

FILED

September 14, 2023

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U.S. EPA REGION 10  
HEARING CLERK

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

D.R. Johnson Lumber Co.

Riddle, Oregon

Respondent.

DOCKET NO. CWA-10-2023-0115

**CONSENT AGREEMENT**

Proceedings Under Section 309(g) of the Clean  
Water Act, 33 U.S.C. § 1319(g)

**I. STATUTORY AUTHORITY**

- 1.1. Clean Water Act (CWA) Section 309(g), 33 U.S.C. § 1319(g) authorizes the U.S. Environmental Protection Agency (EPA) Administrator to enter into this Consent Agreement.
- 1.2. CWA Section 309(g)(1)(A), 33 U.S.C. § 1319(g)(1)(A), authorizes EPA to assess a civil penalty against any person that has violated CWA Section 301, 33 U.S.C. § 1311, and/or any 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 EPA to administratively assess 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 administratively assessed Class II civil penalties may not exceed \$25,847 per day for each day during which the violation continues, up to a maximum penalty of \$323,081. *See also* 88 Fed. Reg. 986 (January 6, 2023) (2023 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 D.R. Johnson Lumber Co. (Respondent) agrees to issuance of, the Final Order attached to this Consent Agreement.

## **II. PRELIMINARY STATEMENT**

- 2.1. Under 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. CWA Section 101(a), 33 U.S.C. § 1251(a), establishes that the Act's objective is "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters."
- 3.2. CWA Section 101(a)(2), 33 U.S.C. § 1251(a)(1) establishes a "national goal that the discharge of pollutants into the navigable waters be eliminated by 1985."
- 3.3. 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, among others, as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

- 3.4. CWA Section 502(12)(a), 33 U.S.C. § 1362(12)(A) defines “discharge of a pollutant” as “any addition of a pollutant to navigable waters from any point source.”
- 3.5. CWA Section 502(6), 33 U.S.C. § 1362(6) defines a “pollutant” as “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.”
- 3.6. CWA Section 502(5), 33 U.S.C. § 1362(5) defines a “person” as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.”
- 3.7. CWA Section 502(14), 33 U.S.C. § 1362(14) defines a “point source” as “any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants may be discharged.”
- 3.8. CWA Section 502(7), 33 U.S.C. § 1362(7) defines “navigable waters” as “waters of the United States.”
- 3.9. CWA Section 402(p), 33 U.S.C. § 1342(p) requires an NPDES permit for any stormwater discharge associated with industrial activity and authorizes EPA to regulate industrial stormwater sources and to establish a comprehensive program such stormwater sources.
- 3.10. “Storm water discharge associated with industrial activity” means “the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant.”  
40 C.F.R. § 122.26(b)(14).

- 3.11. Facilities classified within Standard Industrial Classification Major Group 24, including industry groups 241, 242, 243, 244, 245 and 249, which includes “establishments engaged in cutting timber and pulpwood; merchant sawmills, lath mills, shingle mills, cooperage stock mills, planing mills, and plywood mills and veneer mills engaged in producing lumber and wood basic materials; and establishments engaged in manufacturing finished articles made entirely or mainly of wood or related materials,” are considered to be engaging in “industrial activity” for purposes of 40 C.F.R. § 122.26(b)(14).
- 3.12. CWA Section 402(b), 33 U.S.C. § 1342(b) provides for the governors of each state to administer state permit programs consistent with the CWA upon EPA approval. Oregon’s Department of Environmental Quality may perform any necessary acts to implement the Clean Water Act within the state’s borders. O.R.S. § 468B.035.
- 3.13. On August 1, 2017, the Oregon Department of Environmental Quality issued the Oregon Industrial Stormwater Discharge Permit (Permit 1200-Z); the permit was set to expire on July 31, 2022. The Environmental Quality Commission adopted the renewed 1200-Z Industrial Stormwater Discharge Permit on March 25, 2021, and it became effective on July 1, 2021. On August 17, 2022, the Oregon Department of Environmental Quality modified the 1200-Z to correct minor errors. The current permit expires on June 30, 2026.
- 3.14. Coverage under Permit 1200-Z is available for operators of stormwater discharges associated with industrial activity in Oregon.
- 3.15. CWA Section 309(g)(1), 33 U.S.C. § 1319(g)(1), authorizes EPA to assess administrative penalties against any person who violates CWA Section 301, 33 U.S.C. § 1311 or any condition or limitation in a permit issued under section 402 of the CWA, 33 U.S.C. § 1342.

