CONSENT AGREEMENT
LONNIE BRAMON, and)	AND FINAL ORDER
TERRACE LAKES, INC.)	
Garden Valley, Idaho)	
)	
Respondents.)	

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 VI of this CAFO to the Regional Administrator of EPA Region 10, who in turn has re delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (g)(2)(B), 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 hereby issues, and X Road Development, Inc ("X Road"), Lonnie Bramon ("Bramon"), and Terrace Lakes, Inc.

1 (“Terrace Lakes”) (collectively referred to as “Respondents”) hereby agree to issuance of, the
2 Final Order contained in Part VI of this CAFO.

3 **II. PRELIMINARY STATEMENT**

4 2.1. In accordance with 40 C.F.R. §§ 22.31(b) and 22.45(b), issuance of this CAFO
5 commences this proceeding which will conclude when the Final Order contained in Part VI of
6 this CAFO becomes effective.

7 2.2. Part III of this CAFO contains a concise statement of the statutory and factual
8 basis for the alleged violations of the CWA. Part IV of this CAFO contains the specific
9 provisions of the CWA that Respondents are alleged to have violated.

10 **III. ALLEGATIONS**

11 3.1. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the “discharge of any
12 pollutants by any person” except as authorized by a National Pollutant Discharge Elimination
13 System (“NPDES”) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342. Section
14 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” to
15 include “any addition of any pollutant to navigable waters from any point source.” “Navigable
16 waters” are defined as “waters of the United States.” 33 U.S.C. § 1362(7).

17 3.2. Section 402(p) of the CWA, 33 U.S.C § 1342(p), specifies that an NPDES permit
18 is required for any storm water discharge “associated with industrial activity.” 40 C.F.R.
19 § 122.26(b)(14)(x) defines “[s]torm water associated with industrial activity” to include
20 discharges associated with “[c]onstruction activity, including clearing, grading, and excavation”
21 resulting in the disturbance of at least five acres of total land area.

22 3.3. In July of 2003, EPA reissued the NPDES General Permit for Storm Water
23 Discharges from Construction Activities (“CGP”) pursuant to Section 402 of the CWA, 33
24 U.S.C. § 1342. The CGP became effective on July 1, 2003 and authorizes discharges of storm
25

1 water associated with construction activities. The CGP's coverage extends to all facilities in the
2 State of Idaho and requires permittees to comply with the conditions and requirements set forth
3 in the CGP.

4 3.4. To obtain coverage for storm water discharges from a construction site under the
5 CGP, an operator must first "prepare and submit a complete and accurate Notice of Intent." CGP
6 at Part 2. An "operator" is defined as both (1) "[t]he party [who] has operational control over the
7 construction plans and specifications . . .," and (2) "[t]he party [who] has day-to-day operational
8 control of those activities at a project which are necessary to ensure compliance with a [storm
9 water pollution prevention plan] for the site or other permit conditions." CGP at Appendix A.

10 3.5. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes EPA to require the
11 owner or operator of any point source to provide such information as may be reasonably required
12 in carrying out Section 402 of the CWA, 33 U.S.C. § 1342. Pursuant to Section 308(a), EPA has
13 promulgated NPDES permit application requirements. Among these application requirements
14 are:

- 15 • The requirement set forth in 40 C.F.R. § 122.21(a)(1) that "[a]ny person
16 who discharges or proposes to discharge pollutants . . . must submit a
complete application to [EPA]."
- 17 • The requirements set forth in 40 C.F.R. § 122.26(c)(1) that "[d]ischarges
18 of storm water associated with industrial activity and with small
construction activity are required to apply for an individual permit or seek
19 coverage under a promulgated storm water general permit," and
- 20 • The requirement set forth in 40 C.F.R. § 122.21(c)(1) that regulated
21 dischargers of construction storm water submit an NPDES permit
22 application or a Notice of Intent to apply for coverage under an NPDES
23 general permit at least ninety (90) days before the date on which
24 construction is to commence unless an applicable NPDES general permit
25 specifies a different submittal date.

1 3.6. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes EPA to assess
2 administrative penalties against any person who has violated Section 301 or 308 of the CWA, 33
3 U.S.C. § 1311 or 1318. Section 309(g)(1) of the CWA also authorizes EPA to assess
4 administrative penalties against any person who has violated any permit condition or limitation
5 in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

6 3.7. X Road is a "person" as defined in Section 502(5) of the CWA, 33 U.S.C.
7 § 1362(5).

