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EPA-REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DOCKET NO. CWA-10-2009-0001

CRAIG FRAME,
Crouch, Idaho

CONSENT AGREEMENT AND
FINAL ORDER

Respondent.

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 VI of this CAFO to the Regional Administrator of EPA Region 10, who in turn has redelegated this authority to the Regional Judicial Officer.

1.3. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 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 hereby issues, and Mr. Craig Frame ("Respondent") hereby agrees to issuance of, the Final Order contained in Part VI of this CAFO.

CONSENT AGREEMENT AND FINAL ORDER - 1
DOCKET NO. CWA-10-2009-0001

U.S. Environmental Protection Agency
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101
(206) 553-1037

1 **II. PRELIMINARY STATEMENT**

2 2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO
3 commences this proceeding which will conclude when the Final Order contained in Part VI of
4 this CAFO becomes effective.

5 2.2. Part III of this CAFO contains a concise statement of the statutory and factual
6 basis for the alleged violations of the CWA. Part IV of this CAFO contains the specific
7 provisions of the CWA that Respondent is alleged to have violated.

8 **III. ALLEGATIONS**

9 3.1. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the "discharge of any
10 pollutant by any person" except as authorized by a National Pollutant Discharge Elimination
11 System ("NPDES") permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342. CWA
12 Section 502(12), 33 U.S.C. § 1362(12), defines "discharge of a pollutant" to include "any
13 addition of any pollutant to navigable waters from any point source." "Navigable waters" are
14 defined as "waters of the United States." 33 U.S.C. § 1362(7).

15 3.2. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), specifies that an NPDES permit
16 is required for any storm water discharge "associated with industrial activity." Section 402(p)
17 also authorizes EPA to issue regulations that designate additional storm water discharge sources
18 and establish a comprehensive program to regulate these additional sources.

19 3.3. 40 C.F.R. § 122.26(b)(14)(x) defines "[s]torm water associated with industrial
20 activity" to include discharges associated with "[c]onstruction activity, including clearing,
21 grading, and excavation" resulting in the disturbance of at least five acres of total land area. 40
22 C.F.R. § 122.26(b)(15) defines "storm water discharge associated with small construction
23 activity" to include the "discharge of storm water from ... [c]onstruction activities including
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1 clearing, grading, and excavating that result in land disturbance of equal or greater than one acre
2 and less than five acres.”

3 3.4. In July of 2003, EPA re-issued the NPDES General Permit for Storm Water
4 Discharges from Construction Activities (“CGP”) pursuant to Section 402 of the CWA, 33
5 U.S.C. § 1342. The CGP became effective on July 1, 2003 and authorizes certain discharges of
6 storm water associated with construction activities. The CGP’s coverage extends to all facilities
7 in the State of Idaho and requires permittees to comply with the conditions and requirements set
8 forth in the CGP.

9 3.5. To obtain coverage from storm water discharges from a construction site under
10 the CGP, an operator must first “prepare and submit a complete and accurate Notice of Intent.”
11 CGP at Part 2. An “operator” is defined as both (1) “[t]he party [who] has operational control
12 over construction plans and specifications ...,” and (2) “[t]he party [who] has day-to-day
13 operational control of those activities at a project which are necessary to ensure compliance with
14 a [storm water pollution prevention plan] for the site or other permit conditions.” CGP at
15 Appendix A.

16 3.6. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes EPA to require the
17 owner and operator of any point source to provide such information as may be reasonably
18 required in carrying out Section 402 of the CWA, 33 U.S.C. § 1342. Pursuant to Section 308(a),
19 EPA has promulgated NPDES permit application requirements. Among these application
20 requirements are:

- 21 ▪ The requirement set forth in 40 C.F.R. § 122.21(a)(1) that “[a]ny person
22 who discharges or proposes to discharge pollutants ... must submit a
23 complete application to [EPA],”
- 24 ▪ The requirement set forth in 40 C.F.R. § 122.26(c)(1) that “[d]ischarges of
25 storm water associated with industrial activity and with small construction

1 activity are required to apply for an individual permit or seek coverage
2 under a promulgated storm water general permit,” and

- 3 ▪ The requirement set forth in 40 C.F.R. § 122.21(c)(1) that regulated
4 discharges of construction storm water submit an NPDES permit
5 application or a Notice of Intent to apply for coverage under an NPDES
6 general permit at least ninety (90) days before the date on which
construction is to commence unless an applicable NPDES general permit
specifies a different submittal date.

