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EPA -- REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

JAYO CONSTRUCTION, INC. and  
JAYO DEVELOPMENT, INC.  
Boise, Idaho

Respondents.

DOCKET NO. CWA-10-2014-0144

**CONSENT AGREEMENT AND  
FINAL ORDER**

**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 (g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (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 Jayo Construction, Inc. and Jayo Development, Inc. (“Respondents”) agree to issuance of, the Final Order contained in Part V of this CAFO.

## **II. PRELIMINARY STATEMENT**

1.4. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO commences this proceeding, which will conclude when the Final Order contained in Part V of this CAFO becomes effective.

2.1. 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.

2.2. 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 implementing regulations that Respondents are alleged to have violated.

## **III. ALLEGATIONS**

### **Statutory and Regulatory Background**

3.1. The CWA prohibits the “discharge of any pollutants by any person” except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit. CWA § 301(a), 33 U.S.C. § 1311(a); CWA § 402, 33 U.S.C. § 1342.

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

3.1.2 The CWA defines “point source” as “any discernible, 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 are or may be discharged.” CWA § 502(14), 33 U.S.C. § 1362(14).

3.1.3 The CWA defines a pollutant to include, *inter alia*, rock, sand, cellar dirt, biological materials, dredged spoil, and solid waste discharged into water. CWA § 502(6), 33 U.S.C. § 1362(6).

3.2. The CWA prohibits any stormwater discharge “associated with industrial activity,” except when that discharge is in compliance with an applicable NPDES permit and authorizes EPA to establish a comprehensive program to regulate these sources. CWA § 402(p), 33 U.S.C. § 1342(p).

3.2.1. Stormwater discharge associated with industrial activity includes discharges of stormwater containing pollutants from areas of soil disturbing activities, which includes “[c]onstruction activity, including clearing, grading, and excavation.” 40 C.F.R. § 122.26(a)(1)(ii), (b)(14)(x), (b)(15)(i).

3.3. Whenever required to carry out Section 402 of the CWA, “the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use and maintain such monitoring equipment or methods ... , (iv) sample such effluents ... , and (v) provide such other information as he may reasonably require.” CWA § 308(a); 33 U.S.C. § 1318(a).

3.3.1. Pursuant to Section 402 of the CWA, EPA issues NPDES General Permits for Storm Water Discharges from Construction Activities (“CGPs”) to authorize certain discharges of storm water associated with construction activities, provided that appropriate stormwater controls are designed, installed, and maintained, in conformance with the permit criteria. CWA § 402, 33 U.S.C. § 1342.

3.3.2. To be authorized to discharge under an applicable CGP, the discharger must first “prepare and submit a complete and accurate Notice of Intent” (“NOI”), following the requirements specified by that CGP, in which the applicant certifies that the

applicant meets the eligibility criteria and will comply with the conditions and requirements set forth in that CGP.

3.4. Authorization to discharge under Permit No. IDR100000 (“2008 CGP”) was available to construction activity facilities in the State of Idaho, except for facilities in Indian Country, for the period of June 30, 2008 through July 8, 2012.

3.4.1. Authorization to discharge under Permit No. IDR120000 (“2012 CGP”) is available to construction activity facilities in the State of Idaho, except for facilities in Indian Country, for the period of April 9, 2012 through February 16, 2017.

3.4.2. Coverage for individual entities under the 2008 CGP continued until the earlier of the start of coverage under a subsequent individual NPDES permit, start of coverage under a general NPDES permit (e.g., 2012 CGP), or July 8, 2012.

3.4.3. Permittees authorized to discharge stormwater under the provisions of either the 2008 CGP or the 2012 CGP are required to implement control measures that reduce and/or eliminate pollutants in storm water discharges from commencement of construction activity until final stabilization is complete, to the extent achievable using control measures that are technologically available and economically practicable and achievable in light of the best industry practice. 2008 CGP, Part 3; 2012 CGP, Part 3.

