

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

FOUGHT & COMPANY, INC.

Tigard, Oregon

Respondent.

DOCKET NO. CWA-10-2021-0069

CONSENT AGREEMENT

Proceedings Under Section 309(g) of the Clean
Water Act, 33 U.S.C. § 1319(g)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g).

1.2. Pursuant to CWA Section 309(g)(1)(A), 33 U.S.C. § 1319(g)(1)(A), the EPA is authorized to assess a civil penalty against any person that has violated CWA Section 301, 33 U.S.C. § 1311, and/or any permit condition or limitation in a permit issued under CWA Section 402, 33 U.S.C. § 1342.

1.3. CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of Class II civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000. Pursuant to 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed \$22,320 per day for each day during which the violation continues, up to a maximum

penalty of \$278,995. *See also* 85 Fed. Reg. 1751 (January 13, 2020) (2020 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to CWA Section 309(g)(1)(A) and (g)(2)(B), 33 U.S.C. § 1319(g)(1)(A) and (g)(2)(B), and in accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Fought & Company, Inc. (Respondent) agrees to issuance of, the Final Order attached to this Consent Agreement.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), execution of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Enforcement and Compliance Assurance Division, EPA Region 10 (Complainant).

2.3. Part III of this Consent Agreement 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 Respondent is alleged to have violated.

III. ALLEGATIONS

Statutory and Regulatory Framework

3.1. As provided in CWA Section 101(a), 33 U.S.C. § 1251(a), the objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

3.2. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person from any point source into waters of the United States except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

3.3. CWA Section 502(12), 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.”

3.4. CWA Section 502(6), 33 U.S.C. § 1362(6), defines a “pollutant” to include, *inter alia*, dredged spoil, rock, sand, chemical wastes, and industrial wastes.

3.5. CWA Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State or any interstate body.”

3.6. CWA Section 502(14), 33 U.S.C. § 1362(14), defines “point source” to mean any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel or conduit from which pollutants are or may be discharged.

3.7. CWA Section 502(7) defines “navigable waters” as “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). In turn, at the time of the violations, “waters of the United States” included, *inter alia*, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; tributaries to such waters; and wetlands adjacent to the foregoing waters. 40 C.F.R. § 122.2 (2014).

3.8. CWA Section 402(p), 33 U.S.C. § 1342(p), requires a NPDES permit for any discharge of stormwater “associated with industrial activity.”

3.9. “Stormwater discharge associated with industrial activity” is defined to include the discharge from any conveyance that is used for collecting and conveying stormwater that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant, including the discharge from facilities classified under Standard Industrial Classification code 3441 (Fabricated Structural Metal). 40 C.F.R. § 122.26(b)(14).

3.10. The state of Oregon, through the Oregon Department of Environmental Quality (ODEQ), is authorized pursuant to CWA Section 402(b), 33 U.S.C. § 1342(b), to administer the NPDES permitting program for stormwater discharges associated with industrial activity.

3.11. On October 1, 2011, ODEQ issued the 1200-Z General Permit NPDES Stormwater Discharge Permit pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, which became effective on July 1, 2012 and expired on June 30, 2017 (2012 Permit). The 2012 Permit authorizes, subject to its terms and conditions, the discharge of stormwater associated with certain industrial activities, including activities conducted under Standard Industrial Classifications 3441.

3.12. On September 29, 2017, ODEQ issued the 1200-Z General Permit NPDES Stormwater Discharge General Permit (2017 Permit). The 2017 Permit became effective on August 1, 2017, it was reissued on October 22, 2018, and it expires on July 31, 2022. The 2017 Permit authorizes, subject to its terms and conditions, the discharge of stormwater associated with certain industrial activities, including activities conducted under Standard Industrial Classifications 3441.

General Allegations

3.13. Respondent is a corporation licensed to do business in the state of Oregon and is a “person” under CWA Section 502(5), 33 U.S.C. § 1362(5).

3.14. At all times relevant to this action, Respondent owned and operated the business at the property located at 14255 SW 72nd Avenue, Tigard, Oregon (Facility).

