

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

GARRETT CONSTRUCTION COMPANY,
INC.,

Okanogan County, Washington

Respondent.

DOCKET NO. CWA-10-2020-0129

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.

1.3. CWA Section 309(g)(2)(A), 33 U.S.C. § 1319(g)(2)(A), authorizes the administrative assessment of Class I civil penalties in an amount not to exceed \$10,000 per violation, up to a maximum penalty of \$25,000. Pursuant to 40 C.F.R. Part 19, the administrative assessment of Class I civil penalties may not exceed \$22,320 per violation, up to a maximum penalty of \$55,800. *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)(A), 33 U.S.C. § 1319(g)(1)(A) and (g)(2)(A), 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 Garrett Construction 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), issuance 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 Department of Army permit issued by the United States Army Corps of Engineers (“Corps”) pursuant to CWA Section 404, 33 U.S.C. § 1344.

3.3. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

3.4. The term “navigable waters” is defined as “waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). In turn, “waters of the United States” has been defined to include, *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. 33 C.F.R. § 328.3.

3.5 A “point source” includes, *inter alia*, “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, [or] container ... from which pollutants are or may be discharged.” CWA Section 502(14), 33 U.S.C. § 1362(14).

3.6 A “pollutant” includes, *inter alia*, dredged spoil, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, rock, sand, and industrial waste discharged into water. CWA Section 502(6), 33 U.S.C. § 1362(6).

3.7 “Fill material” includes material placed in waters of the United States where the material has the effect of replacing any portion of a water of the United States with dry land, or changing the bottom elevation of any portion of a water of the United States. Examples of fill material include rock, sand, soil, clay, construction debris, wood chips, overburden from

excavation activities, and materials used to create any structure or infrastructure in the waters of the United States. 40 C.F.R. § 232.2.

3.8 Each discharge of pollutants from a point source that is not authorized by permit issued pursuant to the CWA constitutes a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

General Allegations

3.9 Respondent is a corporation registered to conduct business in the state of Washington and a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.10 At all times relevant to this action, Respondent operated at two properties: (1) 1665 Loomis Oroville Road, Loomis, Washington (“Newmarch Property”), and (2) 1923 Loomis Oroville Road, Loomis, Washington (“Jansen Property”) (hereinafter collectively referred as the “Sites”).

3.11 Both Sites abut Palmer Lake. Palmer Lake is used in interstate commerce and it is a perennial tributary to other traditionally navigable waters. As such, Palmer Lake is a “navigable water” as defined in CWA Section 502(7), 33 U.S.C. § 1362(7).

Violations

Count 1

3.12 Between September and October 2014, Respondent and/or persons acting on Respondent’s behalf, used heavy earthmoving equipment to discharge fill material below the ordinary high water mark (OHWM) of Palmer Lake on the Jansen Property. The fill material was used to create a 4-foot retaining wall.

3.13. The heavy equipment referenced in Paragraph 3.12 is a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

3.14. The dredged or fill material that Respondent and/or persons acting on its behalf caused to be discharged, as referenced in Paragraph 3.12, included soil, gravel, and rock, each of which constitutes “dredged material” and/or “fill material” within the meaning of 40 C.F.R. § 232.2, and “pollutant[s]” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

3.15. By causing such dredged and/or fill material to enter water of the United States, Respondent engaged in the “discharge of pollutants” from a point source within the meaning of CWA Sections 301(a) and 502(12), 33 U.S.C. §§ 1311(a) and 1362(12).

3.16. Respondent’s discharge of dredged and/or fill material described in Paragraph 3.12 above was not authorized by any permit issued pursuant to CWA Section 404, 33 U.S.C. § 1344. Respondent is therefore in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

3.17. Each day that the dredged and/or fill material remains in place without the required permit constitutes a violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

Count 2

3.18. Between August 15 and August 28, 2014, Respondent and/or persons acting on Respondent’s behalf, used heavy earthmoving equipment to discharge approximately 1250 cubic yards of fill material and rock below the ordinary high water mark (OHWM) of Palmer Lake on the Newmarch Property. The fill material was used to create a wall measuring approximately six feet in height and 75 feet in length.