7 3.7. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes EPA to assess
8 administrative penalties against any person who has violated Section 301 or 308 of the CWA, 33
9 U.S.C. § 1311 or 1318.

10 3.8. Respondent is a “person” as defined in Section 502(5) of the CWA, 33 U.S.C.
11 § 1362(5).

12 3.9. Respondent is the owner of the Silverado Pines Subdivision construction site
13 (“Site”) which is located on the corner of Middle Fork Road and Dry Creek Road in Crouch,
14 Idaho. As the owner of the Site, Respondent has operational control over the construction plans
15 and specifications at the Site. In addition, Respondent has day-to-day operational control over
16 those activities at the Site necessary to ensure compliance with the CGP. As such, Respondent is
17 an operator under the CGP.

18 3.10. The receiving water for any storm water discharges from the Site is Dry Creek
19 which flows into the Middle Fork of the Payette River. The Middle Fork of the Payette River
20 flows into the Payette River which flows into the Snake River. The Snake River is susceptible to
21 use in interstate and foreign commerce, and thus is a “navigable water” as defined in Section
22 502(7) of the CWA, 33 U.S.C. § 1362(7), and is a “water of the United States” as defined in 40
23 C.F.R. § 122.2. Therefore, Dry Creek, the Middle Fork of the Payette River, and the Payette
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1 River are "navigable waters" as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and
2 are "waters of the United States" as defined in 40 C.F.R. § 122.2.

3 **IV. VIOLATIONS**

4 **A. Failure to Apply for Permit Coverage**

5 4.1. As an operator of the Site, Respondent was required to either submit a Notice of
6 Intent to obtain coverage under the CGP or apply for an individual permit before beginning
7 construction activities at the Site.

8 4.2. Prior to the start of construction activities, Respondent failed to apply for an
9 individual NPDES permit or properly seek coverage under the CGP. At the time of the EPA site
10 inspection, on May 5, 2006, Respondent had not submitted a Notice of Intent or application for
11 NPDES permit coverage.

12 4.3. On or about May 6, 2006, Respondent submitted a Notice of Intent to obtain
13 coverage under the CGP.

14 4.4. Between October 2005 and May 2006, Respondent was engaged in construction
15 activities resulting in the discharge of storm water associated with construction activities without
16 having applied for NPDES permit coverage.

17 4.5. Respondent's failure to timely apply for an NPDES permit placed Respondent in
18 violation of the requirements imposed pursuant to Section 308 of the CWA, 33 U.S.C. § 1318.
19 Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. Part 19, Respondent
20 is liable for civil penalties not to exceed \$11,000 per day for each day during which the violation
21 continues up to a maximum amount of \$157,500.

22 **B. Discharges of Construction Storm Water Without a Permit**

23 4.6. On or about April 10, 2006, construction storm water containing, among other
24 things, sediment and dirt, was discharged from the Site to Dry Creek.

1 4.7. Upon information and belief, between October 2005 and May 2006, EPA further
2 alleges that there were an additional eleven (11) days of discharge.

3 4.8. By causing such storm water to enter waters of the United States, Respondent
4 engaged in the "discharge of pollutants" from a point source within the meaning of Sections
5 301(a) and 502(12) of the CWA, 33 U.S.C. § 1311(a) and 1362(12).

6 4.9. The discharge of storm water was not authorized by a permit issued pursuant to
7 Section 402 of the CWA, 33 U.S.C. § 1342. Therefore, Respondent violated Section 301(a) of
8 the CWA, 33 U.S.C. § 1311(a).