3.15. The primary operations conducted by Respondent at the Facility include the fabrication of structural steel components, which is categorized under Standard Industrial Classification code 3441 (Fabricated Structural Metal).

3.16. The Facility, which was under Respondent’s control at all times relevant to this action, discharged stormwater to Fanno Creek via three identified discharge points (Discharge Points 001 – 003). The Facility’s stormwater discharges contain “pollutants” within the meaning of Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12).

3.17. Discharge Point 001, Discharge Point 002, and Discharge Point 003 are “point sources” as defined at CWA Section 502(14), 33 U.S.C. § 1362(14).

3.18. Fanno Creek flows to the Tualatin River, which flows to the Willamette River, which flows to the Columbia River to the Pacific Ocean. Fanno Creek is a tributary to an interstate water body that is susceptible to use in interstate commerce. As such, Fanno Creek is a “navigable water” under Section 502(7) of the Act, 33 U.S.C. § 1362(7) and is a “water of the United States” within the meaning of 40 C.F.R. § 122.2.

3.19. By discharging industrial stormwater from the Facility into waters of the United States, Respondent engaged in the “discharge of pollutants” from point sources within the meaning of CWA Sections 301(a) and 502(12), 33 U.S.C. §§ 1311(a) and 1362(12).

3.20. At all times relevant to this action, Respondent was authorized to discharge stormwater associated with industrial activity from the Facility under the 2012 Permit and the 2017 Permit, both with permit number ORR200078.

3.21. On May 8, 2019, an authorized representative of EPA conducted a compliance inspection of the Facility to determine Respondent's compliance with the 2012 Permit and the 2017 Permit and CWA Sections 301 and 402, 33 U.S.C. §§ 1311 and 1342.

3.22. As part of the inspection, EPA requested records concerning Respondent's compliance with the 2012 Permit and the 2017 Permit, including but not limited to the Stormwater Pollution Control Plan (SWPCP) for the Facility. At that time, Respondent provided EPA with a SWPCP dated December 11, 2017. Respondent also provided EPA with additional records, including copies of its Tier I and Tier II corrective action reports and a copy of its Tier II Corrective Action Response Memorandum, dated December 22, 2014 (2014 Tier II Corrective Action Response Memorandum).

Violations

3.23. Based on the inspection and EPA's review of Respondent's discharge monitoring reports (DMRs), SWPCP, Tier I Corrective Action Reports, Tier II Benchmark Exceedance Reports, 2014 Tier II Corrective Action Response Memorandum, and Tier II Corrective Action Response Memorandum, dated December 19, 2019 (2019 Tier II Corrective Action Response Memorandum), EPA alleges that, after obtaining coverage under the 2012 Permit and the 2017 Permit, Respondent violated certain terms and conditions of the 2012 Permit and the 2017 Permit and therefore violated CWA Section 301, 33 U.S.C. § 1311.

Count 1 – Failure to Complete Adequate Tier II Response

3.24. Schedule A.12.a of the 2012 Permit requires that sampling results collected in the 2nd year of permit coverage must be evaluated to determine if the geometric mean of the samples

collected at each monitored outfall exceeds any statewide benchmark in Schedule A.9 of the 2012 Permit.

3.25. If the geometric mean of the sampling results for any outfall monitored exceeds any statewide benchmark, Schedule A.12.c.i. of the 2012 Permits requires, *inter alia*, revision to the SWPCP to include additional stormwater treatment measures with the goal of achieving the benchmark(s) in Schedule A.9 of the 2012 Permit in future discharges. Schedule A.12.c.ii. of the 2012 Permit states the deadline to implement the treatment measures is June 30th of the 4th year of permit coverage.

3.26. After stormwater treatment measures are implemented, if sampling results continue to exceed the same benchmark parameter(s) that triggered the Tier II corrective action requirement, Schedule A.12.c.iii of the 2012 Permit requires Respondent, within 30 days of receiving sampling result, to evaluate whether the treatment measures were properly installed, maintained and implemented and whether modifications to these measures are necessary and to summarize such findings in a Tier II Benchmark Exceedance Report.