8 3.8. Bramon is a "person" as defined in Section 502(5) of the CWA, 33 U.S.C.
9 § 1362(5).

10 3.9. Terrace Lakes is a "person" as defined in Section 502(5) of the CWA, 33 U.S.C.
11 § 1362(5).

12 3.10. Between October 2005 and February 2006, Bramon and Terrace Lakes were
13 owners of the North Ridge Subdivision construction site ("Site") which is located on 101
14 Holiday Drive in Garden Valley, Idaho. As owners of the Site, Bramon and Terrace Lakes had
15 operational control over the construction plans and specifications at the Site. In addition,
16 between October 2005 and February 2006, Bramon and Terrace Lakes had day-to-day
17 operational control over those activities at the Site necessary to ensure compliance with the CGP.
18 As such, between October 2005 and February 2006, Bramon and Terrace Lakes were operators
19 of the Site under the CGP.

20 3.11. In February 2006, Bramon and Terrace Lakes deeded the Site to X Road. To
21 date, as the owner of the Site, X Road has had operational control over the construction plans
22 and specifications at the Site. In addition, X Road has day-to-day operational control over those
23 activities at the Site necessary to ensure compliance with the CGP. As such, since February
24 2006, X Road has been the operator of the Site under the CGP.

1 3.12. The receiving water for any storm water discharges from the Site is Easley Creek
2 which flows into the Middle Fork of the Payette River. The Middle Fork of the Payette River
3 flows into the South Fork of the Payette River which flows into the Payette River. The Payette
4 River flows into the Snake River. The Snake River is an interstate water which is susceptible to
5 use in interstate and foreign commerce, and thus is a "navigable water" as defined in Section
6 502(7) of the CWA, 33 U.S.C. § 1362(7), and is a "water of the United States" as defined in 40
7 C.F.R. § 122.2. Therefore, Easley Creek, the Middle Fork of the Payette River, and the Payette
8 River are "navigable waters" as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and
9 are "waters of the United States" as defined in 40 C.F.R. § 122.2.

10 3.13. In or about October 2005, Respondents began construction activities that resulted
11 in the clearing, grading, and/or excavation of more than one acre of land at the Site.

12 IV. VIOLATIONS

13 A. Failure to Apply for Permit Coverage Against Terrace Lakes and Bramon

14 4.1. As operators of the Site, Terrace Lakes and Bramon were required to either
15 submit a Notice of Intent to obtain coverage under the CGP or apply for an individual permit
16 before beginning construction activities at the Site.

17 4.2. Prior to the start of construction activities, Terrace Lakes and Bramon failed to
18 apply for an individual NPDES permit or properly seek coverage under the CGP.

19 4.3. In or about February 2006, Terrace Lakes and Bramon deeded the property to X
20 Road.

21 4.4. Between October 2005 and February 2006, Terrace Lakes and Bramon failed to
22 obtain coverage under the CGP.

23 4.5. Terrace Lakes' and Bramon's failure to timely apply for an NPDES permit placed
24 Terrace Lakes and Bramon in violation of the requirements imposed pursuant to Section 308 of
25

1 the CWA, 33 U.S.C. § 1318. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and
2 40 C.F.R. Part 19, Terrace Lakes and Bramon are liable for civil penalties not to exceed \$11,000
3 per day for each day during which the violation continues, up to a maximum amount of
4 \$157,500.

5 **B. Failure to Apply for Permit Coverage Against X Road**

6 4.6. In or about February 2006, X Road became the operator of the Site.

7 4.7. As an operator of the Site, X Road was required to either submit a Notice of
8 Intent to obtain coverage under the CGP or apply for an individual permit before beginning
9 construction activities at the Site.

10 4.8. Prior to the starting construction activities at the Site, X Road failed to apply for
11 an individual NPDES permit or properly seek coverage under the CGP.

12 4.9. On or about June 21, 2006, X Road applied for coverage under the CGP.

13 4.10. Therefore, between February 2006 and June 2006, X Road failed to apply for
14 coverage under the CGP.

15 4.11. X Road's failure to timely apply for an NPDES permit placed X Road in violation
16 of the requirements imposed pursuant to Section 308 of the CWA, 33 U.S.C. § 1318. Pursuant to
17 Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. Part 19, X Road is liable for
18 civil penalties not to exceed \$11,000 per day for each day during which the violation continues,
19 up to a maximum amount of \$157,500.

