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HEARINGS CLERK  
EPA -- REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	DOCKET NO. CWA-10-2007-0147
	)	
BLACK DIAMOND ENGINEERING, Sandpoint, 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)(A) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(A).

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 who, in turn, has re delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(1) and (g)(2)(A), 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 Black Diamond Engineering ("Black Diamond") hereby agrees to issuance of, the Final Order contained in Part IV of this CAFO.

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## II. PRELIMINARY STATEMENT

2.1. On July 20, 2007, EPA commenced this proceeding against Black Diamond pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), by filing an administrative complaint ("Complaint").

2.2. The Complaint alleged that Black Diamond's violations of the CWA had subjected Black Diamond to penalties and proposed that Black Diamond be assessed an administrative civil penalty.

2.3. The complete and jurisdictional basis for proposing the assessment of a civil penalty is set forth in the Complaint and is incorporated herein by reference.

2.4. 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 State of Idaho has been given an opportunity to consult with EPA regarding the assessment of an administrative civil penalty against Black Diamond.

2.5. In accordance with Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45, EPA has issued a public notice to inform the public of its intent to assess an administrative penalty against Respondent and to invite public comment. EPA has received no public comments on this proceeding.

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## III. CONSENT AGREEMENT

The parties to this action hereby stipulate as follows:

3.1. Black Diamond enters this Consent Agreement to compromise and settle the disputed claims alleged in the Complaint without further proceedings in this matter.

3.2. Black Diamond admits the jurisdictional allegations in the Complaint.

3.3. Black Diamond neither admits nor denies the specific factual allegations contained in the Complaint.

1           3.4.    Black Diamond expressly waives the right to contest the allegations contained in  
2 the 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 Black  
4 Diamond agrees that an appropriate penalty to settle this action is in the amount of One  
5 Thousand Two Hundred Seventy-Seven Dollars (\$1,277.00). This penalty amount has been  
6 agreed upon in consideration of the statutory penalty factors identified in Section 309(g)(3) of  
7 the CWA, 33 U.S.C. § 1319(g)(3).

8           3.6.    Black Diamond 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 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                           U.S. Environmental Protection Agency  
15                           Fines and Penalties  
16                           Cincinnati Finance Center  
17                           PO Box 979077  
18                           St. Louis, MO 63197-9000

19 Black Diamond shall note on the check the title and docket number of this case.

20           3.8.    Black Diamond shall serve photocopies of the check described above on the  
21 Regional Hearing Clerk and EPA at the following addresses:

22                           Regional Hearing Clerk  
23                           U.S. Environmental Protection Agency  
24                           Region 10, MS ORC-158  
25                           1200 Sixth Avenue, Suite 900  
                          Seattle, WA 98101

1 Office of Compliance and Enforcement  
2 Attn: David Domingo  
3 U.S. Environmental Protection Agency  
4 Region 10, MS OCE-133  
5 1200 Sixth Avenue, Suite 900  
6 Seattle, WA 98101

7 3.9. If Black Diamond fails to pay the penalty assessed by this CAFO in full by the  
8 due date set forth in Paragraph 3.6, above, the entire unpaid balance of the penalty and accrued  
9 interest shall become immediately due and owing. If such a failure to pay occurs, Respondent  
10 may be subject to a civil action to collect the assessed penalty under the CWA, together with  
11 interest, fees, costs, and additional penalties described below. In any collection action, the  
12 validity, amount and appropriateness of the penalty shall not be subject to review.

13 3.10. If Black Diamond fails to pay any portion of the penalty assessed by this CAFO  
14 in full by the due date set forth in Paragraph 3.6, above, Black Diamond shall be responsible for  
15 payment of the amounts described below:

16 3.10.1. Interest. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. 1319(g)(9),  
17 any unpaid portion of the assessed penalty shall bear interest at a rate established by the  
18 Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the  
19 Final Order set forth in Part V, below, provided, however, that no interest shall be  
20 payable on any portion of the assessed penalty that is paid within thirty (30) days of the  
21 effective date of the Final Order.

22 3.10.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to  
23 Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), if Black Diamond fails to pay on a  
24 timely basis the amount of the penalty set forth in Paragraph 4.3, above, Black Diamond  
25 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

1 such failure to pay persists. Such nonpayment penalty shall be in an amount equal to  
2 twenty percent (20%) of the aggregate amount of Black Diamond's penalties and  
3 nonpayment 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 Black Diamond certifies that he or she is fully  
8 authorized to enter into the terms and conditions of this CAFO and to bind Black Diamond to  
9 this 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.

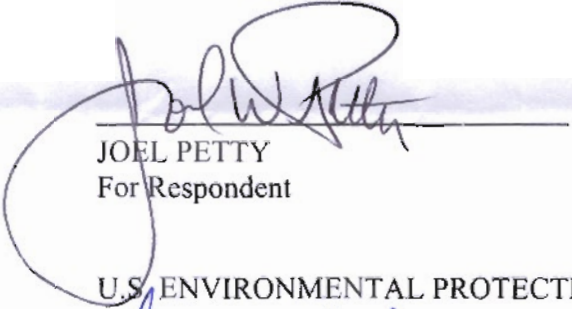
12 3.14. The provisions of this CAFO shall bind Black Diamond and its officers, directors,  
13 agents, servants, employees, successors, and assigns.

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

16  
17 DATED:

BLACK DIAMOND:

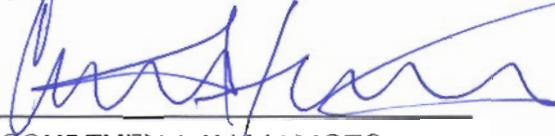
18  
19 March 10/2008

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22 JOEL PETTY  
23 For Respondent

24 DATED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

25 March 18, 2008

  
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COURTNEY J. HAMAMOTO  
For Complainant

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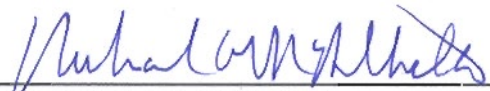
IV. FINAL ORDER

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

4.2. This CAFO shall constitute a settlement by EPA of all claims for civil penalties pursuant to the CWA for the particular violations alleged in the Complaint. 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 Black Diamond's obligations to comply with all applicable provisions of the CWA, the CWA regulations, and/or any permits issued thereunder.

4.3. This Final Order shall become effective upon filing.

SO ORDERED this 18<sup>th</sup> day of March, 2008.



RICHARD G. McALLISTER  
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: Black Diamond Engineering, DOCKET NO.: CWA-10-20076-0147** was filed with the Regional Hearing Clerk on March 18, 2008.

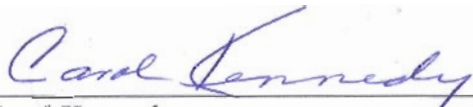
On March 18, 2008 the undersigned certifies that a true and correct copy of the document was delivered to:

Courtney Hamamoto, Esquire  
US Environmental Protection Agency  
Suite 900  
1200 Sixth Avenue, M/S ORC-158  
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 on March 18, 2008 to:

Joel Petty  
Black Diamond Engineering, P.C.  
1555 W. Ontario Street  
Sandpoint, Idaho 83864

DATED this 18<sup>th</sup> day of March 2008.

  
\_\_\_\_\_  
Carol Kennedy  
Regional Hearing Clerk  
EPA Region 10