3.27. In the 2014 Tier II Corrective Action Response Memorandum, Respondent agreed to implement certain measures in response to benchmark exceedance values for zinc in the south yard of the Facility, including but not limited to redirecting stormwater from previously labeled Outfall No. 1 to previously labeled Outfall No. 2, thereby removing Outfall No 1, and enlarging the sand/grass filter in this location.

3.28. In response to benchmark exceedance values for zinc on December 21, 2016, April 20, 2017, and May 25, 2017, Respondent drafted Tier II Benchmark Exceedance Reports dated January 17, 2017, May 1, 2017, and June 22, 2017, respectively. None of these Tier II Benchmark Exceedance Reports described whether or how Respondent evaluated whether the

sand/grass filter was properly installed, maintained and implemented and whether modifications were necessary.

3.29. EPA alleges that Respondent violated Schedule A.12 of the 2012 Permit by failing to complete adequate Tier II response on at least 3 instances between January 2017 and June 2017. Violations of 2012 Permit are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 2 – Failure to Complete Adequate Tier I Corrective Action Response

3.30. Schedule A.10 of the 2017 Permit requires Respondent to perform a series of Tier I Corrective Actions no later than thirty calendar days following the receipt of stormwater sampling results that exceed any of the statewide benchmarks identified in Schedule A.9 of the 2017 Permit, any sector-specific benchmarks in Schedule E of the 2017 Permit, or any reference concentrations for impairment pollutants identified in the assignment letter for the 2017 Permit.

3.31. Schedule A.10.a.iv. of the 2017 Permit requires that those Tier I Corrective Actions be documented in a Tier I report that is kept on site and submitted to ODEQ upon request. Schedule A.10.b. requires Respondent to “[i]mplement corrective actions before the next storm event, if possible, or no later than 30 calendar days after receiving the monitoring results, whichever comes first.” If Respondent “fails to complete the corrective action within this timeframe, the reasoning should be documented in the Tier I Report, and corrective actions must be completed as soon as practicable.”

3.32. EPA alleges that Respondent violated Section A.10 of the 2017 Permit by failing to provide documentation of Tier I corrective action following benchmark exceedances at the Facility on one instance in June 2018 and failing to complete adequate Tier I corrective action response following benchmark exceedances at the Facility on at least 6 instances between

November 2017 and April 2019. Violations of 2017 Permit are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 3 – Failure to Develop an Adequate Tier II Report

3.33. Schedule A.11.a of the 2017 Permit requires that sampling results collected during the second monitoring year of permit coverage must be evaluated to determine if the geometric mean of the qualifying samples collected at each monitored discharge point exceeds any statewide benchmark in Schedule A.9 of the 2017 Permit.

3.34. Pursuant to Schedule A.11.f. of the 2017 Permit, if the geometric mean of the qualifying sampling results for any monitored discharge point exceeds any applicable statewide benchmark in Schedule A.9 of the 2017 Permit, a Tier II Report, Tier II mass reduction waiver request, or a Tier II natural background waiver request, along with associated revisions to the SWPCP, must be submitted to DEQ or its agent no later than December 31 of the third year of permit coverage.

3.35. Schedule A.11.j. requires that the Tier II Report must include a proposal for active or passive treatment, which may include a combination of source removal, control and treatment measures, with the goal of achieving the benchmarks in Schedule A.9 of the 2017 Permit. The Tier II Report must also include the rationale for the selection of the control and treatment measures, the projected reduction of pollutant concentration(s) and the schedule for implementing these measures.

3.36. During the second year of coverage under the 2017 Permit, the geometric mean of qualifying samples Respondent collected at the Facility exceeded the benchmark for total zinc and soluble zinc at Discharge Points 001, 002, and 003. In response, Respondent prepared the 2019 Tier II Corrective Action Response Memorandum.

3.37. The 2019 Corrective Action Response Memorandum failed to include a proposal for active or passive treatment, the rationale for the selection of the control and treatment measures, and the projected reduction of pollutant concentrations.