20 **C. Discharges of Construction Storm Water Without a Permit Against Respondents**

21 4.12. Upon information and belief, between October 2005 and February 2006, EPA
22 alleges that there were eight (8) days of discharge. During this time, Terrace Lakes and Bramon
23 were operators of the Site.
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25

1 4.13. On or about April 11, 2006, construction storm water containing, among other
2 things, sediment and dirt, was discharged from the Site to Easley Creek. At this time, X Road
3 was the operator of the Site.

4 4.14. Upon information and belief, between February 2006 and June 2006, EPA further
5 alleges that there were an additional three (3) days of discharge. During this time, X Road was
6 the operator of the Site.

7 4.15. By causing such storm water to enter waters of the United States, Respondents
8 engaged in the "discharge of pollutants" from a point source within the meaning of Sections
9 301(a) and 502(12) of the CWA, 33 U.S.C. § 1311(a) and 1362(12).

10 4.16. The discharge of storm water was not authorized by a permit issued pursuant to
11 Section 402 of the CWA, 33 U.S.C. § 1342. Therefore, Respondents violated Section 301(a) of
12 the CWA, 33 U.S.C. § 1311(a).

13 4.17. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. Part
14 19, Respondents are liable for civil penalties not to exceed \$11,000 per day for each day during
15 which the violation continues, up to a maximum amount of \$157,500.

16 **D. CGP Violations Against X Road**

17 4.18. X Road obtained coverage under the CGP on June 28, 2006.

18 4.19. The CGP requires an operator of a construction site to prepare a storm water
19 pollution prevention plan ("SWPPP"). CGP at Part 3.1. The required contents of a SWPPP are
20 set forth in Part 3 of the CGP. At the time of the EPA inspection conducted on May 4, 2006, the
21 SWPPP failed to meet all of the requirements in the CGP, as set forth below:

- 22 a. The SWPPP did not identify all the operators at the Site and the areas of
23 the Site over which each operator has control, in violation of Part 3.3.A of
24 the CGP.

- 1 b. The SWPPP did not include a general location map with enough detail to
2 identify the location of the Site and waters of the United States, in
3 violation of Part 3.3.B.4 of the CGP.
- 4 c. The site map in the SWPPP did not identify the location of material,
5 waste, borrow or equipment storage, in violation of Part 3.3.C.5 of the
6 CGP.
- 7 d. The SWPPP did not include a description of which operator would be
8 responsible for implementing pollution control measures or stabilization
9 measures at the Site, in violation of Part 3.4.A of the CGP.
- 10 e. The SWPPP did not identify the timing by which major grading activities
11 would be implemented, temporary or permanent construction would cease,
12 and stabilization practices would be initiated, in violation of Part 3.4.C.1-3
13 of the CGP.

14 4.20. Inspection reports were not conducted in the manner set forth in the CGP, in
15 violation of Parts 3.10.A and 3.10.G of the CGP.

16 4.21. Inspection reports were not kept as part of the SWPPP, in violation of Part 3.10.G
17 of the CGP.

18 4.22. A sign or other notice was not posted near the main entrance of the construction
19 site, in violation of Part 3.12.B of the CGP.

20 4.23. Best management practices were not properly selected, installed and/or
21 maintained in violation of Part 3.13.A of the CGP.

22 4.24. Stabilization practices were not initiated within fourteen days where construction
23 activities had temporarily or permanently ceased at the Site, in violation of Part 3.13.D of the
24 CGP.

1 5.5.1 Within three (3) years from the effective date of the Final Order,
2 Respondent shall pay the full penalty amount of \$86,000, plus accrued interest at the rate
3 of three percent (3%) per annum amortized over said three (3) year payment period.

4 5.5.2. Respondents shall be entitled to prepay the penalty amount, in whole or in
5 part, plus all interest then accrued without any penalty for such prepayment; provided,
6 however, that any partial prepayment of the penalty amount shall not relieve Respondents
7 of their obligation to pay the entire remaining balance of the penalty amount plus accrued
8 interest when due.