3.19. The heavy equipment referenced in Paragraph 3.18 is a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

3.20. The dredged or fill material that Respondent and/or persons acting on its behalf caused to be discharged, as referenced in Paragraph 3.18, included soil, gravel, and rock, each of which constitutes “dredged material” and/or “fill material” within the meaning of 40 C.F.R. § 232.2, and “pollutant[s]” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

3.21. By causing such dredged and/or fill material to enter water of the United States, Respondent engaged in the “discharge of pollutants” from a point source within the meaning of CWA Sections 301(a) and 502(12), 33 U.S.C. §§ 1311(a) and 1362(12).

3.22. Respondent’s discharge of dredged and/or fill material described in Paragraph 3.18 above was not authorized by any permit issued pursuant to CWA Section 404, 33 U.S.C. § 1344. Respondent is therefore in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

3.23. Each day that the dredged and/or fill material remains in place without the required permit constitutes a violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

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) of the CWA, 33 U.S.C. § 1319(g)(3), 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 \$15,995.

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 in 36 installments with interest, at the current rate of two percent per annum, as established by the United States Department of the Treasury, and as set forth in Attachment A. Should Respondent choose to pay any remaining portion of the entire penalty prior to the dates set forth in Attachment A, Respondent may do so as long as the penalty payment includes the payment of all of the per annum interest on the remaining balance.

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, Missouri 63197-9000

Respondent must note on the checks the title and docket number of this action.

4.6. Respondent must serve photocopies of the checks, or proof of other payment method, described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Compliance Officer at the following addresses:

Teresa Young, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, M/S 11-C07
1200 Sixth Avenue, Suite 155
Seattle, Washington 98101
Young.Teresa@epa.gov

Krista Rave-Perkins, Compliance Officer
U.S. Environmental Protection Agency
Region 10, M/S 20-C04
1200 Sixth Avenue
Seattle, Washington
Rave-Perkins.krista@epa.gov

4.7. If Respondent fails to pay an installment payment as set forth in Paragraph 4.4, 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.

4.7.1. *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, 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.

4.7.2. *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 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, represent 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.

4.11. Except as described in Subparagraph 4.7.2, 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. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this CAFO,

including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent is aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

4.14. The provisions of this Consent Agreement and Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.15. The above provisions are STIPULATED AND AGREED upon by Respondent and Complainant.

DATED:

FOR RESPONDENT

8/25/20



PATRICK GARRETT
Garrett Construction Company, Inc.

DATED:

FOR COMPLAINANT:

EDWARD J. KOWALSKI
Director
Enforcement and Compliance Assurance Division
EPA Region 10

ATTACHMENT A

PAYMENT NUMBER	DUE DATE IN DAYS AFTER THE EFFECTIVE DATE OF THE FINAL ORDER	AMOUNT
1	30	\$450.79
2	60	\$450.79
3	90	\$450.79
4	120	\$450.79
5	150	\$450.79
6	180	\$450.79
7	210	\$450.79
8	240	\$450.79
9	270	\$450.79
10	300	\$450.79
11	330	\$450.79
12	360	\$450.79
13	390	\$450.79
14	420	\$450.79
15	450	\$450.79
16	480	\$450.79
17	510	\$450.79
18	540	\$450.79
19	570	\$450.79
20	600	\$450.79
21	630	\$450.79
22	660	\$450.79
23	690	\$450.79
24	720	\$450.79
25	750	\$450.79
26	780	\$450.79
27	810	\$450.79
28	840	\$450.79
29	870	\$450.79
30	900	\$450.79
31	930	\$450.79
32	960	\$450.79
33	990	\$450.79
34	1,020	\$450.79
35	1,050	\$450.79
36	1,080	\$450.79

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In the Matter of:

GARRETT CONSTRUCTION COMPANY,
INC.,

Respondent.

DOCKET NO. CWA-10-2020-0129

FINAL ORDER

1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of 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 _____, 2020.

RICHARD MEDNICK
Regional Judicial Officer
EPA Region 10