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HEARINGS CLERK  
EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. CWA-10-2011-0086
	)	
	)	
Robert M. Loomis and	)	<b>CONSENT AGREEMENT AND</b>
Nancy M. Loomis,	)	<b>FINAL ORDER</b>
Haines, Alaska	)	
	)	
Respondents.	)	

**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 issue the Final Order contained in Part IV of this Consent Agreement and Final Order ("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 Sections 309(g)(1) and 309(g)(2)(B) of the CWA, 33 U.S.C. §§ 1319(g)(1) and 1319(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,

1 and Respondents, Robert M. and Nancy M. Loomis, agree to issuance of, the Final Order  
2 contained in Part IV of this CAFO.

## 3 **II. PRELIMINARY STATEMENT**

4 2.1. On June 16, 2011, EPA initiated this proceeding against Respondents pursuant to  
5 Section 309(g) of the CWA, 33 U.S.C. § 1319(g), by issuing an Administrative Complaint.

6 2.2. The Complaint alleged that Respondents' violations of the CWA had subjected  
7 Respondents to civil penalties.

8 2.3. The complete factual and jurisdictional basis for proposing the assessment of a  
9 civil penalty is set forth in the Complaint which is incorporated herein by reference.

10 2.4. Concurrent with this CAFO, EPA and Respondents, have entered into an  
11 Administrative Order on Consent (AOC) for performance of agreed upon restoration and  
12 mitigation for alleged unauthorized dredge and fill material discharged into waters of the United  
13 States on Respondents' property as more fully described in the AOC.

## 14 **III. CONSENT AGREEMENT**

15 3.1. Respondents admit to the jurisdictional allegations in the Complaint.

16 3.2. Respondents neither admit nor deny the specific factual allegations in the  
17 Complaint.

18 3.3. As required by Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has  
19 taken into account the nature, circumstances, extent, and gravity of the alleged violations, as  
20 well as Respondents' economic benefit of noncompliance, ability to pay, and other relevant  
21 factors. After considering all of these factors, EPA has determined and Respondents agree that  
22 an appropriate penalty to settle this action is TWENTY-TWO THOUSAND AND FIVE  
23 HUNDRED DOLLARS (\$22,500).

24 3.4. Respondents agree to pay the total civil penalty set forth in Paragraph 3.3. within  
25

1 thirty (30) days of the effective date of the Final Order.

2 3.5. Payment under this CAFO must be made by cashier's check or certified check,  
3 payable to the order of "Treasurer, United States of America" and delivered to the following  
4 address:

5 U.S. Environmental Protection Agency  
6 Fines and Penalties  
7 Cincinnati Finance Center  
8 PO Box 979077  
9 St. Louis, MO 63197-9000

8 Respondents must note on the check the title and docket number of this action.

9 3.6. Respondents shall serve photocopies of the check described Paragraph 3.5. on the  
10 Regional Hearing Clerk and EPA Region 10 at the following two addresses:

11 Regional Hearing Clerk  
12 U.S. Environmental Protection Agency  
13 Region 10, Mail Stop ORC- 158  
14 1200 Sixth Avenue, Suite 900  
15 Seattle, WA 98101

16 Mark Jen  
17 U.S. Environmental Protection Agency, Region 10  
18 Office of Ecosystems, Tribal and Public Affairs  
19 Mail Stop ETPA-083  
20 1200 Sixth Avenue, Suite 900  
21 Seattle, WA 98101

22 Julie Congdon  
23 U.S. Environmental Protection Agency, Region 10  
24 Office of Enforcement and Compliance Assurance  
25 Mail Stop OCE-138  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

22 3.7. If Respondents fail to pay the penalty assessed by this CAFO in full by its due  
23 date set for in Paragraph 3.4., the entire unpaid balance of penalty and accrued interest shall  
24 become immediately due and owing. Such failure may also subject Respondents to a civil action

1 to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional  
2 penalties described below. In any collection action, the validity, amount, and appropriateness of  
3 the penalty shall not be subject to review.

4           3.7.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 33  
5 U.S.C. § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at the  
6 rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from  
7 the effective date of the Final Order contained herein, provided, however, that no interest  
8 shall be payable on any portion of the assessed penalty that is paid within thirty (30) days  
9 of the effective date of the Final Order.