3.38. EPA alleges Respondent violated Schedule A.11.j. of the 2017 Permit by failing to develop an adequate Tier II Report in December 2019. Violations of 2017 Permit are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 4 – Failure to Monitor Discharge Points and Conduct Representative Sampling

3.39. Schedule B.2.c of the 2017 Permit provides that each discharge point must be monitored unless, *inter alia*, the discharge point serves an area without exposure of stormwater to industrial activities or the discharge point has effluent that is substantially similar to the effluent(s) of a monitored discharge point and the same Best Management Practices (BMPs) are implemented and maintained at the similar discharge points or drainage areas that lead to the discharge points.

3.40. Schedule B.2.c defines substantially similar effluent(s) as “discharges from drainage areas serving comparable activities where the discharges are expected to be similar in composition. The determination of substantial similarity of effluent(s) must be based on past monitoring data or an analysis supporting that the discharge points are substantially similar. The supporting data or analysis must be included in the SWPCP.”

3.41. During the inspection, an EPA representative observed four drainage channels (together, the Unmonitored Discharge Points) and one catch basin (Unmonitored Catch Basin) at the Facility that were not included in the SWPCP and not monitored. There was no monitoring data or analysis in the SWPCP supporting that the discharge points are substantially similar from drainage areas serving comparable activities.

3.42. Schedule B.2.f and Table 5 of the 2017 Permit require that Respondent monitor for benchmark pollutants, any applicable sector-specific benchmark pollutants in Schedule E of the 2017 Permit, and any applicable impairment pollutants four times per year.

3.43. Schedule B.2.b.i. of the 2017 Permit states that “samples must be representative of the discharge.” Schedule F, Section C1 of the 2017 Permit requires sampling and measurements taken as required by the 2017 Permit to be “representative of the volume and nature of the monitored discharge.”

3.44. During the inspection, an EPA representative observed that the Unmonitored Discharge Points were located along the northern boundary of the Facility, adjacent to Discharge Point 001, and the drainage area sloped toward the Unmonitored Discharge Points.

3.45. EPA alleges that Respondent violated Section B.2 and Schedule F, C1 of the 2017 Permit by failing to monitor discharges from the Unmonitored Discharge Points and the Unmonitored Catch Basin and failing to conduct representative sampling at the Facility from at least September 2017 to May 2019. Violations of the 2017 Permit are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 5 – Failure to Include Required Elements in the SWPCP

3.46. Schedule A.7.b.i.(3) of the 2017 Permit requires that the SWPCP contain site map(s), which must include, *inter alia*, conveyances and discharge structures, such as piping or ditches.

3.47. At the time of inspection, the Facility’s SWPCP contained a site map that failed to include the Unmonitored Discharge Points and the Unmonitored Catch Basin, in violation of Schedule A.7.b.i (3) of the 2017 Permit.

3.48. In Respondent’s 2019 Tier II Corrective Action Response Memorandum, Respondent reported an undocumented manhole at the Facility that received stormwater from

two below-grade conveyance lines and discharged stormwater via a below-grade conveyance line through a culvert to Fanno Creek. Respondent numbered the manhole “MH-1.”

3.49. At the time of inspection, the Facility’s SWPCP contained a site map that failed to include MH-1, in violation of Schedule A.7.b.i(3) of the 2017 Permit.

3.50. Schedule A.7.b.i.(16) further requires the site map include the exact location of monitoring points, indicating if any discharge points are “substantially similar” and not being monitored. At the time of inspection, the site map failed to include the exact locations of the Unmonitored Discharge Points and Unmonitored Catch Basin and failed to indicate whether the Unmonitored Discharge Points and Unmonitored Catch Basin were substantially similar and not being monitored, as required by Schedule A.7.b.i.(16) of the 2017 Permit.

3.51. Schedule A.7.b.x. of the 2017 Permit requires, in pertinent part, that the SWPCP identify each discharge point and the location where stormwater monitoring will occur, with each monitoring location labeled in the SWPCP as “monitoring location.” Existing discharge points excluded from monitoring must include a description of the discharge point(s) and data or analysis supporting that the discharge point(s) are substantially similar as described in Schedule B.2.c.ii of the 2017 Permit.