### General Allegations

- 3.16. Respondent is an Oregon Domestic Business Corporation and a “person” under CWA Section 502(5), 33 U.S.C. § 1362(5).
- 3.17. Respondent owns and/or operates an 86.8-acre log yard, lumber producing facility, and laminated timber product facility (collectively, Facility) located at 1991 Pruner Road in Riddle, Oregon. The Facility’s primary operations include lumber sanding, re-sawing, and planing, which are categorized under Standardized Industrial Classification 2421, General Sawmills and Planing Mills.
- 3.18. On January 26, 2021, Complainant’s inspector conducted an announced inspection at the Facility to assess its compliance with the CWA and Permit 1200-Z. (2021 Inspection).
- 3.19. During the 2021 Inspection, the inspector identified a drainage ditch that appeared to discharge stormwater directly off-site through a culvert to a drainage ditch in the northern side of Boyer Road (4<sup>th</sup> Outfall). This drainage ditch appeared to receive stormwater runoff from the Facility’s sawmill and maintenance shops areas.
- 3.20. The culvert is a point source as defined at CWA Section 501(14), 33 U.S.C. § 1362(14).
- 3.21. Stormwater leaving the northern portion of the Facility flows into Judd Creek approximately 0.25 miles to the north. Judd Creek flows approximately 0.8 miles to the east before reaching the South Umpqua River.
- 3.22. Judd Creek is a tributary to the South Umpqua River, which is a traditionally navigable water.
- 3.23. Judd Creek, the South Umpqua River, and the Pacific Ocean are “navigable waters” under CWA Section 502(7), 33 U.S.C. § 1362(7).
- 3.24. The South Umpqua River is impaired for fish and aquatic life, water contact recreation, boating and aesthetic quality uses; it does not attain water quality standards for year-round temperature, *E. coli*, aquatic weeds, biocriteria, excess algal growth, chlorine, flow

modification and chlorophyll-a. The Umpqua Basin is subject to various total maximum daily loads pursuant to CWA Section 303(d)(2); 33 U.S.C. § 1313(d)(2).

- 3.25. Respondent discharged stormwater associated with industrial activity at the Facility from a point source into waters of the United States at the Facility, within the meaning of CWA Section 402(g) and 502(7), and as defined at 40 C.F.R. § 122.26(b)(14).
- 3.26. The CWA prohibits the discharge of a pollutant from a point source to a water of the United States except as pursuant to the terms of a duly authorized permit. 33 U.S.C. § 1311.
- 3.27. The Facility is permitted under Permit 1200-Z and has been at all times relevant to this action. The permit application number is 949565, the file number is 100167, and the EPA number is ORG703520.
- 3.28. Permit 1200-Z Schedule A.8 requires a person knowledgeable in stormwater management and familiar with the facility to prepare a Stormwater Pollution Control Plan (SWPCP). The permit registrant must implement the SWPCP and any revisions to the plan. Failure to implement any narrative technology-based effluent limits, other control measures or operational practices described in the SWPCP is a violation of Permit 1200-Z.
- 3.29. Respondent was subject to a SWPCP prepared by Robert Goodfellow, R.G., of Goodfellow Environmental and Geological Services, LLC, dated December 21, 2017. It was signed by Mr. Randy Crockett, CFO, as authorized facility representative.
- 3.30. Respondent is subject to a SWPCP prepared by Frederick W. Scalise, Ph.D., CHHM, of OMNICON Environmental Management, certified on December 22, 2021 by Jodi Westbrook, President, as authorized facility representative.
- 3.31. Permit 1200-Z Schedule A.8.d requires Respondent to implement the SWPCP and any revisions to the plan. Failure to implement any narrative technology-based effluent limits,

other control measures, or operational practices described in the SWPCP is a violation of Permit 1200-Z.

