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BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
AGENCY CLERK  
REGION 10

In the Matter of:

JOSEPH O'MEARA, JOSEPH O'MEARA  
LIVING TRUST, and KILLARNEY WEST  
GOLF COURSE, INC,  
Hillsboro, Oregon,

Respondents.

**DOCKET NO. CWA-10-2017-0042**

**CONSENT AGREEMENT**

**I. STATUTORY AUTHORITY**

1.1 This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Sections 308, 309(a)(3) and 309(g)(2)(B) of the Clean Water Act (CWA). CWA §§ 308, 309(a)(3), 309(g)(2)(B), 33 U.S.C. §§ 1318, 1319(a)(3), 1319(g)(2)(B).

1.2 Pursuant to Sections 308, 309(a)(3) and 309(g)(2)(B) of the CWA, 33 U.S.C. §§ 1318, 1319(a)(3), and 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 issues, and Joseph O'Meara, Joseph O'Meara Living Trust, and Killarney West Golf Course, Inc. (Respondents) agree 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), 22.18(b)(2) and 22.45(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

**In the Matter of: Joseph O'Meara, Joseph O'Meara  
Living Trust, and Killarney West Golf Course, Inc.  
Docket Number: CWA-10-2017-0042  
Consent Agreement  
Page 1 of 9**

**U.S. Environmental Protection Agency  
1200 Sixth Avenue, Suite 900, ORC-113  
Seattle, Washington 98101  
(206) 553-1037**

2.2 The Director of the Office of Compliance and Enforcement, EPA Region 10 (Complainant) has been delegated the authority pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to sign Consent Agreements between EPA and the party against whom a Class II penalty is proposed to be assessed.

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 Respondents are alleged to have violated.

### III. ALLEGATIONS

#### Statutory and Regulatory Background

3.1 The CWA prohibits the “discharge of any pollutant by any person” into navigable waters of the United States except, *inter alia*, as authorized by a permit issued pursuant to the CWA. CWA §§ 301(a), 402, 404, 33 U.S.C. §§ 1311(a), 1342, 1344.

3.1.1 The “discharge of a pollutant” includes “any addition of any pollutant to navigable waters from any point source” and “navigable waters” include “waters of the United States.” CWA § 502(7), (12); 33 U.S.C. § 1362(7), (12).

3.1.2 “Waters of the United States” include waters that are currently used, were used in the past, or may be susceptible to use, in interstate or foreign commerce; all interstate waters; all other waters of which the use, degradation, or destruction could affect interstate or foreign commerce; impoundments of, wetlands adjacent to, and tributaries to those waters. 40 C.F.R. §§ 122.2, 230.3(s).

3.1.3 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 § 502(14), 33 U.S.C. § 1362(14).

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

3.1.5 “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, heat, 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.

3.1.6 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).

### **Factual Background**

3.2 Respondent Joseph E. O’Meara is president and owner of a domestic business corporation organized under the laws of the State of Oregon, and is a “person” within the meaning of the CWA. CWA § 502(5), 33 U.S.C. § 1362(5).

3.3 Respondent Joseph O’Meara Living Trust is a revocable trust established pursuant to Oregon Uniform Trust Code. Joseph O’Meara is the trustee of the Joseph O’Meara Living Trust, and is a “person” within the meaning of the CWA. CWA § 502(5), 33 U.S.C. § 1362(5).

3.4 Respondent Killarney West Golf Course, Inc. (Killarney West) is registered under the laws of the State of Oregon as a domestic business corporation, and is a “person” within the meaning of the CWA. CWA § 502(5), 33 U.S.C. § 1362(5).

3.5 Killarney West Golf Course, Inc. is a 9-hole public golf. At all times relevant to this action, Respondent Joseph O’Meara was the owner and operator of the Killarney West Golf Course (Site) at 1275 NW 344<sup>th</sup> Avenue in Hillsboro, Oregon.

3.6 Dairy Creek and Council Creeks flow through the Site property. Council Creek flows from south to north along the west side of the Killarney West golf course before connecting with Dairy Creek which flows from west to east along the north side of Killarney West Golf Course.

3.6.1 Council Creek is a tributary of Dairy Creek. Dairy Creek is a tributary of the Tualatin River. Both Council and Dairy Creeks have continuous flow discharging into the Tualatin River year round.