9 5.6. Payment under this CAFO shall be made by cashier's check or certified check
10 payable to the order of "Treasurer, United States of America" and delivered to the following
11 address:

12 U.S. Environmental Protection Agency
13 Region 10
14 Fines and Penalties
15 Cincinnati Finance Center
 PO Box 979077
 St. Louis, MO 63197-9000

16 Respondents shall note on the check the title and docket number of this action.

17 5.7. Respondents shall serve photocopies of the check described in Paragraph 5.6,
18 above, on the Regional Hearing Clerk and the EPA Region 10 Office of Compliance and
19 Enforcement at the following addresses:

20 Regional Hearing Clerk
21 U.S. Environmental Protection Agency
22 Region 10
 1200 Sixth Avenue, Suite 900, ORC-158
 Seattle, WA 98101

1 U.S. Environmental Protection Agency
2 Region 10
3 Idaho Operations Office
4 Attn: Maria Lopez
5 1435 N. Orchard Street
6 Boise, ID 83706

7 5.8. If Respondents fail to pay the penalty assessed by this CAFO in full by the due
8 date set forth in Paragraph 5.5, above, the entire unpaid balance of penalty and accrued interest
9 shall become immediately due and owing. If Respondents fail to pay the penalty assessed,
10 Respondents may be subject to a civil action to collect the assessed penalty under the CWA,
11 together with interest, fees, costs, and additional penalties described below. In any collection
12 action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

13 5.9. If Respondents fail to pay any portion of the penalty assessed by this CAFO in
14 full by the due date set forth in Paragraph 5.5, above, Respondents shall be responsible for
15 payment of the amounts described below:

16 5.9.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. §
17 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate
18 established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the
19 effective date of the Final Order set forth in Part VI, below, provided, however, that no
20 interest shall be payable on any portion of the assessed penalty that is paid within thirty
21 (30) days of the effective date of the Final Order.

22 5.9.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to
23 Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondents fail to pay on a
24 timely basis the amount of the penalty set forth in Paragraph 4.4, above, Respondents
25 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 persists. Such nonpayment penalty shall be in an amount equal to twenty

1 percent (20%) of the aggregate amount of Respondents' penalties and nonpayment
2 penalties which are unpaid as of the beginning of such quarter.

3 5.10. The penalty described in Paragraph 4.4, above, including any additional costs
4 incurred under Paragraph 5.9, above, represents an administrative civil penalty assessed by EPA
5 and shall not be deductible for purposes of federal taxes.

6 5.11. Each of the undersigned representatives of Respondents certifies that he or she is
7 fully authorized to enter into the terms and conditions of this CAFO and to bind Respondents to
8 this document.

9 5.12. Except as described in Subparagraph 5.9.2, above, each party shall bear its own
10 costs in bringing or defending this action.

11 5.13. The provisions of this CAFO shall bind each Respondent and its agents, servants,
12 employees, successors, and assigns.

13 5.14. The above provisions are STIPULATED AND AGREED upon by Respondents
14 and EPA.

15 DATED:

TERRACE LAKES, INC.:

16
17 NOVEMBER _____, 2008



Signature

Print Name: LONNIE E. BRAMON

Title: PRESIDENT

20
21 DATED:

LONNIE BRAMON:

22
23 NOVEMBER _____, 2008



Respondent

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25
CONSENT AGREEMENT AND FINAL ORDER - 12
DOCKET NO. CWA-10-2009-0041

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
(206) 553-1037

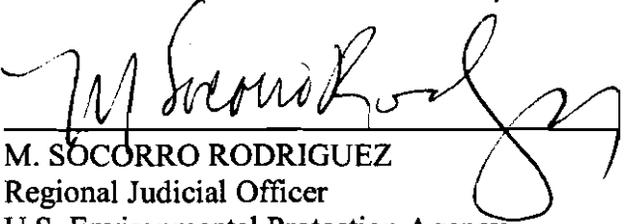
1 opportunity to consult with EPA regarding the assessment of the administrative civil penalty
2 against Respondent.

3 6.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), EPA
4 has published public notice of its intent to assess an administrative penalty against Respondents
5 and to invite public comment in accordance with 40 C.F.R. § 22.45. More than forty (40) days
6 have elapsed since the issuance of this public notice, and EPA has received no petition to set
7 aside the Consent Agreement contained herein.

8 6.5. This Final Order shall become effective upon filing.

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SO ORDERED this 2nd day of March, 2009


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: X Road Development, Inc., Lonnie Bramon, and Terrace Lakes, Inc., DOCKET NO.: CWA-10-2009-0041** was filed with the Regional Hearing Clerk on March 3, 2009.

On March 3, 2009 the undersigned certifies that a true and correct copy of the document was delivered to:

Courtney Hamamoto
U.S. EPA
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 on March 3, 2009, to:

X Road Development
Lonnie Bramon
Terrace Lakes, Inc.
123 East 45th Street
Boise, Idaho 83714

DATED this 3rd day of March 2009.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10