

RECEIVED

15 JAN 15 AM 9: 04

HEARINGS CLERK  
EPA--REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	
	)	DOCKET NO. CWA-10-2015-0028
J.B. Hunt Transport, Inc.,	)	
	)	<b>CONSENT AGREEMENT AND</b>
	)	<b>FINAL ORDER</b>
Sumner, Washington	)	
	)	
Respondent.	)	

---

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the Administrator of the U.S. 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 V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (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 J.B. Hunt

Transport, Inc. (“Respondent”) agrees to issuance of, the Final Order contained in Part V of this CAFO.

## **II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”).

2.3. Part III of this CAFO 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 the implementing regulations that Respondent is alleged to have violated.

## **III. ALLEGATIONS**

3.1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of a pollutant” by any person into navigable waters of the United States, except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that a state with an approved NPDES program may issue permits for the discharge of pollutants into waters of the United States upon such specific terms and conditions as the state may prescribe.

3.2. Section 502(12) of the CWA, 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.” Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “waters of the United States.” EPA’s regulations define “waters of the United States” to 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; and tributaries to those waters. 40 C.F.R. § 122.2.

3.3. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, dredged spoil, rock, sand, chemical wastes and industrial waste.

3.4. Section 502(14) of the Clean Water Act, 33 U.S.C. § 1362(14), defines the term “point source” to include any “pipe, ditch, channel, tunnel, or conduit . . . from which pollutants are or may be discharged.”

3.5. Section 402(p) of the Act, 33 U.S.C. § 1342(p), specifies that an NPDES permit is required for any stormwater discharge “associated with industrial activity.” Section 402(p) also authorizes EPA to issue regulations that designate additional stormwater discharge sources and establish a comprehensive program to regulate these additional sources.

3.6. EPA’s regulations define “storm water discharge associated with industrial activity” to include discharges associated with facilities under Standard Industrial Classification 4221-25. 40 C.F.R. § 122.26(b)(14)(xi).

3.7. The State of Washington has a federally approved NPDES permit program administered by the Washington Department of Ecology (“Ecology”).

3.8. In October 2009 Ecology reissued the Washington Industrial Stormwater General Permit (“2010 Stormwater GP”) pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The



2010 Stormwater GP became effective on January 1, 2010, and has an expiration date of January 1, 2015. The 2010 Stormwater GP was modified with the new effective date of July 1, 2012. The 2010 Stormwater GP authorizes certain discharges of stormwater associated with industrial activity at permitted facilities.

3.9. The 2010 Stormwater GP requires facilities engaged in certain industrial activities to apply for coverage under the permit if stormwater from the facility discharges to a surface water body, or to a storm sewer system that discharges to a surface water body. Permittees are required to comply with the conditions and requirements set forth in the applicable Stormwater GP.

3.10. Respondent is a corporation duly organized under the laws of the State of Georgia and is therefore a “person” as defined under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.11. At all times relevant to this action, Respondent was the owner and/or operator of a motor freight terminal and maintenance facility located in Sumner, Washington (“Facility”).

3.12. The Facility, which was under Respondent’s control (subject to Respondent’s status as a lessee under a lease) at all times relevant to this action, discharges stormwater into 12 catch basins, all of which ultimately discharge into the White River. White River flows to Puyallup River, which flows into Commencement Bay. 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).

3.13. Commencement Bay is currently used, was used in the past, or may be susceptible to use in interstate and foreign commerce, and thus Commencement Bay is a “navigable water”

as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and “water of the United States” as defined in 40 C.F.R. § 122.2.

3.14. The Facility is a point source within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2. In the alternative, the Facility contains point sources.

3.15. At all times relevant to this CAFO, the Facility had coverage under the 2010 Stormwater GP as modified (permit no. WAR010579).

3.16. Respondent violated the 2010 Stormwater GP between January 2010 and February 2014. Violations were discovered during an EPA inspection of the Facility on February 4, 2014, as well as upon EPA’s review of Respondent’s permit, Respondent’s stormwater pollution prevention plan (“SWPPP”), Respondent’s site inspection reports, Respondent’s annual reports, Respondent’s discharge monitoring reports (“DMRs”), and Respondent’s corrective action reports.