3.52. At the time of inspection, Respondent’s SWPCP failed to include a description of the Unmonitored Discharge Points and Unmonitored Catch Basin and failed to include any data or analysis supporting that the Unmonitored Discharge Points and Unmonitored Catch Basin are substantially similar and not being monitored, as required by Schedule A.7.b.x. of the 2017 Permit.

3.53. Schedule A.7.b.vi. of the 2017 Permit requires the SWPCP include a “description of control measures installed and implemented to meet the technology and water quality based requirements” in the 2017 Permit, together with a description of “how the stormwater control

measures address potential pollutant sources from industrial activities and significant materials on-site, spills and leaks and authorized non-stormwater discharges.”

3.54. Schedule A.7.b.vii. of the 2017 Permit requires the SWPCP include “a description of treatment controls or source control, including low impact development, in response to corrective action requirements and operation and maintenance procedures.”

3.55. At the time of inspection, Respondent’s SWPCP failed to include a description of control measures installed and implemented in the north yard of the Facility, where Discharge Point 001 is located, or in the western portion of the Facility, where Discharge Point 002 is located.

3.56. Schedule A.7.c.ii of the 2017 Permit requires the SWPCP include “the schedule or frequency for maintaining all control measures and waste collection.” Respondent failed to include in its SWPCP a schedule or frequency for maintaining the catch basins or the sand/grass filter, as required by Schedule A.7.c.ii of the 2017 Permit.

3.57. EPA alleges that Respondent violated Schedule A.7 of the 2017 Permit for at least the period December 2017 to December 2019. Violations of the 2017 Permit are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 6 – Failure to Implement Cleaning and Maintenance of Control Measures

3.58. Schedule A.1.i. of the 2017 Permit requires Respondent clean, maintain, and repair all control measures, including stormwater structures, catch basins, and treatment facilities to ensure effective operation as designed and in a manner that prevents the discharge of pollution.

3.59. Discharge Point 002 is a catch basin located in the west yard of the Facility. During the inspection, Discharge Point 002 contained a layer of sludge and the Unmonitored Catch Basin contained discolored fluid. At the time of inspection, a Facility representative

indicated that Discharge Point 002 and the Unmonitored Catch Basin were pumped out a few years prior to the inspection. The EPA representative further observed accumulated sediment and debris on the pavement around Discharge Point 002 and the Unmonitored Catch Basin.

3.60. Stormwater that is discharged through Discharge Point 003 flows through a sand/grass filter prior to discharge through an underground pipe to a swale, which drains to Fanno Creek. At the time of inspection, an EPA representative observed accumulated sediment and debris on the drainage grate of the grass/sand filter.

3.61. EPA alleges that Respondent violated Schedule A.1.i. of the 2017 Permit by failing to implement cleaning and maintenance of stormwater control measures on at least May 8, 2019. Violations of the 2017 Permit are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 7 – Failure to Implement Control Measures

3.62. Schedule A.3.a. of the 2017 Permit requires Respondent to select, design, install, implement and maintain control measures, including all BMPs, to meet the narrative technology-based and numeric effluent limits in Schedule A.1, A.2 and Schedule E of the 2017 Permit and describe these measures, maintenance schedules and frequency of housekeeping measures in the SWPCP. Schedule A.7.b.vii. of the 2017 Permit requires the SWPCP include “a description of treatment controls or source control, including low impact development, in response to corrective action requirements and operation and maintenance procedures.”

3.63. At the time of inspection, Respondent had not installed, implemented, or maintained stormwater control measures for the drainage areas in the north yard of the Facility, where Discharge Point 001 is located, or in the western portion of the Facility, where Discharge Point 002 is located. During the inspection, a Facility representative stated that the Facility had no cleaning schedule to maintain Discharge Point 002 and the Unmonitored Catch Basins.

