

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

OREGON CHIP TERMINAL, INC.

North Bend, Oregon

Respondent.

DOCKET NO. CWA-10-2020-0115

**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 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 Oregon Chip Terminal, 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(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.

3.6. 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, “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. 40 C.F.R. § 122.2.

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

3.8. “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 4491 (Marine Cargo Handling). 40 C.F.R. § 122.26(b)(14).

3.9. 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.

3.10. On October 1, 2011, ODEQ issued the 1200-Z Stormwater Discharge Permit (2012 General Permit) pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The 2012 General Permit became effective on July 1, 2012, and it expired on June 30, 2017. The 2012 General Permit authorized, subject to the terms and conditions of the permit, the discharge of stormwater associated with certain industrial activities, including activities conducted under Standard Industrial Classification code 4491.

3.11. On August 1, 2017, ODEQ renewed the 1200-Z Stormwater Discharge General Permit (2017 General Permit). The 2017 General Permit became effective on August 1, 2017, and it expires on July 31, 2022. The 2017 General Permit authorizes, subject to the terms and conditions of the permit, the discharge of stormwater associated with certain industrial activities, including activities conducted under Standard Industrial Classification code 4491.

### **General Allegations**

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

3.13. At all times relevant to this action, Respondent owned and operated the Oregon Chip Terminal, Inc. Facility (Facility) located at 3701 Tremont Street in North Bend, Oregon.

3.14. The primary operations conducted by Respondent at the Facility include receiving and providing storage for woodchips to be loaded into cargo ships for export, which are activities categorized under Standard Industrial Classification code 4491.

3.15. The Facility, which was under Respondent's control at all times relevant to this action, discharges stormwater into Coos Bay via one identified discharge point (Outfall 001). 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).

3.16. Outfall 001 is a "point source" as defined at CWA Section 502(14), 33 U.S.C. § 1362(14).

3.17. Coos Bay is a navigable waterway under Section 10 of the Rivers and Harbors Act, 33 U.S.C. § 403. Thus, Coos Bay is a "navigable water" as defined under Section 502(7) of the Act, 33 U.S.C. § 1362(7).

3.18. At all times relevant to this Order, Respondent was authorized to discharge stormwater associated with industrial activity from the Facility by 2012 General Permit number ORR801007 and 2017 General Permit number ORR801007. According to ODEQ, Respondent first obtained coverage under the 2012 General Permit on May 28, 2013.

3.19. At all times relevant to this Order, Respondent was implementing a Stormwater Pollution Control Plan (SWPCP) dated December 26, 2017, at the Facility.

3.20. On May 30, 2018, EPA conducted a compliance evaluation inspection at the Facility to determine Respondent's compliance with the 2012 General Permit, 2017 General Permit, and Sections 301 and 402 the CWA, 33 U.S.C. §§ 1311 and 1342.

3.21. As part of the inspection, EPA reviewed Respondent's SWPCP, discharge monitoring reports (DMRs), monthly visual inspection reports, employee training records, and Tier 1 Corrective Action Reports.

## **Alleged Violations**

3.22. As described below, EPA alleges that, after obtaining coverage under the 2012 General Permit and the 2017 General Permit, Respondent violated certain terms and conditions of the 2012 General Permit and 2017 General Permit and therefore violated CWA Section 301, 33 U.S.C. § 1311.

### Count 1: Failure to Properly Document Monthly Inspections

3.23. Schedule B.7 of the 2012 General Permit and Schedule B.7 of the 2017 General Permit require that Respondent perform and document monthly inspections of the Facility.

3.24. EPA alleges that Respondent violated Schedule B.7 of the 2012 General Permit and Schedule B.7 of the 2017 General Permit, by failing to properly document monthly inspections of the Facility for each month from September 2015 through April 2018. Violations of the 2012 General Permit and the 2017 General Permit are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

### Count 2: Failure to Properly Document Tier 1 Corrective Actions

3.25. Schedule A.10 of the 2012 General Permit and Schedule A.10 of the 2017 General Permit requires Respondent to perform a series of Tier 1 Correction 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 2012 General Permit and Schedule A.9 of the 2017 General Permit or any sector-specific benchmarks in Schedule E of the 2012 General Permit and Schedule E of the 2017 General Permit. Schedule A.10.a.iii of the 2012 General Permit and Schedule A.10.a.iv of the 2017 General Permit require that those corrective actions be documented in a Tier 1 report.

3.26. EPA alleges that Respondent violated Schedule A.10 of the 2012 General Permit and Schedule A.10 of the 2017 General Permit, by failing to provide documentation of Tier 1 Corrective Actions following benchmark exceedances at the Facility in November 2015, December 2015, February 2016, March 2016, December 2016, December 2017, January 2018, and April 2018. Violations of the 2012 General Permit and the 2017 General Permit are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 3: Failure to Develop and Maintain Records for Employee Training

3.27. Schedule A.1.j of the 2017 General Permit requires Respondent to “[d]evelop and maintain an employee orientation and education program to inform personnel on the pertinent components and goals” of the 2017 General Permit and SWPCP. Schedule A.1.j.iii and A.1.j.iv of the 2017 General Permit requires that education and training be documented.

3.28. EPA alleges that Respondent violated Schedule A.1.j of the 2017 General Permit, by failing to provide documentation of any employee education and training. Violations of the 2017 General Permit are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count 4: Failure to Properly Calibrate pH Meter

3.29. Schedule B.2.e.i of the 2017 General Permit requires Respondent to “[o]btain accurate pH readings with a properly calibrated pH meter.” Schedule B.2.e.ii of the 2017 General Permit requires that Respondent “follow manufacturers’ specifications” to keep pH meter in “good working order.” The Facility’s pH meter’s manufacturer’s manual states that the pH meter should be calibrated every month.

3.30. EPA alleges that Respondent violated Schedule B.2.e of the 2017 General Permit, by failing to properly calibrate the pH meter used to monitor for pH at the Facility. Violations of the 2017 General 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 violations, 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 \$35,000.

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 thirty (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, Missouri 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  
young.teresa@epa.gov

Robert Grandinetti  
U.S. Environmental Protection Agency  
Region 10, Mail Code: Hanford  
825 Jadwin Avenue, Suite 210  
Richland, Washington 99352  
grandinetti.robert@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, 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, 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.

4.11. This Consent Agreement and the Final Order constitute a settlement by Complainant and Respondent of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III of this Consent Agreement.

4.12. Except as described in Paragraph 4.7 and its subparagraphs, each party shall bear its own costs in bringing or defending this action.

4.13. 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.

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

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

and Complainant.

DATED:

6/24/2020

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FOR RESPONDENT:



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TOMONORI "TOMMY" YOSHIDA  
PRESIDENT  
Oregon Chip Terminal, Inc.

DATED:

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FOR COMPLAINANT:

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

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In the Matter of:

OREGON CHIP TERMINAL, INC.

North Bend, Oregon

Respondent.

DOCKET NO. CWA-10-2020-0115

**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 \_\_\_\_\_, 2020.

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RICHARD MEDNICK  
Regional Judicial Officer  
EPA Region 10