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HEARINGS CLERK
EPA -- REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

G.F. BARNES CONSTRUCTION, INC.
Sandpoint, Idaho

Respondent.

DOCKET NO. CWA-10-2008-0149

AMENDED COMPLAINT

I. AUTHORITIES

1.1. This amended administrative Complaint ("Complaint") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 309(g) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 10, who in turn has re delegated this authority to the Director of the Office of Compliance and Enforcement in Region 10.

1.2. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 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 hereby proposes the assessment of a civil penalty against G.F. Barnes Construction Inc. ("Respondent") for violations of the CWA.

1 1.3. The original Complaint was filed on September 12, 2008, and the respondents
2 have not yet filed their Answers. Pursuant to 40 C.F.R. § 22.14(c), EPA may amend the
3 Complaint once as a matter of right at any time prior to the filing of an Answer.

4 1.4. In accordance with Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and
5 40 C.F.R. § 22.38(b), EPA has provided the State of Idaho with an opportunity to consult with
6 EPA on this matter..

7 **II. STATUTORY AND REGULATORY BACKGROUND**

8 2.1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of any
9 pollutant by any person” except as authorized by a NPDES permit issued pursuant to Section 402
10 of the CWA, 33 U.S.C. § 1342.

11 2.2. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a
12 pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

13 2.3. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include,
14 *inter alia*, dredged spoil, rock, sand, and biological materials.

15 2.4. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as
16 “waters of the United States.”

17 2.5. 40 C.F.R. § 122.2 defines “waters of the United States” to include “tributaries” to
18 waters that are “interstate waters” and/or waters that “may be susceptible to use in interstate or
19 foreign commerce, including all waters which are subject to the ebb and flow of the tide”

20 2.6. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to
21 include “any discernible, confined and discrete conveyance ... from which pollutants are or may
22 be discharged.”

1 2.7. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” as “an
2 individual, corporation, partnership, association, State, municipality, commission, or political
3 subdivision of a State, or any interstate body.”

4 2.8. Section 402(p) of the CWA, 33 U.S.C. § 1342, specifies that an NPDES permit is
5 required for any storm water discharge “associated with industrial activity.” Section 402(p) also
6 authorizes EPA to issue regulations that designate additional storm water discharge sources and
7 establish a comprehensive program to regulate these additional sources.

8 2.9. 40 C.F.R. § 122.26(b)(14)(x) defines “[s]torm water associated with industrial
9 activity” to include discharges associated with “[c]onstruction activity, including clearing
10 grading and excavation” resulting in the disturbance of at least five acres of total land area.

11 2.10. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), also authorizes EPA to issue
12 regulations that designate additional storm water discharge sources and establish a
13 comprehensive program to regulate these additional sources. In accordance with Section 402(p),
14 40 C.F.R. § 122.26(a)(9) requires any “storm water discharge associated with small construction
15 activity” to be authorized by an NPDES permit. 40 C.F.R. § 122.26(b)(15) defines “storm water
16 discharge associated with small construction activity” to include the “discharge of storm water
17 from ... [c]onstruction activities including clearing, grading, and excavating that result in land
18 disturbance of equal or greater than one acre and less than five acres.”

19 2.11. In July of 2003, EPA reissued the NPDES General Permit for Storm Water
20 Discharges from Construction Activities (“CGP”) pursuant to Section 402 of the CWA, 33
21 U.S.C. § 1342. The CGP became effective on July 1, 2003 and expired on July 1, 2008. For
22 construction sites that obtained coverage under the CGP prior to July 1, 2008, the provisions of
23 the CGP remain in effect under an administrative extension.
24
25

1 2.12. The CGP authorizes certain discharges of storm water associated with
2 construction activities. The CGP's coverage extends to all facilities in the State of Idaho and
3 requires permittees to comply with the conditions and requirements set forth in the CGP.

4 2.13. To obtain coverage for storm water discharges from a construction site under the
5 CGP, a discharger must first "prepare and submit a complete and accurate Notice of Intent."
6 CGP at Part 2.

7 2.14. The CGP defines a "discharger" as the operator of the construction site. An
8 "operator" is defined as both (1) "[t]he party [who] has operational control over construction
9 plans and specifications ...," and (2) "[t]he party [who] has day-to-day operational control of
10 those activities at a project which are necessary to ensure compliance with a [storm water
11 pollution prevention plan] for the site or other permit conditions." CGP at Appendix A.

