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EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

G.F. BARNES CONSTRUCTION INC.  
Sandpoint, Idaho

Respondent.

DOCKET NO. CWA-10-2008-0149

CONSENT AGREEMENT AND  
FINAL ORDER

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the United States 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 enter into the Final Order contained in Part IV of this CAFO to the Regional Administrator of EPA Region 10 who, in turn, 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 hereby issues, and G.F. Barnes Construction, Inc. ("Barnes Construction") hereby agrees to issuance of, the Final Order contained in Part IV of this CAFO.

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**II. PRELIMINARY STATEMENT**

2.1. On September 12, 2008, EPA commenced this proceeding against Barnes Construction and Tamara and Gary Barnes (the "Barneses") pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), by filing an administrative complaint. Subsequently, EPA filed an amended complaint ("Complaint") that only alleged violations against Barnes Construction.

2.2. The Complaint alleges that Barnes Construction's violations of the CWA subjects Barnes Construction to penalties and proposes that Barnes Construction be assessed an administrative civil penalty.

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

2.4. 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 State of Idaho has been given an opportunity to consult with EPA regarding the assessment of an administrative civil penalty against Barnes Construction.

2.5. In accordance with Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45, EPA has issued a public notice to inform the public of its intent to assess administrative penalties against Barnes Construction and to invite public comment.

**III. CONSENT AGREEMENT**

The parties to this action hereby stipulate as follows:

3.1. Barnes Construction enters this Consent Agreement to compromise and settle the disputed claims alleged in the Complaint without further proceedings in this matter.

3.2. Barnes Construction admits the jurisdictional allegations in the Complaint.

3.3. Barnes Construction neither admits nor denies the factual allegations contained in the Complaint.

1           3.4.     Barnes Construction expressly waives the right to contest the allegations  
2 contained in the Complaint and to appeal the Final Order contained herein.

3           3.5.     As required under Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA  
4 has taken into account the nature, circumstances, extent, and gravity of the alleged violations as  
5 well as Barnes Construction's economic benefit of noncompliance, ability to pay, and other  
6 relevant factors. After considering all of these factors, EPA has determined and Barnes  
7 Construction agrees that an appropriate penalty to settle this action is in the amount of Twelve  
8 Thousand Nine Hundred Dollars (\$12,900.00).

9           3.6.     Barnes Construction consents to issuance of the Final Order set forth in Part IV,  
10 and agrees to pay the total civil penalty set forth in Paragraph 3.5, above, plus all applicable  
11 interest in such penalty, in accordance with the payment schedule described in subparagraphs  
12 3.6.1 through 3.6.4, below.

13                   3.6.1.   Within thirty (30) days of the effective date of this Final Order, Barnes  
14 Construction shall pay a first installment of \$2,000.00.

15                   3.6.2.   Within one (1) year of the effective date of this Final Order, Barnes  
16 Construction shall pay a second installment of \$2,327.00 (\$2,000 plus \$327 interest).

17                   3.6.3.   Within two (2) years of the effective date of this Final Order, Barnes  
18 Construction shall pay a third installment of \$2,267.00 (\$2,000 plus \$267 interest).

19                   3.6.4.   Within three (3) years of the effective date of this Final Order, Barnes  
20 Construction shall pay a final installment of \$7,107 (\$6,900 plus \$207 interest).

21           3.7.     Payment under this CAFO shall be made by cashier's check or certified check,  
22 payable to the order of "Treasurer, United State of America" and delivered to the following  
23 address:  
24  
25

1 U.S. Environmental Protection Agency  
2 Fines and Penalties  
3 Cincinnati Finance Center  
4 PO Box 979077  
5 St. Louis, MO 63197-9000

6 Barnes Construction shall note on the check the title and docket number of this action.

7 3.8. Barnes Construction shall serve photocopies of the check described in Paragraph  
8 3.7, above, on the Regional Hearing Clerk and EPA at the following addresses:

9 Regional Hearing Clerk  
10 U.S. Environmental Protection Agency  
11 Region 10, MS ORC-158  
12 1200 Sixth Avenue, Suite 900  
13 Seattle, WA 98101

14 Office of Compliance and Enforcement  
15 Attn: Eva DeMaria  
16 U.S. Environmental Protection Agency  
17 Region 10, MS OCE-133  
18 1200 Sixth Avenue, Suite 900  
19 Seattle, WA 98101

20 3.9. If Barnes Construction fails to pay the penalty assessed by this CAFO in full by  
21 the due date set forth in Paragraph 3.6, above, the entire unpaid balance of the penalty and  
22 accrued interest shall become immediately due and owing. If such a failure to pay occurs,  
23 Barnes Construction may be subject to a civil action to collect the assessed penalty under the  
24 CWA, together with interest, fees, costs and additional penalties described below. In any  
25 collection action, the validity, amount and appropriateness of the penalty shall not be subject to  
review.