- 3.32. EPA may enforce violations of Permit 1200-Z under CWA Section 309(g), 33 U.S.C. § 1319(g).

### **Violations**

- 3.33. As described below, Respondent violated the conditions and/or limitations of Permit 1200-Z.

#### Count 1: Housekeeping Violation

##### Violation 1: Schedule A.1.g - Housekeeping

- 3.34. Permit 1200-Z Schedule A.1.g requires the permit registrant to routinely clean all exposed areas that may contribute pollutants to stormwater with measures such as sweeping at regular intervals, litter pick-up, keeping materials orderly and labeled, promptly clean spills and leaks, proper maintenance of vehicles and stowing materials in appropriate containers.
- 3.35. At the 2021 Inspection, the EPA inspector noted the presence “of a fair amount of litter and discarded items” along the roadside ditch that contributes stormwater to Outfall 003.
- 3.36. At the 2021 Inspection, the EPA inspector noted a similar issue in the drainage ditch that contributes stormwater to Outfall 001.
- 3.37. Given the observations described in Sections 3.36 and 3.37, Respondent violated Permit 1200-Z Schedule A.1.g.

#### Count 2: 4<sup>th</sup> Outfall Violations

- 3.38. The Facility’s 2017 SWPCP lists three outfalls but does not list the 4<sup>th</sup> Outfall.
- 3.39. The Facility’s 2021 SWPCP includes the 4<sup>th</sup> Outfall, naming it Discharge Point 004.

- 3.40. Respondent discharged stormwater associated with industrial activity from the Facility through the 4<sup>th</sup> Outfall during the period between September 2017 and December 22, 2021.
- 3.41. Between September 2017 and December 22, 2021, Respondent's stormwater discharges at the 4<sup>th</sup> Outfall were not authorized by Permit 1200-Z or any permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

*Violation 2: Schedule A.7 – Failure to include components; Site description with map indicating all discharge points*

- 3.42. Permit 1200-Z Schedule A.7.b.i.(4) requires the SWPCP to contain site maps including all discharge points assigned a unique three-digit identifying number starting with 001 for electronic reporting.
- 3.43. Permit 1200-Z Schedule A.7.b.i.(5) requires that the SWPCP must contain site maps including an outline of the drainage area for each discharge point.
- 3.44. Permit 1200-Z Schedule A.7.b.i.(6) requires that the SWPCP must contain site maps including paved areas and buildings within each drainage area.
- 3.45. Respondent's 2017 SWPCP site map does not include the 4<sup>th</sup> Outfall, does not designate it as discharge point 004, demarcate its drainage area outline, or indicate paved areas and buildings within its drainage area.
- 3.46. From at least September 2017 to December 22, 2021, Respondent was in violation of Permit 1200-Z Schedule A.7.

Violation 3: *Schedule B.1 – Failure to follow monitoring requirements for 4<sup>th</sup> Outfall*

- 3.47. Permit 1200-Z Schedule B.1.a requires permit registrants, among other things, to monitor for applicable statewide and industrial sector benchmark pollutants.
- 3.48. Respondent's 2017 SWPCP did not require it to monitor the 4<sup>th</sup> Outfall for applicable statewide and industrial sector benchmark pollutants.
- 3.49. Respondent did not, in fact, monitor the 4<sup>th</sup> outfall for applicable statewide and industrial sector benchmark pollutants.
- 3.50. Between September 2017 and December 22, 2021, Respondent was in violation of Permit 1200-Z Schedule B.1.