12 2.15. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes EPA to require the
13 owner or operator of any point source to provide such information as may be reasonably required
14 in carrying out Section 402 of the CWA, 33 U.S.C. § 1342. Pursuant to Section 308(a), EPA has
15 promulgated NPDES permit application requirements. Among these application requirements
16 are:

- 17 ▪ the requirement set forth in 40 C.F.R. § 122.21(a)(1) that "[a]ny person
18 who discharges or proposes to discharge pollutants ... must submit a
complete application to [EPA],"
- 19 ▪ the requirement set forth in 40 C.F.R. § 122.26(c)(1) that "[d]ischarges of
20 storm water associated with industrial activity and with small construction
activity are required to apply for an individual permit or seek coverage
21 under a promulgated storm water general permit," and
- 22 ▪ the requirement set forth in 40 C.F.R. § 122.21(c)(1) that regulated
23 dischargers of construction storm water submit an NPDES permit
application or a Notice of Intent to apply for coverage under a NPDES
24 general permit at least ninety (90) days before the date on which
construction is to commence unless an applicable NPDES general permit
25 specifies a different submittal date.

1
2 2.16. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes EPA to assess
3 administrative penalties against any person who violates Section 301 or 308 of the CWA, 33
4 U.S.C. § 1311 or 1318.

5 2.17. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), also authorizes EPA to
6 assess administrative penalties against any person who has violated any permit condition or
7 limitation in a permit under Section 402 of the CWA, 33 U.S.C. § 1342.

8 **III. ALLEGATIONS**

9 3.1. Respondent is a corporation registered under the laws of the State of Idaho and
10 thus is a "person" as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

11 3.2. Respondent has day-to-day operational control of those activities at the Granite
12 Peaks construction site ("Site") necessary to ensure compliance with the CGP. As such,
13 Respondent is an operator under the CGP.

14 3.3. The Site consists of approximately 1.25 acres of real property located on Mogul
15 Hill Road (previously called Alpine Way) near Sandpoint, Idaho, within a portion of Block 2 of
16 First Addition to Schweitzer Basin Village; West of the center of Section 20, Township 58
17 North, Range 2 West, Boise Meridian, Bonner County, Idaho. The Site is also called the Village
18 View short plat.

19 3.4. The receiving water for any storm water discharges from the Site is an unnamed
20 tributary to Schweitzer Creek. Schweitzer Creek flows into Sand Creek which flows into Lake
21 Pend Oreille. Lake Pend Oreille flows into the Pend Oreille River.

22 3.5. The Pend Oreille River and Lake Pend Oreille are susceptible to use in interstate
23 commerce.

24 3.6. The Pend Oreille River is an interstate water body.
25

1 3.7. Therefore, the Pend Oreille River, Lake Pend Oreille, Sand Creek, and the
2 unnamed tributary are "navigable waters" as defined in Section 502(7) of the CWA, 33 U.S.C.
3 § 1362(7), and are "waters of the United States" as defined in 40 C.F.R. § 122.2.

4 3.8. As the operator of a construction site that discharges storm water into waters of
5 the United States, Respondent was required to obtain coverage under the CGP or obtain an
6 individual NPDES permit before beginning construction activities.

7 3.9. On or about April 4, 2005, Respondent began construction activities that resulted
8 in the clearing, grading, and/or excavation of one or more acres of land at the Site.

9 3.10. On or about May 18, 2006, the Idaho Department of Environmental Quality
10 ("IDEQ") conducted an inspection of the Site.

11 3.11. On or about May 31, 2006, EPA conducted an inspection of the Site.

12 3.12. On or about June 21, 2006, Respondent submitted a Notice of Intent for coverage
13 under the CGP.

14 3.13. On or about June 1, 2007, Bonner County inspectors visited the Site.

15 3.14. On or about June 11, 2007 and October 19, 2007, an IDEQ inspector visited the
16 Site.

17 **Count 1**
18 **(Failure to Apply for a Permit)**

19 3.15. Paragraphs 1.1 through 3.14 are realleged and incorporated herein by reference.

20 3.16. At the time it commenced construction at the Site, Respondent was a "person who
21 discharges or proposes to discharge pollutants" within the meaning of 40 C.F.R. § 122.21(a)(1).

