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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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|----------------------|---|------------------------------|
| In the Matter of: |) | DOCKET NO. CWA-10-2006-0081 |
| |) | |
| LANDSING DEVELOPMENT |) | CONSENT AGREEMENT AND |
| GROUP, LLC |) | 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 enter into the Final Order contained in Part IV of this CAFO to the Regional Administrator of 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 Landsing Development Group, LLC (“Respondent”) hereby agrees to issuance of, the Final Order contained in Part IV of this CAFO.

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

3 3.5. Pursuant to Section 309(g), 33 U.S.C. § 1319(g), EPA has determined and
4 Respondent agrees that an appropriate penalty to settle this action is in the amount of TEN
5 THOUSAND DOLLARS (\$10,000.00). This penalty amount has been agreed upon in
6 consideration of the statutory penalty factors identified in Section 309(g)(3) of the CWA, 33
7 U.S.C. § 1319(g)(3).

8 3.6. Respondent consents to the issuance of the Final Order recited herein and to
9 payment of the civil penalty cited in the foregoing paragraph within thirty (30) days of the
10 effective date of the Final Order.

11 3.7. Payments under this CAFO shall be made by cashier's check or certified check,
12 payable to the order of "Treasurer, United States of America" and shall be delivered to the
13 following address:

14 Mellon Bank
15 EPA Region 10
16 P.O. Box 36903M
 Pittsburgh, Pennsylvania 15251

17 Respondent shall note on the check the title and docket number of this case.

18 3.8. Respondent shall serve photocopies of the check described above on the Regional
19 Hearing Clerk and EPA at the following addresses:

20 Regional Hearing Clerk
21 U.S. Environmental Protection Agency
22 Region 10
23 1200 Sixth Avenue, Mail Stop ORC-158
24 Seattle, Washington 98101

Office of Compliance and Enforcement
Attn: Robert Grandinetti
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue, Mail Stop OCE-133
Seattle, Washington 98101

3.9. If Respondent fails to pay the penalty assessed by this CAFO in full by the due date set forth in Paragraph 3.6, above, the entire unpaid balance of the penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject 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.

3.10. If Respondent 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, Respondent shall be responsible for payment of the amounts described below:

3.10.1. 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 set forth in Part IV, below, provided, however, that no 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.

3.10.2. 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 amount of the penalty set forth in Paragraph 3.5, above, 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

1 failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty
2 percent (20%) of the aggregate amount of Respondent's penalties and nonpayment
3 penalties which are unpaid as of the beginning of such quarter.

4 3.11. The penalty described in Paragraph 3.5, above, including any additional costs
5 incurred under Paragraph 3.10, above, represents an administrative civil penalty assessed by
6 EPA and shall not be deductible for purposes of federal taxes.

7 3.12. The undersigned representative of Respondent certifies that he or she is fully
8 authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this
9 document.

10 3.13. Except as described in Subparagraph 3.10.2, above, each party shall bear its own
11 costs in bringing or defending this action.

12 3.14. The provisions of this CAFO shall bind Respondent and its officers, directors,
13 agents, servants, employees, successors, and assigns.

14 3.15. The above provisions are STIPULATED AND AGREED upon by Respondent
15 and EPA.

16
17 DATED:

LANDSING DEVELOPMENT GROUP, LLC:

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19 4/14/06

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BRUCE HESSING
For Respondent

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DATED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

4/12/06



MARK RYAN
Assistant Regional Counsel
For Complainant

1 **IV. FINAL ORDER**

2 4.1. The terms of the foregoing Consent Agreement are hereby ratified and
3 incorporated by reference into this Final Order. Respondent is hereby ordered to comply with
4 the foregoing terms of the settlement.

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

12 4.3. This Final Order shall become effective upon filing.

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14
15 SO ORDERED this 19th day of April, 2006.

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18 
19 L. MICHAEL BOGERT
20 Regional Administrator
21 U.S. Environmental Protection Agency
22 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: Landsing Development Group, LLC, DOCKET NO.: CWA-10-2005-0081** was filed with the Regional Hearing Clerk on April 19, 2006.

On April 19, 2006 the undersigned certifies that a true and correct copy of the document was delivered to:

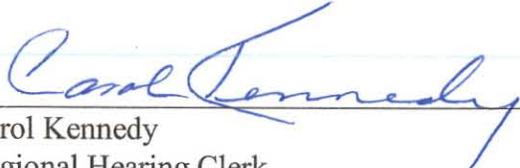
Courtney J. Hamamoto, Esquire
US Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Seattle, WA 98101

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 19, 2006, to:

Bruce Hessing
Landsing Development Group, LLC
4315 S. Choctaw Way
Boise, ID 83709

Judge Carl C. Charneski
U.S. EPA
Office of Administrative Law Judges
Mail Code 1900L
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

DATED this 19th day of April 2006.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10