3.6.2 The Tualatin River is a major tributary of the Willamette River, which flows into the Columbia River which flows into the Pacific Ocean.

3.6.3 Oregon Department of Environmental Quality identified Council Creek as having impaired beneficial uses and developed TMDL criteria for oxygen and phosphorus in Council Creek. Dairy Creek is identified as water quality impaired for temperature and phosphorus. Dairy Creek is also considered as critical habitat for Upper Willamette steelhead trout (*Oncorhynchus mykiss*), a federally listed threatened species under the Endangered Species Act.

3.7 Council Creek, Dairy Creek, and the Tualatin River are waters of the United States, and are subject to the jurisdiction of the CWA. CWA § 502(7), 33 U.S.C. § 1362(7); 33 C.F.R. § 328.3(a); 40 C.F.R. § 230.3(s).

3.8 Sometime before June 2015, Respondents' employees used heavy equipment to place "fill material," in the form of dirt and rock fill, as well as mulch, tree limbs and other debris, below the ordinary high water mark of Dairy Creek along a 3,960 foot section of bank and below the ordinary high water mark of Council Creek along a 739 foot section of bank.

3.8.1 Respondents discharged fill material, including dirt, rocks, sand, mulch, tree limbs, and other biological materials, below the ordinary high water mark of Council and Dairy Creeks, resulting in a discharge of "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 232.2.

3.8.2 Each piece of heavy equipment used by Respondents to discharge the "fill material" was a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

3.9 Respondents did not have a permit issued pursuant to the CWA to discharge any fill material within the bed and bank of the Stream during the years 2013 through 2015, or any other relevant year.

3.10 **Violations:** Respondents violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), when Respondents discharged fill material from a point source into the waters of the United States without a permit issued pursuant to the CWA.

3.11 Respondents remain in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), each day that the fill material remains within waters of the United States without a permit issued pursuant to the CWA.

3.12 Respondents are liable for administrative penalties in an amount not to exceed \$16,000 per day for each day during which the violation continued, up to a maximum of \$187,500. CWA § 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B); 40 C.F.R. Part 19.

3.13 Respondents entered into an Administrative Order on Consent (Consent Order), which was issued on September 19, 2016 by EPA under the authority of Section 308 and 309(a) of the CWA, 33 U.S.C. §§ 1318 and 1319(a), for implementation of a Site Fill Removal Plan for fill removal and reporting.

#### IV. TERMS OF SETTLEMENT

4.1. Respondents admit the jurisdictional allegations contained in this Consent Agreement. Respondents neither admits nor denies the specific factual allegations contained in this Consent Agreement. Nothing in this Consent Agreement shall be construed as an admission of liability by Respondents.

4.2. ***Prohibition of Discharge.*** Respondents shall not discharge any additional pollutants into any waters of the United States at the Site except in compliance with the Consent Order or a permit issued pursuant to the Clean Water Act.

4.3. ***Penalty.*** As required by 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 alleged violations as well as Respondents' economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondents agree that an appropriate penalty to settle the alleged violations is \$8,042.25.

4.4. Respondents agree to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order. 40 C.F.R. § 22.31(c).

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  
PO Box 979077  
St. Louis, MO 63197-9000

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

4.6. Concurrent with payment, Respondents must serve photocopies of the check, 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 ORC-113  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101  
[young.teresa@epa.gov](mailto:young.teresa@epa.gov)

Yvonne Vallette, Compliance Officer  
U.S. Environmental Protection Agency  
Region 10, Oregon Operations Office  
805 SW Broadway, Suite 500  
Portland, OR 97205  
[vallette.yvonne@epa.gov](mailto:vallette.yvonne@epa.gov)

4.7. Except as described in Subparagraph 4.8.2, below, each party shall bear its own fees and costs in bringing or defending this action.

4.8. If Respondents fail 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. If such a failure to pay occurs, Respondents 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.

4.8.1 *Interest.* Interest shall accrue from the effective date of the Final Order, at the rate established by the Secretary of the Treasury, and applied to any portion of the assessed penalty which remains unpaid 30 days after the effective date of the Final Order. CWA § 309(g)(9), 33 U.S.C. § 1319(g)(9); 31 U.S.C. § 3717(a)(1); 40 C.F.R. § 13.11(a)(3).