9 4.10. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. Part
10 19, Respondent is liable for civil penalties not to exceed \$11,000 per day for each day during
11 which the violation continues, up to a maximum amount of \$157,500.

12 **V. CONSENT AGREEMENT**

13 5.1. Respondent stipulates that EPA has jurisdiction over the subject matter alleged
14 herein.

15 5.2. Respondent neither admits nor denies the specific factual allegations contained in
16 Parts III and IV of this CAFO.

17 5.3. As required under Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA
18 has taken into account the nature, circumstances, extent and gravity of the alleged violations as
19 well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant
20 factors. After considering all of these factors, EPA has determined and Respondent agrees that
21 an appropriate penalty to settle this action is in the amount of Forty-Seven Thousand Seven
22 Hundred Dollars (\$47,700).

23 5.4. Respondent consents to issuance of the Final Order set forth in Part VI, and
24 agrees to pay the total civil penalty set forth in Paragraph 5.3, above, plus all applicable interest
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1 in such penalty, in accordance with the payment schedule described in the subparagraphs 5.4.1
2 and 5.4.5, below.

3 5.4.1 Within thirty (30) days of the effective date of the Final Order,
4 Respondent shall pay a first installment of \$10,000.00.

5 5.4.2. Within one (1) year of the effective date of the Final Order, Respondent
6 shall pay a second installment of \$11,885.00 (\$10,000.00 plus \$1,885.00 interest).

7 5.4.3. Within two (2) years of the effective date of the Final Order, Respondent
8 shall pay a third installment of \$11,385.00 (\$10,000.00 plus \$1,385.00 interest).

9 5.4.4. Within three (3) years of the effective date of the Final Order, Respondent
10 shall pay a fourth installment of \$10,885.00 (\$10,000.00 plus \$885.00 interest).

11 5.4.5. Within four (4) years of the effective date of the Final Order, Respondent
12 shall pay a fifth installment of \$8,085.00 (\$7,700.00 plus \$385.00 interest).

13 5.5. Payment under this CAFO shall be made by cashier's check or certified check
14 payable to the order of "Treasurer, United States of America" and delivered to the following
15 address:

16 U.S. Environmental Protection Agency
17 Region 10
18 Fines and Penalties
19 Cincinnati Finance Center
20 PO Box 979077
21 St. Louis, MO 63197-9000

22 Respondent shall note on the check the title and docket number of this action.

23 5.6. Respondent shall serve photocopies of the check described in Paragraph 5.5,
24 above, on the Regional Hearing Clerk and the EPA Region 10 Office of Compliance and
25 Enforcement at the following addresses:

1 Regional Hearing Clerk
2 U.S. Environmental Protection Agency
3 Region 10
4 1200 Sixth Avenue, Suite 900, ORC-158
5 Seattle, WA 98101

6 U.S. Environmental Protection Agency
7 Region 10
8 Idaho Operations Office
9 Attn: Maria Lopez
10 1435 N. Orchard Street
11 Boise, ID 83706

12 5.7. If Respondent fails to pay the penalty assessed by this CAFO in full by the due
13 date set forth in Paragraph 5.4, above, the entire unpaid balance of penalty and accrued interest
14 shall become immediately due and owing. If Respondent fails to pay the penalty assessed,
15 Respondent may be subject to a civil action to collect the assessed penalty under the CWA,
16 together with interest, fees, costs, and additional penalties described below. In any collection
17 action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

18 5.8. If Respondent fails to pay any portion of the penalty assessed by this CAFO in
19 full by the due date set forth in Paragraph 4.4, above, Respondent shall be responsible for
20 payment of the amounts described below:

21 5.8.1. Interest. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C.
22 § 1319(g)(9), any unpaid portion of the assessed penalty shall bear interest at a rate
23 established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the
24 effective date of the Final Order set forth in Part VI, below, provided, however, that no
25 interest shall be payable on any portion of the assessed penalty that is paid within thirty
(30) days of the effective date of the Final Order.