22 3.17. At the time it commenced construction at the Site, Respondent was a "discharger
23 of storm water associated with industrial activity" within the meaning of 40 C.F.R. § 122.26(c)
24 and was an "operator" within the meaning of the CGP.
25

1 3.18. As the operator of the Site, Respondent was required to either submit a Notice of
2 Intent to obtain coverage under the CGP or apply for an individual NPDES permit before
3 beginning construction activities at the Site.

4 3.19. Between or about April 2005 and June 2006, Respondent failed to apply for an
5 individual NPDES permit or properly seek coverage under the CGP.

6 3.20. Respondent's failure to timely apply for an NPDES permit placed Respondent in
7 violation of the requirements imposed pursuant to Section 308 of the CWA, 33 U.S.C. § 1318.
8 Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R Part 19, Respondent
9 is liable for civil penalties not to exceed \$16,000 per day for each day during which the violation
10 continues.

11 **Count 2**
12 **(Discharge Without a Permit)**

13 3.21. Paragraphs 1.1 through 3.20 are realleged and incorporated herein by reference.

14 3.22. During the May 18, 2006 Site inspection, IDEQ observed a discharge of
15 sediment-laden water into a drainage ditch adjacent to the Site. The water in the ditch flowed
16 into the unnamed tributary to Schweitzer Creek.

17 3.23. During the May 31, 2006 Site inspection, EPA observed a discharge of sediment-
18 laden water into a drainage ditch adjacent to the Site. The water in the ditch flowed into the
19 unnamed tributary to Schweitzer Creek.

20 3.24. Therefore, the construction activities at the Site resulted in the discharge of
21 "storm water associated with industrial activity" to the unnamed tributary of Schweitzer Creek.

22 3.25. The storm water was contaminated with, among other things, sediment, sand, and
23 dirt.

1 3.26. The drainage ditch adjacent to the Site described in Paragraphs 3.22 and 3.23
2 constitutes a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C.
3 § 1362(14).

4 3.27. The sediment, sand and dirt in the storm water constitute "pollutant[s]" within the
5 meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

6 3.28. By causing such storm water to enter waters of the United States, Respondent
7 engaged in a "discharge of pollutants" from a point source within the meaning of Sections 301(a)
8 and 502(12) of the CWA, 33 U.S.C. § 1311(a) and 1362(12).

9 3.29. Respondent's discharges of storm water were not authorized by a permit issued
10 pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. Therefore, Respondent violated Section
11 301(a) of the CWA, 33 U.S.C. § 1311(a).

12 3.30. Each day that storm water was discharged without the required permit constitutes
13 an additional day of violation of Section 301 of the CWA, 33 U.S.C. § 1311. Pursuant to Section
14 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. Part 19, Respondent is liable for civil
15 penalties not to exceed \$16,000 per day for each day during which the violation continues.

16 **Count 3**
17 **(Failure to Properly Select, Install and/or Maintain Best Management Practices**
18 **in violation of the CGP)**

18 3.31. Paragraphs 1.1 through 3.30 are realleged and incorporated herein by reference.

19 3.32. Part 3.13.A of the CGP requires the construction site operator to select, install and
20 maintain best management practices ("BMPs") in accordance with sound engineering practices.

21 3.33. At the time of the June 1, 2007 Site visit, Bonner County inspectors observed
22 numerous BMP deficiencies including, but not limited to, improper installation of silt fences,
23 improper maintenance of the straw bales along the roadside ditch, improper maintenance of
24
25

1 stabilizer rock at the entrance of the Site, and improper maintenance of the erosion control
2 blankets.

3 3.34. At the time of the June 11, 2007 Site visit, the IDEQ inspector observed
4 numerous BMP deficiencies including, but not limited to, improper maintenance of the straw
5 bales along the roadside ditch, improper maintenance of the check dams in the roadside ditch,
6 and improper installation of the silt fences at the Site.

7 3.35. At the time of the October 19, 2007 Site visit, the IDEQ inspector observed
8 numerous BMP deficiencies including, but not limited to, improper installation of silt fences on a
9 slope at the Site. In addition, the IDEQ inspector observed that Respondent failed to select and
10 install BMPs on a slope at the Site.

11 3.36. Therefore, Respondent failed to properly install and maintain BMPs at the Site, in
12 violation of Part 3.13.A of the CGP.

13 3.37. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. Part
14 19, Respondent is liable for civil penalties not to exceed \$16,000 per day for each day during
15 which the violation continues.