### **Factual Background**

3.5. At all times relevant to this action, Respondents were corporations, duly organized and existing under the laws of the State of Idaho, and therefore “persons” within the meaning of the CWA. CWA § 502(5), 33 U.S.C. § 1362(5).

3.6. At all times relevant to this action, Respondents owned and/or operated a construction site known as the Somerset Village Subdivision (“Site”) located at or near West Boise Hills Drive and West Crestline Drive in Boise, Idaho.

3.7. Respondent Jayo Construction, Inc. submitted a NOI to EPA for coverage under the 2008 CGP for the Site on December 16, 2011, which identified Respondent Jayo Construction, Inc. as the operator for the Site, and estimated the Site would have 3.25 acres of disturbed area.

3.7.1. On December 16, 2011, EPA issued a letter to Respondent Jayo Construction, Inc., granting Respondent coverage under the 2008 CGP. Respondent's coverage went into effect on December 23, 2011 and was assigned NPDES Tracking No. IDR10CQ56.

3.7.2. On December 6, 2012, EPA issued a Notice of Violation ("NOV") to Respondent Jayo Construction, Inc. in regards to violations of the CWA, as alleged within this CAFO.

3.8. Respondent Jayo Development, Inc. submitted a NOI to EPA for coverage under the 2012 CGP for the Site on December 3, 2012, which identified Respondent Jayo Development, Inc. as the operator for the Site, and estimated the Site would have 3.25 acres of disturbed area.

3.8.1. Respondent's coverage went into effect on December 17, 2012 and was assigned NPDES Tracking No. IDR12C185.

3.9. Respondent Jayo Development, Inc. prepared the Stormwater Pollution Prevention Plan ("SWPPP") used on the Site and finalized a revised SWPPP on February 10, 2012 ("2012 SWPPP").

3.9.1. The City of Boise required an Erosion and Sediment Control Plan for the Site, in which Respondent Jayo Development, Inc. identified itself as "The responsible person or persons on site ..." who has the responsibility "... to understand and abide by federal and local requirements relating to the Clean Water Act and National Pollution Discharge Elimination System (NPDES) permits."

3.9.2. In a letter dated December 12, 2012, Respondent Jayo Development, Inc. responded to the NOV issued to Respondent Jayo Construction, Inc.

3.10. The Boise River, a tributary to the Snake River, is a “navigable water” and “waters of the United States,” and is subject to the jurisdiction of the Clean Water Act. CWA § 311, 33 U.S.C. § 1321; CWA § 502(7), 33 U.S.C. § 1362(7); 33 C.F.R. § 328.3(a); 40 C.F.R. §§ 110.1, 232.2.

3.10.1. The Americana Outfall in Boise, Idaho, is one of the discharge points for the Ada County Highway Department’s (“ACHD”) municipal separate storm sewer system (“MS4”), and discharges into the Boise River.

3.10.2. The Site is located within a sub-watershed which drains through the ACHD MS4 and discharges from the Americana Outfall into the Boise River.

3.11. EPA conducted construction stormwater inspections (“CSI”) at the Site on April 24-26, 2012 to evaluate the treatment and disposal of storm water in accordance with the CWA, the regulations promulgated under the CWA at 40 C.F.R. § 122.26 and the 2008 CGP.

3.11.1. On April 25, 2012 and April 26, 2012, EPA observed turbid stormwater discharging from exposed areas of the Site to West Boise Hills Drive and West Crestline Drive, which subsequently discharged through storm drains into the ACHD MS4.

3.11.2. On April 26, 2012, EPA observed turbid stormwater discharging from exposed areas of the Site to the ACHD MS4 stormwater retention basin, which discharged into the ACHD MS4.

3.12. EPA conducted a subsequent inspection at the Site on May 8, 2012.

3.13. Respondent Jayo Development, Inc. submitted a NOI to EPA for coverage under the 2012 CGP for the Site and the addition of Subdivision No. 3 on February 28, 2013, which identified Respondent Jayo Development, Inc. as the operator for the Site, including Subdivision No. 3, and estimated the total Site would have an additional 2.0 acres of disturbed area.