5.8.2. Attorneys Fees, Collective 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

1 timely basis the amount of the penalty set forth in Paragraph 5.3, above, Respondent shall
2 pay (in addition to any assessed penalty and interest) attorneys fees and costs for
3 collection proceedings and a quarterly nonpayment penalty for each quarter during which
4 such failure to pay persists. Such non payment shall be in an amount equal to twenty
5 percent (20%) of the aggregate amount of Respondent's penalties and nonpayment
6 penalties which are unpaid as of the beginning of such quarter.

7 5.9. The penalty described in 5.3, above, including any additional costs incurred under
8 Paragraph 5.8, above, represents an administrative civil penalty assessed by EPA and shall not be
9 deductible for purposes of federal taxes.

10 5.10. The undersigned representative of Respondent certifies that he or she is fully
11 authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this
12 document.

13 5.11. Except as described in subparagraph 5.8.2, above, each party shall bear its own
14 costs in bringing or defending this action.

15 5.12. Respondent expressly waives any rights to contest the allegations and waives any
16 right to appeal the Final Order set forth in Part V, below

17 5.13. The provisions of this CAFO shall bind Respondent and its agents, servants,
18 employees, successors, and assigns.

19 5.14. The above provisions are **STIPULATED AND AGREED** upon by Respondent
20 and EPA

21 DATED:

CRAIG FRAME:

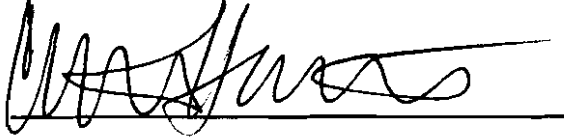
22
23 11-7-08

24 
25 _____
Respondent

1 DATED:

2
3 10/10/08

U.S. ENVIRONMENTAL PROTECTION AGENCY:



4 COURTNEY J. HAMAMOTO
5 Assistant Regional Counsel
6 For Complainant

7 **VI. FINAL ORDER**

8 6.1. The terms of the foregoing Parts I-V are hereby ratified and incorporated by
9 reference into this Final Order. Respondent is hereby ordered to comply with the foregoing
10 terms of the settlement.

11 6.2. This CAFO shall constitute a settlement by EPA of all claims for civil penalties
12 pursuant to the CWA for the violations alleged in Part III and IV, above. In accordance with 40
13 C.F.R. § 22.31(a), nothing in this CAFO shall affect the right of EPA or the United States to
14 pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of
15 law. This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to
16 comply with all applicable provisions of the CWA, applicable CWA regulations, and/or any
17 permits issued thereunder.


18 6.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and
19 40 C.F.R. § 22.38(b), the Idaho Department of Environmental Quality has been given the
20 opportunity to consult with EPA regarding the assessment of the administrative civil penalty
21 against Respondent.

22 6.4. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), EPA
23 has published public notice of its intent to assess an administrative penalty against Respondent
24 and to invite public comment in accordance with 40 C.F.R. § 22.45. More than forty (40) days
25

1 have elapsed since the issuance of this public notice, and EPA has received no petition to set
2 aside the Consent Agreement contained herein.

3 6.5. This Final Order shall become effective upon filing.

4
5 SO ORDERED this 29th day of December, 2008.

6
7 
8 RICHARD G. McALLISTER
9 Regional Judicial Officer
10 U.S. Environmental Protection Agency
11 Region 10
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CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **Consent Agreement and Final Order in In the Matter of: Craig Frame, DOCKET NO.: CWA-10-2009-0001** was filed with the Regional Hearing Clerk on December 30, 2008.

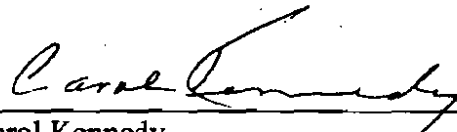
On December 30, 2008 the undersigned certifies that a true and correct copy of the document was delivered to:

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 December 30, 2008, to:

Craig Frame
2300 East Deer Pont Court
Eagle, Idaho 83616

DATED this 30th day of December 2008.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10