16
17 **Count 4**
18 **(Failure to Remove Off-Site Accumulation of Sediment**
19 **in violation of the CGP)**

20 3.38. Paragraphs 1.1 through 3.37 are realleged and incorporated herein by reference.

21 3.39. Part 3.13.B of the CGP states that “[i]f sediment escapes the construction site, off-
22 site accumulations of sediment must be removed at a frequency sufficient to minimize off-site
23 impacts.”

24 3.40. During the June 11, 2007 Site visit, IDEQ observed significant off-site
25 accumulation of sediment on the road adjacent to the Site that appeared to have accumulated
over a period of time.

1 3.41. Therefore, Respondent failed to remove off-site accumulations of sediment, in
2 violation of Part 3.13.B of the CGP.

3 3.42. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. Part
4 19, Respondent is liable for civil penalties not to exceed \$16,000 per day for each day during
5 which the violation continues.

6 **Count 5**
7 **(Sign or Notice not Posted at the Main Entrance**
8 **of the Site in Violation of the CGP)**

8 3.43. Paragraphs 1.1 through 3.42 are realleged and incorporated herein by reference.

9 3.44. Part 3.12.B of the CGP requires a permittee to place “[a] sign or other notice ...
10 conspicuously near the main entrance of the construction site.”

11 3.45. During the IDEQ Site visits in March 2007, June 2007, and October 2007, a sign
12 or notice was not conspicuously posted near the main entrance of the construction site.

13 3.46. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. Part
14 19, Respondent is liable for civil penalties not to exceed \$16,000 per day for each day during
15 which the violation continues.

16 **Count 6**
17 **(SWPPP Deficiencies in Violation of the CGP)**

18 3.47. Paragraphs 1.1 through 3.46 are realleged and incorporated herein by reference.

19 3.48. Part 3.1 of the CGP requires an operator of a construction site to prepare a storm
20 water pollution prevention plan (“SWPPP”). The required contents of a SWPPP are set forth in
21 Part 3 of the CGP.

22 3.49. In reviewing the SWPPP, EPA found that it failed to meet all of the SWPPP
23 requirements in the CGP, as set forth in Paragraphs 3.50-3.65, below.

24
25

1 3.50. The SWPPP did not identify all potential sources of pollutant that may reasonably
2 be expected to affect the quality of storm water discharges from the Site, in violation of Part
3 3.1.B.1 of the CGP.

4 3.51. The SWPPP did not identify all the operators for the Site and did not identify the
5 operators' areas of control at the Site, in violation of Part 3.3.A of the CGP.

6 3.52. The SWPPP did not describe the sequence and timing of activities that disturb soil
7 at the Site, in violation of Part 3.3.B.2 of the CGP.

8 3.53. The SWPPP did not include a legible site map with all required components, in
9 violation of Part 3.3.C of the CGP.

10 3.54. The SWPPP did not identify the location and description of any storm water
11 discharge associated with industrial activity other than construction at the Site, in violation of
12 Part 3.3.D of the CGP.

13 3.55. The SWPPP did not identify the general sequence during the construction process
14 in which the control measures will be implemented and which operator is responsible for the
15 control measure's implementation in violation of Part 3.4.A of the CGP.

16 3.56. The SWPPP did not include a schedule of when the interim and permanent
17 stabilization practices will be implemented at the Site, in violation of Part 3.4.B of the CGP.

18 3.57. The SWPPP did not include the dates for major grading activities, dates when
19 construction activities would temporarily or permanently cease on a portion of the Site, and dates
20 when stabilization measures are initiated, in violation of Part 3.4.C of the CGP.

21 3.58. The SWPPP did not include a description of structural practices to divert flows
22 from exposed soils, retain/detain flows or otherwise limit runoff from exposed areas of the Site,
23 in violation of Part 3.4.D of the CGP.

1 3.59. The SWPPP did not include a description of the measures that will be used to
2 minimize the off-site vehicle tracking and generation of dust, in violation of Part 3.4.G of the
3 CGP.

4 3.60. The SWPPP did not include a description of construction and waste materials
5 expected to be stored on-site, in violation of Part 3.4.H of the CGP.

6 3.61. The SWPPP did not include a description of pollutant sources from areas other
7 than construction and a description of controls and measures that will be implemented at those
8 sites, in violation of Part 3.4.I of the CGP.

9 3.62. The SWPPP did not identify all allowable sources of non-storm water discharges,
10 in violation of Part 3.5 of the CGP.