3.13.1. Respondent's coverage went into effect on March 14, 2013 and was assigned NPDES Tracking No. IDR12CA75. The Respondents prepared another SWPPP for the Somerset Village and Subdivision No. 3, dated February 14, 2013.

#### **Count 1**

3.14. Part 3, Paragraph 1.A.3. of the 2008 CGP required Respondents to implement sediment controls or use sediment basins for all down slope boundaries of the Site.

3.14.1. At the time of the CSI, the Site had multiple down slope boundaries where sediment controls were not implemented and where such areas did not drain to a sediment basin in accordance with Paragraph 1.A.3.

3.15. Respondents violated Part 3, Paragraph 1.A.3. of the 2008 CGP when Respondents failed to implement sediment controls for all down slope boundaries of the Site or use a sediment basin designed and constructed to meet the 2008 CGP's sediment basin storage requirements.

#### **Count 2**

3.16. Part 3, Paragraph 1.B. of the 2008 CGP required Respondents to minimize dust generation and the off-site vehicle tracking of sediments onto paved surfaces. If sediment escaped the Site, Respondents were required to remove off-site accumulations of sediment at a frequency sufficient to minimize off-site impacts. The Respondents' 2012 SWPPP indicated that mud or dirt tracked into any roadway from the Site would be cleaned up daily.

3.16.1. At the time of the April 24 and 25, 2012 inspections, the main construction entrance on West Boise Hills Drive either lacked adequate armoring or had armoring which was at least partially buried under accumulated sediment. Off-site vehicle tracking of sediments from the Site onto West Boise Hills Drive was visibly present and had not been removed.

3.16.2. On the evening of April 25, 2012 after construction activity at the Site had concluded for the day, and on the morning of April 26, 2012, off-site accumulations of sediment from the Site remained visibly present and had not been removed from West Boise Hills Drive.

3.16.3. At the time of the April 24 and 25, 2012 inspections, the construction equipment staging entrance on West Crestline Drive lacked adequate armoring. Off-site vehicle tracking of sediments from the Site onto West Crestline Drive was visibly present and had not been removed.

3.16.4. On the evening of April 25, 2012 after construction activity at the Site had concluded for the day, and on the morning of April 26, 2012, off-site accumulations of sediment from the Site remained visibly present and had not been removed from West Crestline Drive.

3.17. Respondents violated Part 3, Paragraph 1.B. of the 2008 CGP when Respondents failed to remove off-site accumulations of sediment from the Site at a frequency sufficient to minimize off-site impacts.

### Count 3

3.18. Part 3 and Part 3, Paragraph 1.C. of the 2008 CGP required Respondents to select, install, and maintain control measures for each major construction activity sufficient to divert flows from exposed soils, retain/detain flows or otherwise minimize runoff and the discharge of pollutants from exposed areas of the Site.

3.18.1. Respondents were required to implement control measures, from commencement of construction activity until final stabilization is complete, to reduce and/or eliminate pollutants in storm water discharges.

3.18.2. Respondents' Erosion Control Plan, dated December 9, 2011, depicts an interceptor drainage channel located at the base of the hills immediately south of the Site,



to divert stormwater from flowing down the hillsides and onto the Site. At the time of the April 24-26, 2012 inspections, portions of the interceptor drainage channel had not been constructed.

3.18.3. At the time of the April 25 and 26, 2012 inspections, Respondents had inadequate flow control measures upgradient of the utility construction activity in West Crestline Drive to divert or otherwise control stormwater which flowed across exposed areas of the Site. Respondents did not install control measures upgradient of the utility construction activity to divert or otherwise control stormwater flowing downhill along West Crestline Drive. Respondents did not install control measures downgradient of the utility construction activity to retain and/or detain flows or otherwise minimize runoff and the discharge of pollutants from exposed areas of the Site. Sediment carried by stormwater was visibly present across the width of West Crestline Drive.