**Count 1: Failure to Develop an Adequate Site Map**

3.17. Condition S3.B.1.c. of the 2010 Stormwater GP requires the Permittee to develop and implement a SWPPP for the permitted facility that contains a site map that identifies the stormwater drainage and discharge structures.

3.18. At the time of EPA’s February 4, 2014 inspection of the Facility, Respondent’s site map failed to properly identify the stormwater drainage and discharge structures.

3.19. At the time of EPA’s February 4, 2014 inspection of the Facility, Respondent failed to develop an adequate site map in violation of Condition S3.B.1.c. of the 2010 Stormwater GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Count 2: Failure to Properly Identify Individuals Responsible for the SWPPP**

3.20. Condition S3.B.3. of the 2010 Stormwater GP states that the SWPPP “shall identify specific individuals by name or by title within the organization (pollution prevention team) whose responsibilities include: SWPPP development, implementation, maintenance, and modification.”

3.21. At the time of EPA’s February 4, 2014 inspection of the Facility, Respondent’s SWPPP failed to identify specific individuals responsible for SWPPP development, implementation, maintenance, and modification.

3.22. At the time of EPA’s February 4, 2014 inspection of the Facility, Respondent’s SWPPP failed to properly identify individuals responsible for the SWPPP in violation of Condition S3.B.3. of the 2010 Stormwater GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Count 3: Failure to Submit Complete and Accurate Annual Reports**

3.23. Condition S9.B. of the 2010 Stormwater GP requires the Permittee to “submit a complete and accurate Annual Report to the Department of Ecology no later than May 15th of each year . . . .”

3.24. Respondent submitted annual reports in 2011 and 2012 that inaccurately described benchmark exceedances.

3.25. On at least two occasions, Respondent failed to submit complete and accurate annual reports in violation of Condition S9.B. of the 2010 Stormwater GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).



**Count 4: Failure to Conduct Representative Sampling of Stormwater Discharge**

3.26. Condition S4.A. of the 2010 Stormwater GP requires the Permittee to conduct sampling of stormwater in accordance with the 2010 Stormwater GP and the Permittee's SWPPP.

3.27. Condition S4.B.1.d. of the 2010 Stormwater GP states that the Permittee "shall obtain representative samples." A representative sample is defined as "a sample of the discharge that accurately characterizes stormwater runoff generated in the designated drainage area of the facility."

3.28. The stormwater at the Facility is collected in two separate and distinct areas before it is transferred via two collection pipes to a collection vault, where it commingles with stormwater discharge from an unrelated facility and is then discharged offsite into the White River.

3.29. Respondent conducts sampling of stormwater at the terminus of the two collection pipes, using a ratio of one to one under the assumption that the relative flow volume of each pipe is equal.

3.30. Respondent has failed to demonstrate that the stormwater volumes of the two respective collective pipes are equal or that the stormwater samples are truly representative of each stormwater collection area.

3.31. For at least 16 quarters between 2010 and 2013, Respondent failed to obtain representative samples of the Facility's stormwater discharge in violation of Condition S4.B.1.d. of the 2010 Stormwater GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Count 5: Failure to Conduct and Document Visual Inspections**

3.32. Condition S7.A.1. of the 2010 Stormwater GP requires the Permittee to conduct and document visual inspections of the site each month.

3.33. At the time of EPA's February 4, 2014 inspection of the Facility, Respondent was unable to produce a monthly inspection report for February 2011.

3.34. On one occasion, Respondent failed to conduct and document a monthly visual inspection of the Facility in violation of Condition S7.A.1. of the 2010 Stormwater GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**Count 6: Failure to Take, Implement, and Document Required Corrective Actions**

3.35. Condition S8.D. of the 2010 Stormwater GP requires that a Permittee who exceeds an applicable benchmark value (for a single parameter) for any three quarters during a calendar year complete a Level Three Corrective Action. A Permittee required to take a Level Three Correction Action must, among other requirements: (1) review the SWPPP and ensure that it fully complies with Permit Condition S3; (2) make appropriate revisions to the SWPPP to include additional Treatment BMPs and include additional operational and/or structural source control BMPs if necessary; (3) sign and certify the revised SWPPP; (4) summarize the Level Three Corrective Actions in the Annual Report; and (5) fully implement the revised SWPPP as soon as possible, but no later than September 30th of the following year.