11 3.63. The SWPPP did not include documentation supporting permit eligibility with
12 regard to the Endangered Species Act, in violation of Part 3.7 of the CGP.

13 3.64. The SWPPP did not include a copy of the CGP and certified Notice of Intent
14 submitted to EPA, in violation of Part 3.8 of the CGP.

15 3.65. The SWPPP was not properly signed and/or certified, in violation of Part 3.12.D
16 of the CGP.

17 3.66. Each SWPPP deficiency constitutes a violation of the CGP. Pursuant to Section
18 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. Part 19, Respondent is liable for civil
19 penalties not to exceed \$16,000 per day for each day during which the violation continues.

20 **IV. PROPOSED PENALTY**

21 4.1. Based on the foregoing allegations, and pursuant to the authority of Section
22 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), EPA proposes that an administrative
23 penalty of Seventy Thousand Dollars (\$70,000.00) be assessed against Respondent.

1 4.2. EPA proposes this penalty amount after considering the applicable penalty factors
2 in Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3). These statutory penalty factors are as
3 follows: the nature, circumstances, extent, and gravity of the violation or violations, and, with
4 respect to Respondent, ability to pay, any prior history of such violations, the degree of
5 culpability, economic benefit or savings (if any) resulting from the violation, and such other
6 matters as justice may require.

7 4.3. Nature, Circumstances, and Gravity of Violations: The proposed penalty reflects
8 EPA's determination that a failure to apply for an NPDES permit, any unpermitted discharges, or
9 a failure to comply with the CGP are serious violations which significantly undermine the
10 CWA's regulatory scheme. The gravity of the violation is aggravated in this case because, prior
11 to obtaining permit coverage, Respondent not only failed to apply for the requisite NPDES
12 permit, it also failed to implement adequate BMPs and structural controls to minimize the
13 adverse environmental effects of storm water discharges which resulted in unpermitted
14 discharges of pollutants into the unnamed tributary of Schweitzer Creek. Moreover, Respondent
15 was aware that there could be significant erosion and storm water runoff from the Site. Even
16 after Respondent obtained coverage under the CGP, Respondent failed to properly implement
17 BMPs and structural controls at the Site and failed to prepare an adequate SWPPP in compliance
18 with the CGP.

19 4.4. Respondent's Ability to Pay: EPA has reviewed publicly available information
20 on Respondent's financial condition as well as information provided to EPA by Respondent.
21 EPA will consider any additional information submitted by Respondent related to its ability to
22 pay the proposed penalty.

23 4.5. Respondent's History of Prior Violations: EPA is unaware of Respondent having
24 any history of prior violations of the CWA.
25

1 4.6. Respondent's Degree of Culpability: The proposed penalty reflects the fact that,
2 in 2005, Respondent was told by its engineer and consultant that there were significant erosion
3 and storm water runoff issues at the Site. Moreover, in January 2005, Respondent's consultant
4 wrote in a document provided to Respondent that NPDES coverage would be required for the
5 Site. However, Respondent did not obtain NPDES permit coverage until after EPA's May 2006
6 Site inspection, approximately one year after construction activities began at the Site. Prior to
7 obtaining coverage under the CGP, Respondent's construction activities at the Site resulted in the
8 discharge of pollutants into waters of the United States in violation of Section 301(a) of the
9 CWA, 33 U.S.C. § 1311(a).

10 4.7. Respondent's Economic Benefit: Prior to obtaining coverage under the CGP,
11 Respondent enjoyed an economic benefit as a result of its unpermitted activities described above.
12 This economic benefit includes the delayed cost associated with timely preparing and submitting
13 a Notice of Intent, the delayed costs associated with preparing an implementing a SWPPP, the
14 avoided costs of installing appropriate BMPs and structural controls, the avoided costs of
15 conducting weekly inspections, and the avoided costs of maintaining appropriate BMPs and
16 structural controls.

17 4.8. Other Matters as Justice May Require: Credible and consistent enforcement of
18 the CWA's requirements to apply for, obtain, and comply with NPDES permits regulating the
19 discharge of construction storm water is necessary to deter Respondent and other similarly
20 situated from violating the law.

21 **V. OPPORTUNITY TO REQUEST A HEARING**

22 5.1. Respondent has the right to file an Answer requesting a hearing on any material
23 fact contained in this Amended Complaint or on the appropriateness of the penalty proposed
24 herein. Upon request, the Presiding Officer may hold a hearing for the assessment of these civil
25

1 penalties, conducted in accordance with the provisions of the Part 22 Rules and the
2 Administrative Procedure Act, 5 U.S.C. § 551 *et seq.* A copy of the Part 22 Rules accompanies
3 this Amended Complaint.