3.18.4. At the time of the April 26, 2012 inspection, Respondents had inadequate flow control measures upgradient of the West Boise Hills entrance to the Site to divert or otherwise control stormwater flowing downhill along West Boise Hills Drive. Respondents did not install control measures downgradient of the West Boise Hills entrance to retain and/or detain flows or otherwise minimize runoff and the discharge of pollutants from exposed areas of the Site. Sediment carried by stormwater was visibly present in stormwater exiting the West Boise Hills entrance, and continued to flow downgradient until it drained into the ACHD MS4.

3.19. Respondents violated Part 3, Paragraph 1.C. of the 2008 CGP when Respondents failed to have adequate control measures in place to divert flows from exposed soils, detain or retain flows, or otherwise minimize runoff and the discharge of pollutants from exposed areas of the Site.

#### Count 4

3.20. Part 3, Paragraph 1.D. of the 2008 CGP required Respondents to place velocity dissipation devices at discharge locations and along the length of any outfall channel to provide a non-erosive flow velocity from the structure to a water course so the natural physical and biological characteristics and functions are maintained and protected.

3.19.1. On April 26, 2013, stormwater from the Site flowed through a channel on the west side of the Site, near the pumphouse, which discharged across the sidewalk and onto West Boise Hills Drive.

3.19.2. On April 26, 2012, Respondents utilized a channel to divert a portion of the stormwater flow, which otherwise would have flowed through the utility construction activity in West Crestline Drive, to the ACHD MS4 stormwater retention basin.

3.19.3. During the April 26, 2012 inspection, the ACHD stormwater retention basin was overflowing into the ACHD MS4, which discharges to the Boise River.

3.19.4. During the April 26, 2012 inspection, stormwater directed into the channels described in subparagraphs 3.19.1 and 3.19.2 had flowed across onsite soils exposed due to construction activity before travelling off site. Respondents did not place adequate velocity dissipation devices in either channel, and stormwater within the channel was visually turbulent and turbid, characteristic of erosive flow.

3.21. Respondents violated Part 3, Paragraph 1.D. of the 2008 CGP when Respondents failed to place adequate velocity dissipation devices at discharge locations and along the length of outfall channels to provide a non-erosive flow velocity from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.

### **Count 5**

3.22. Part 3, Paragraph 1.F.2. of the 2008 CGP required Respondents to implement storage practices, prevention and response practices, and other controls sufficient to minimize exposure of construction and waste materials to stormwater, and the occurrence of spills.

3.22.1. On April 25, 2012, Respondents had an excavation bucket on the ground at the staging area for the Site, but had not placed a drip pan underneath the end of the excavation bucket's hydraulic line. Fluid had visibly seeped into the exposed soil underneath the quick connect at the end of the hydraulic line.

3.22.2. On April 25, 2012, Respondents had a 500 gallon fuel tank within a roll off container, for the purpose of spill containment, at the staging area for the Site. The roll off container had visibly separated at one of the lower weld seams, and could not adequately serve as secondary containment for a 500 gallon fuel tank.

3.23. Respondents violated Part 3, Paragraph 1.F.2. of the 2008 CGP when Respondents failed to implement storage practices, prevention and response practices, and other controls sufficient to minimize exposure of construction and waste materials to stormwater, and the occurrence of spills.

### **Count 6**

3.24. Part 3, Paragraph 6.A. of the 2008 CGP required Respondents to maintain all stormwater control measures and other protective measures in effective operating condition. If Respondents identified stormwater control measures or other protective measures that were not operating effectively, Respondents were required to perform maintenance as soon as possible and whenever practicable before the next storm event.

3.24.1. As described in subparagraph 3.16.1 through 3.16.4, the aggregate material used to armor the entrances to the Site was inadequately installed and/or

maintained, and as a result, Respondents had visible vehicle tracking of sediments from the Site onto paved surfaces.

3.24.2. As of April 25, 2012, Respondents failed to maintain secondary containment for the 500 gallon fuel tank at the Site, as previously described in subparagraph 3.22.2, in effective operating condition.