Violation 4: *Schedule B.2 – Failure to follow sampling procedures for 4<sup>th</sup> Outfall*

- 3.51. Permit 1200-Z Schedule B.2.a requires permit registrants, among other things, to collect a single grab sample of stormwater discharge, or a series of composite samples, for each discharge point monitored.
- 3.52. Permit 1200-Z Schedule B.2.b requires, among other things, that permit samples be representative of the discharge.
- 3.53. Permit 1200-Z Schedule B.2.c requires that each discharge point must be monitored, except for in certain inapplicable circumstances.
- 3.54. Permit 1200-Z Schedule B.2.d requires permit registrants, among other things, to monitor the discharge during the first 12 hours of a discharge event, or as soon as is practicable if the permit registrant documents why sampling during the first 12 hours was not practicable.
- 3.55. Permit 1200-Z Schedule B.2.f requires permit registrants to monitor their stormwater discharge according to the frequency described in the permit unless the Oregon Department of Environmental Quality approves a variance in writing.

- 3.56. Between September 2017 and December 21, 2021, Respondent failed to collect representative grab samples at the 4<sup>th</sup> Outfall within 12 hours of a discharge event or analyze grab samples of stormwater point source discharges from the 4th Outfall for total copper, total lead, total zinc, total suspended solids, oil & grease, and pH as required by Permit 1200-Z. Respondent did not obtain a written variance under Schedule B.2.f from the Oregon Department of Environmental Quality.
- 3.57. Between September 2017 and December 22, 2021, Respondent was in violation of Permit 1200-Z Schedule B.2.

*Violation 5: Schedule B.7 – Failure to inspect discharge point for evidence of pollutants discharging to receiving waters*

- 3.58. Permit 1200-Z Schedule B.7.a.vi requires permit registrants to inspect areas where industrial materials or activities are exposed to stormwater and areas where stormwater control measures, structures, catch basins, and treatment facilities are located. Inspections must include all discharge points for, among other things, evidence of pollutants discharging to receiving waters at all discharge points.
- 3.59. Between September 2017 and December 21, 2021, Respondent failed to inspect the 4<sup>th</sup> Outfall for evidence of pollutants discharging to receiving waters as required by Permit 1200-Z.
- 3.60. Between September 2017 and December 22, 2021, Respondent was in violation of Permit 1200-Z Schedule B.7.

#### 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), EPA has considered “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 \$49,948.00.
- 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 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://www.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, MO 63197-9000

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

- 4.6. 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, WA 98101  
R10\_RHC@epa.gov

Steven Potokar  
U.S. Environmental Protection Agency  
Region 10, Mail Stop 20-C04  
1200 Sixth Avenue, Suite 155  
Seattle, WA 98101  
Potokar.steven@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.

4.7.1. **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 V, 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 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, in addition to any assessed penalty and interest, pay 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.

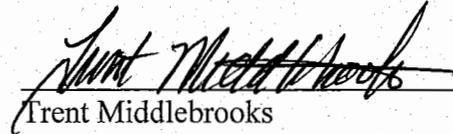
- 4.8. The penalty described in Paragraph 4.3, including any additional expenses incurred under Paragraph 4.7, above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.
- 4.9. The undersigned representative of Respondent certifies that 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. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and 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. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.14. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA  
Region 10.

DATED:

8/1/23

FOR RESPONDENT:

  
\_\_\_\_\_  
Trent Middlebrooks

Chief Financial Officer  
D.R. Johnson Lumber Co.

FOR COMPLAINANT:

\_\_\_\_\_  
EDWARD J. KOWALSKI

Director

Enforcement and Compliance Assurance Division  
EPA Region 10

BEFORE THE  
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DOCKET NO. CWA-10-2023-0115

**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.

IT IS SO ORDERED.

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RICHARD MEDNICK  
Regional Judicial Officer  
EPA Region 10