3.64. EPA alleges that Respondent violated Schedule A.3.a. of the 2017 Permit by failing to implement stormwater control measures for at least the period between September 2017 and May 2019. Violations of the 2017 Permit are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 8 – Failure to Cover All Waste Contained in Bins or Dumpsters

3.65. Schedule A.1.c of the 2017 Permit requires Respondent cover all waste contained in bins or dumpsters where there is a potential for drainage of stormwater through the waste to prevent exposure of stormwater to these pollutants.

3.66. During the inspection, an EPA representative observed uncovered dumpsters that contained waste.

3.67. EPA alleges that Respondent violated Schedule A.1.c of the 2017 Permit by failing to cover all waste contained in bins or dumpsters where there is a potential for drainage of stormwater through the waste on at least May 8, 2019. Violations of the 2017 Permit are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations contained in this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), the EPA has taken into account “the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other

matters as justice may require.” After considering all of these factors as they apply to this case, EPA has determined that an appropriate penalty to settle this action is \$82,000.

4.4. Respondent consents to the assessment of the civil penalty set forth in Paragraph 4.3 and agrees to pay the total civil penalty within 30 days of the effective date of the Final Order.

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier’s check or certified check must be 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. Concurrent with payment, Respondent must serve photocopies of the check, or proof of other payment method described in Paragraph 4.5, on the Regional Hearing Clerk and EPA Region 10 Compliance Officer at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
R10_RHC@epa.gov

Steven Potokar
U.S. Environmental Protection Agency
Region 10, Mail Stop 20-C04
1200 Sixth Avenue,
Seattle, WA 98101
Potokar.Steven@epa.gov

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement 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.

a. Interest. Pursuant to CWA Section 309(g)(9), 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.

b. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 309(g)(9), 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 Consent Agreement 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 Consent Agreement, Respondent has corrected the violation(s) alleged in Part III above other than those alleged violations that will be corrected in accordance with Administrative Order on Consent, Docket Number: CWA-10-2021-0068.

4.11. Except as described in Subparagraph 4.7.b., above, each party shall bear its own costs in bringing or defending this action.

4.12. For the purposes of this proceeding, Respondent expressly waives any affirmative defenses and the right to contest the allegations contained in the Consent Agreement and to appeal the Final Order.

4.13. The provisions of this Consent Agreement and the Final Order 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:

5-12-21

FOR RESPONDENT:



WAYNE SEARLE
Chief Executive Officer
Fought & Company, Inc.

DATED:

FOR COMPLAINANT:

EDWARD
KOWALSKI

Digitally signed by
EDWARD KOWALSKI
Date: 2021.06.28
10:58:29 -07'00'

EDWARD J. KOWALSKI

Director

Enforcement and Compliance Assurance Division

EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

FOUGHT & COMPANY, INC.

Tigard, Oregon

Respondent.

DOCKET NO. CWA-10-2021-0069

FINAL ORDER

Proceedings Under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g)

1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.

2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act (CWA) for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order 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 Final Order 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. This Final Order shall become effective upon filing.

SO ORDERED this _____ day of _____, 2021.

**RICHARD
MEDNICK**

Digitally signed by
RICHARD MEDNICK
Date: 2021.06.29
14:47:50 -07'00'

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Fought & Company, Inc. DOCKET NO.: CWA-10-2021-0069** 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 emailed to:

Danielle N. Granatt, Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop 11-C07
1200 Sixth Avenue, Suite 155
Seattle, WA 98101
(206) 553-2108
granatt.danielle@epa.gov

Further, the undersigned certifies that a true and correct copy of the aforementioned document was emailed to:

Wayne Searle, CEO
Fought & Co., Inc.
14255 SW 72nd Ave.
Tigard, OR 97224
waynes@foughtsteel.com

Jennifer Gates, Counsel
Pearl Legal Group, P.C.
529 SW Third Ave., Suite 600
Portland, OR 97204
jgates@pearllegalgroup.com

DATED this _____ day of _____, 2021.

**TERESA
YOUNG**

Digitally signed by
TERESA YOUNG
Date: 2021.06.30
07:36:34 -07'00'

Teresa Young
Regional Hearing Clerk
EPA Region 10