3.36. Respondent's quarterly sampling result submissions to Ecology indicate that Respondent exceeded the benchmark values for turbidity for at least three quarters in 2012 and was therefore required to complete a Level Three Corrective Action by October 1, 2013.



3.37. At the time of EPA's February 4, 2014 inspection of the Facility, Respondent had not completed a Level Three Corrective Action for its turbidity exceedances.

3.38. For at least 127 days between October 1, 2013, and February 4, 2014, Respondent failed to take, implement, and document an adequate Level Three Corrective Action in violation of Conditions S8.D. of the 2010 Stormwater GP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### IV. CONSENT AGREEMENT

4.1. Respondent admits the jurisdictional allegations of this CAFO.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this CAFO.

4.3. 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 Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle this action is \$41,000.

4.4. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order contained in Part V of this CAFO.

4.5. Payment under this CAFO must be made by a check 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 described in Paragraph 4.5 on the Regional Hearing Clerk and EPA Region 10 at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Chae Park  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-133  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

4.7. If Respondent fails to pay the penalty assessed by this CAFO 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 Section 309(g)(9) of the CWA, 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 Section 309(g)(9) of the CWA, 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, 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 CAFO 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 CAFO, 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 costs in bringing or defending this action.

4.12. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in Part V.



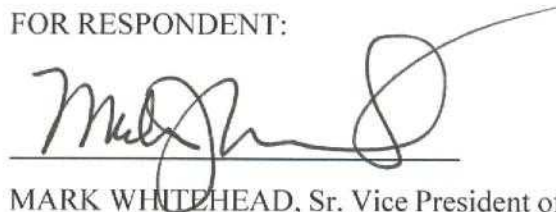
4.13. The provisions of this CAFO shall bind Respondent and its agents, servants, employees, successors, and assigns.

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

DATED:

12/19/14

FOR RESPONDENT:



MARK WHITEHEAD, Sr. Vice President of Claims & Risk Management  
J.B. Hunt Transport, Inc.

DATED:

1/5/2015

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement  
EPA Region 10

## V. FINAL ORDER

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

5.2. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III. In accordance with 40 C.F.R. § 22.31(a), nothing in this CAFO 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.

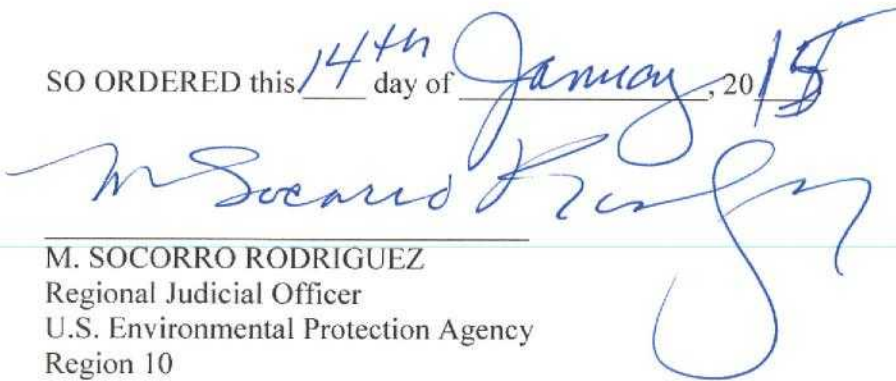
This CAFO does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

5.3. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Washington Department of Ecology has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

5.4. 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 Respondent. 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.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 14<sup>th</sup> day of January, 2015



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 **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: J.B. Hunt Transport, Inc., DOCKET NO.: CWA-10-2015-0028** was served on the addressees in the following manner on the date specified below:

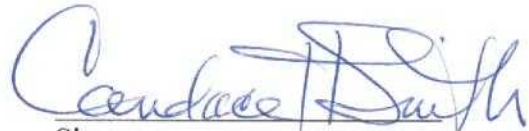
The undersigned certifies that a true and correct copy of the document was delivered to:

Leah Brown  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
Region 10, Mail Stop ORC-158  
1200 Sixth Avenue, 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 to:

Mark Whitehead  
J.B. Hunt Transport, Inc.  
615 J.B. Hunt Corporate Drive  
Lowell, AR 72745

DATED this 15<sup>th</sup> day of January, 2015

  
Signature

Candace Smith  
Regional Hearing Clerk  
EPA Region 10