4.8.2 *Attorneys Fees, Collection Costs, Nonpayment Penalty.* Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondents fail to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondents 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 Respondents' penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.9. *Federal Tax.* The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.8, represent an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes. 26 U.S.C. § 162(f).

4.10. The undersigned representative of Respondents certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to the terms and conditions of this document.



4.11. Respondents expressly waives any right to contest the allegations and waives any right to appeal the Final Order attached to this Consent Agreement.

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

4.13. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondents and EPA Region 10.

DATED:

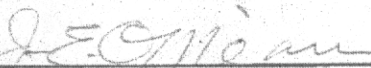
FOR RESPONDENTS:

3-21-17



Signature  
Joseph E. O'Meara, Owner/Operator

3-21-17



Signature  
Joseph E. O'Meara, Trustee  
Joseph O'Meara Living Trust

3-21-17

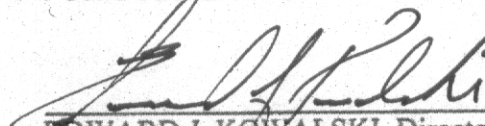


Signature  
Joseph E. O'Meara, President  
Killarney West Golf Course, Inc.

DATED:

FOR COMPLAINANT:

3/30/2017



EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement

**BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

JOSEPH O'MEARA, JOSEPH O'MEARA  
LIVING TRUST, and KILLARNEY WEST  
GOLF COURSE, INC,  
Hillsboro, Oregon,

Respondents.

**DOCKET NO. CWA-10-2017-0042**

**FINAL ORDER**

1.1. 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.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondents are ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III of the Consent Agreement up to the effective date of the Final Order. 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 Respondents' obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

1.4. Respondents waive any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which Respondent may have with respect to any

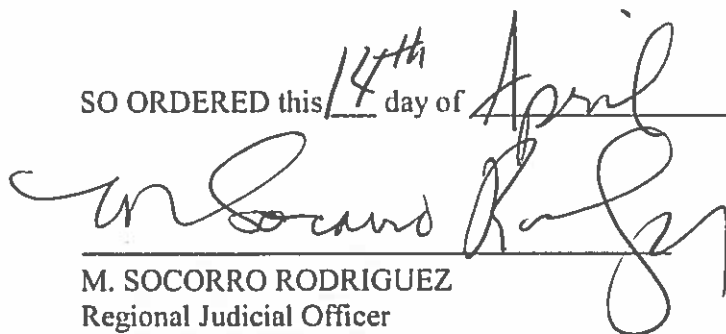
issue of fact or law set forth in this Final Order, including, but not limited to, any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708 provided, however, that this waiver does not impair or prejudice the ability of Respondents to pursue and obtain, including appeal and review of the process thereof, an after-the-fact permit from the U.S. Army Corps of Engineers.

1.5. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Oregon Department of State Lands has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondents.

1.6. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondents. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

1.7. This Final Order shall become effective upon filing.

SO ORDERED this 14<sup>th</sup> day of April, 2017.



M. SOCORRO RODRIGUEZ  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10

**Certificate of Service**

The undersigned certifies that the original of the attached **ADMINISTRATIVE ORDER ON CONSENT, In the Matter of: Joseph O'Meara, Joseph O'Meara Living Trust, and Killarney West Golf Course, Inc. No.: CWA-10-2017-0042**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

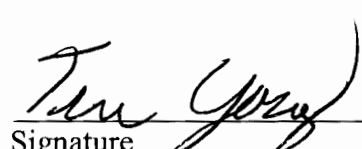
The undersigned certifies that a true and correct copy of the document was delivered to:

Clarke Thurmon  
U.S. Environmental Protection Agency  
1200 Sixth Ave, Ste. 900, M/S ORC-113  
Seattle, Washington 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 to:

Mr. Joseph E. O' Meara  
Joseph O'Meara Living Trust  
Killarney West Golf Course, Inc.  
1270 NW 334th Avenue  
Hillsboro, OR 97124

DATED this 14 day of April, 2017

  
\_\_\_\_\_  
Signature

Teresa Young  
Regional Hearing Clerk  
EPA Region 10