3.10. If Barnes Construction fails to pay any portion of the penalty assessed by this  
CAFO in full by the due date set forth in Paragraph 3.6, above, Barnes Construction shall be  
responsible for payment of the amounts described below:

1           3.10.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C.  
2           § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate  
3           established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the  
4           effective date of the Final Order set forth in Part IV, below, provided, however, that no  
5           interest shall be payable on any portion of the assessed penalty that is paid within thirty  
6           (30) days of the effective date of the Final Order.

7           3.10.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to  
8           Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Barnes Construction fails to  
9           pay on a timely basis the amount of the penalty set forth in Paragraph 3.5, above, Barnes  
10          Construction shall pay (in addition to any assessed penalty and interest) attorneys fees  
11          and costs for collection proceedings and a quarterly nonpayment penalty for each quarter  
12          during which such failure to pay persists. Such nonpayment penalty shall be in an  
13          amount equal to twenty percent (20%) of the aggregate amount of Barnes Construction's  
14          penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

15          3.11. The penalty described in Paragraph 3.5, above, including any additional costs  
16          incurred under Paragraph 3.10, above, represents an administrative civil penalty assessed by  
17          EPA and shall not be deductible for purposes of federal taxes.

18          3.12. The undersigned representative of Barnes Construction certifies that he or she is  
19          fully authorized to enter into the terms and conditions of this CAFO and to bind Barnes  
20          Construction to this document.

21          3.13. Except as described in Subparagraph 3.10.2, above, each party shall bear its own  
22          costs in bringing or defending this action.

23          3.14. The provisions of this CAFO shall bind Barnes Construction and its officers,  
24          directors, agents, servants, employees, successors and assigns.

1           3.15. The above provisions are STIPULATED AND AGREED upon by Barnes  
2 Construction and EPA.

3  
4 DATED:

5 4/1/09

BARNES CONSTRUCTION:

6 Gary F. Barnes  
GARY BARNES  
For Respondent Barnes Construction

7  
8 DATED:

9 4/9/09

U.S. ENVIRONMENTAL PROTECTION AGENCY

10 Courtney J. Hamamoto  
COURTNEY J. HAMAMOTO  
For Complainant

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12  
13 **IV. FINAL ORDER**

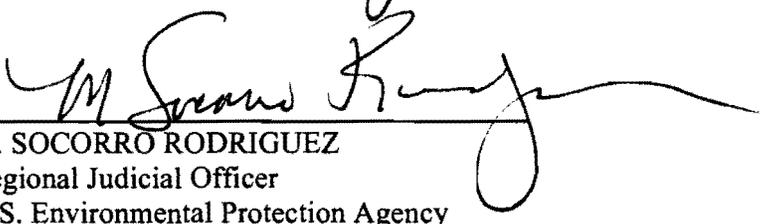
14           4.1. The terms of the foregoing Consent Agreement are hereby ratified and  
15 incorporated by reference into this Final Order. Barnes Construction is hereby ordered to  
16 comply with the foregoing terms of the settlement.

17           4.2. This CAFO shall constitute a settlement by EPA of all claims for civil penalties  
18 pursuant to the CWA for the particular violations alleged in the Complaint. In accordance with  
19 40 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to  
20 pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of  
21 law. This CAFO does not waive, extinguish or otherwise affect Barnes Construction's  
22 obligations to comply with all applicable provisions of the CWA, the CWA regulations, and/or  
23 any permits issued thereunder.

24           4.3. This Final Order shall become effective upon filing.  
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1 SO ORDERED this 16<sup>th</sup> day of June, 2009.

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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: G.F. BARNES CONSTRUCTION, INC, DOCKET NO.: CWA-10-2008-0149** was filed with the Regional Hearing Clerk on June 16, 2009.

On June 16, 2009 the undersigned certifies that a true and correct copy of the document was delivered to:

Courtney Hamamoto, Esquire  
US 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 June 16, 2009, to:

Richard Campbell  
Campbell, Bissell & Kirby, PLLC  
416 Symons Building  
7 South Howard Street  
Spokane, WA 99201

Gary and Tamara Barnes  
G.F. Barnes Construction, Inc.  
P.O. Box 122  
Liberty Lake, WA 99019

DATED this 16<sup>th</sup> day of June 2009.



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Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10