10           3.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant  
11 to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), should Respondents fail to pay  
12 on a timely basis the amount of the penalty assessed by the Final Order contained herein,  
13 Respondents shall pay (in addition to any assessed penalty and interest), attorneys fees  
14 and costs for collection proceedings and a quarterly nonpayment penalty for each quarter  
15 during which such failure to pay persists. Such nonpayment penalty shall be in an  
16 amount equal to twenty percent (20%) of the aggregate amount of Respondents' penalties  
17 and nonpayment penalties which are unpaid as of the beginning of such quarter.

18           3.8. The penalty described in Paragraph 3.3, including any additional costs incurred  
19 under Paragraph 3.7. above, represents an administrative civil penalty assessed by EPA and shall  
20 not be deductible for purposes of federal taxes.

21           3.9. The undersigned Respondents certify they are authorized to enter into the terms  
22 and conditions of this CAFO and bind themselves to this document.

23           3.10. Except as described in Subparagraph 3.7.2. above, each party shall bear its own  
24 costs in bringing or defending this action.

25           3.11. Respondents expressly waive any right to contest the allegations and waive any

1 right to appeal the Final Order set forth in Part IV.

2 3.12. The provisions of this CAFO shall bind Respondents and their agents, servants,  
3 employees, successors, and assigns.

4 3.13 The above provisions are STIPULATED AND AGREED upon by Respondents  
5 and EPA Region 10.

6 DATED:

ROBERT M. LOOMIS

7  
8 4/13/12

Robert M Loomis

9  
10 DATED:

NANCY M. LOOMIS

11  
12 4-13-12

Nancy m. Loomis

13  
14 DATED:

FOR COMPLAINANT:

15  
16 4/18/2012

Edward J. Kowalski

EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement

17  
18  
19 4/17/12

Kate Kelly

KATE KELLY, Director  
Office of Ecosystems, Tribal and Public Affairs

1 **IV. FINAL ORDER**

2 4.1. The terms of the foregoing Parts I-III are ratified and incorporated by reference  
3 into this Final Order. Respondents are ordered to comply with the terms of the settlement.

4 4.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties  
5 pursuant to the CWA for the violations alleged in the Complaint. In accordance with 40 C.F.R.  
6 § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to pursue  
7 appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.  
8 This CAFO does not waive, extinguish, or otherwise affect Respondents' obligations to comply  
9 with all applicable provisions of the CWA, applicable CWA regulations, and/or any permits  
10 issued thereunder.

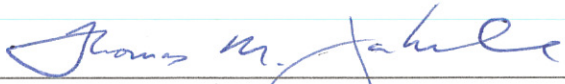
11 4.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and  
12 40 C.F.R. § 22.38(b), the Alaska Department of Environmental Conservation has been given the  
13 opportunity to consult with EPA regarding the assessment of the administrative civil penalty  
14 against Respondents.

15 4.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A),  
16 EPA issued public notice of the Complaint within 30 days following proof of service and  
17 provided reasonable opportunity to comment on its intent to assess an administrative penalty  
18 against Respondents. EPA received no comments on the Complaint

19 4.5. This Final Order shall become effective upon filing.  
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1 SO ORDERED this 18<sup>th</sup> day of April, 2012.

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THOMAS M. JAHNKE  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10

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CERTIFICATE OF SERVICE 12 APR 18 PM 1:29

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Robert M. Loomis and Nancy M. Loomis**, Docket No. CWA 10-2011-0086 was filed with the Regional Hearing Clerk on April 18, 2012.

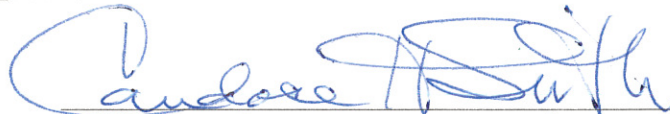
On April 18, 2012 the undersigned certifies that a true and correct copy of the document was hand delivered to:

Lori Houck Cora  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 9000  
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 April 18, 2012 to:

Robert and Nancy Loomis  
279 Rocking Chair Road  
Kilgore, Texas 75662-8275

DATED this 18 day of April 2012.



Signature

Print Name: Candace H. Smith