4 5.2. Respondent's Answer, including any request for hearing, must be in writing and
5 must be filed with:

6 Regional Hearing Clerk
7 U.S. Environmental Protection Agency, Region 10
8 1200 Sixth Avenue, Suite 900, Mail Stop ORC-158
9 Seattle, Washington 98101

9 **VI. FAILURE TO FILE AN ANSWER**

10 6.1. To avoid a default order being entered pursuant to 40 C.F.R. § 22.17, Respondent
11 must file a written Answer to this Amended Complaint with the Regional Hearing Clerk within
12 twenty (20) days after service of this Amended Complaint.

13 6.2. In accordance with 40 C.F.R. § 22.15, Respondent's Answer must clearly and
14 directly admit, deny, or explain each of the factual allegations contained in this Complaint with
15 regard to which Respondent has any knowledge. Respondent's Answer must also state: (1) the
16 circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts
17 which Respondent intends to place at issue; and (3) whether a hearing is requested. Failure to
18 admit, deny or explain any material factual allegations contained herein constitutes an admission
19 of the allegation.

20 **VII. INFORMAL SETTLEMENT CONFERENCE**

21 7.1. Whether or not Respondent requests a hearing, Respondent may request an
22 informal settlement conference to discuss the facts of this case, the proposed penalty, and the
23 possibility of settling this matter. To request such a settlement conference, Respondent should
24 contact:
25

1 Courtney Hamamoto
2 Assistant Regional Counsel
3 U.S. Environmental Protection Agency, Region 10
4 1200 Sixth Avenue, Suite 900, Mail Stop ORC-158
5 Seattle, Washington 98101
6 (206) 553-1477

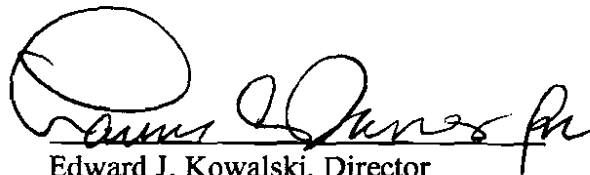
7 7.2. Note that a request for an informal settlement conference does not extend the
8 twenty (20) day period of filing a written Answer to this Amended Complaint, nor does it waive
9 Respondent's right to request a hearing.

10 7.3. Respondent is advised that, after the Complaint is issued, the Part 22 Rules
11 prohibit any *ex parte* (unilateral) discussion of the merits of these or any other factually related
12 proceedings with the Administrator, the Environmental Appeals Board or its members, the
13 Regional Judicial Officer, the Presiding Officer, or any other person who is likely to advise these
14 officials in the decision of this case.

15 **VIII. RESERVATIONS**

16 8.1. Neither assessment nor payment of an administrative civil penalty pursuant to this
17 Complaint shall affect Respondent's continuing obligation to comply with: (1) the CWA and all
18 other environmental statutes; (2) the terms and conditions of all applicable CWA permits; and (3)
19 any Compliance Order issued to Respondent under Section 309(a) of the CWA, 33 U.S.C.
20 § 1319(a), concerning the violations alleged herein.

21 Dated this 15 day of April, 2009

22 

23 Edward J. Kowalski, Director
24 Office of Compliance and Enforcement
25

1 **CERTIFICATE OF SERVICE**

2 I certify that the foregoing "Amended Complaint" was sent to the following persons, in
3 the manner specified, on the date below:

4 Original and one copy, hand-delivered:

5 Carol Kennedy, Regional Hearing Clerk
6 U.S. Environmental Protection Agency, Region 10
7 1200 Sixth Avenue, Mail Stop ORC-158
8 Seattle, WA 98101

9 A true and correct copy, by certified mail, return receipt requested:

10 Richard Campbell
11 Campbell, Bissell & Kirby, PLLC
12 416 Symons Building
13 7 South Howard Street
14 Spokane, WA 99201

15 G.F. Barnes Construction, Inc.
16 c/o Gary and Tamara Barnes
17 P.O. Box 122
18 Liberty Lake, WA 99019

19 Dated: 4/15/09

20 Lisa Bingham
21 Office Manager
22 U.S. EPA Region 10