3.24.3. On April 25 and April 26, 2012, Respondents failed to maintain sediment controls around stormwater drains on West Crestline Drive and West Boise Hills Drive.

3.25. Respondents violated Part 3, Paragraph 6.A. of the 2008 CGP when Respondents failed to properly select, install, and maintain sediment and stormwater controls adequate to prevent or minimize the discharge of stormwater runoff and/or pollutants from exposed areas of the Site.

#### **Count 7**

3.26. Part 3, Paragraphs 6.A and 6.D. of the 2008 CGP required Respondents to remove trapped sediment from a silt fence before the deposit reaches 50 percent of the above-ground fence height, or a lower height based on manufacturer's specifications.

3.26.1. On April 26, 2012, Respondents had at least one silt fence in which the accumulated trapped sediment was approaching the top of the silt fence during the precipitation event, at a height well past 50 percent of the above-ground fence.

3.26.2. On May 8, 2012, accumulated trapped sediment on that same silt fence remained near the top of the silt fence, at a height well past 50 percent of the above-ground fence.

3.27. Respondents violated Part 3, Paragraphs 6.A. and 6.D. of the 2008 CGP when Respondents failed to remove trapped sediment from the silt fence when the deposit remained above 50 percent of the above-ground fence height, as observed on May 8, 2012.

**Count 8**

3.28. Part 4, Paragraph A. of the 2008 CGP required Respondents to conduct inspections at a frequency of at least once every seven calendar days, or once every 14 calendar days and within 24 hours of the end of a storm event with 0.5 inches of precipitation or greater, and to record the selected schedule within the SWPPP.

3.28.1. The SWPPP available at the Site on April 26, 2012 was dated February 10, 2012, and stated that Respondents would conduct inspections once every seven calendar days. The Respondents' representative told the EPA inspector that inspections were being conducted on a 14-day schedule.

3.28.2. Part 5.9 of the 2008 CGP required Respondents to create a record of each inspection and to retain those inspection records with the SWPPP for at least three years from the date that permit coverage expired or was terminated.

3.28.3. According to Respondents' inspection records, inspections took place on December 20 in 2011, and January 4, January 13, January 20, February 1, February 20, March 7, March 20, April 5, and April 25 in 2012. Eight of those inspections took place more than seven days after the prior inspection. Even under a 14-day schedule, the Respondents did not conduct inspections within this time frame for three periods: February 21, 2012 – March 5, 2012; March 21, 2012 – April 3, 2012; and April 6, 2012 – April 19, 2012.

<u>Inspection Date</u>	<u>number of days since the prior inspection</u>
Dec. 20, 2011	
Jan. 04, 2012	15 days
Jan. 13, 2012	9 days
Jan. 20, 2012	7 days
Feb. 01, 2012	12 days
Feb. 20, 2012	19 days
Mar. 07, 2012	16 days

Mar. 20, 2012	13 days
Apr. 05, 2012	16 days
Apr. 25, 2012	20 days

3.28.4. As of April 26, 2012, Respondents' SWPPP did not include a record of any storm events with 0.5 inches of precipitation or greater.

3.28.5. The National Oceanic and Atmospheric Administration has a weather station (Station ID GHCND:US11IDAD0009) within a mile of the Site, which in January 1, 2012 through April 5, 2012, recorded daily precipitation of 0.5 inches or greater on January 19, January 20, and March 17. The Respondents did not conduct inspections after the January 20 and March 17 precipitation events.

3.29. Respondents violated Part 4, Paragraph A. of the 2008 CGP when Respondents failed to conduct inspections at a frequency of at least once every 7 calendar days, or once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater.

#### **Count 9**

3.30. Part 4.1.2 of the 2012 CGP required Respondents to conduct inspections at a frequency of at least once every seven calendar days, or once every 14 calendar days and within 24 hours of the end of a storm event with 0.25 inches of precipitation or greater, and to record the selected schedule within the SWPPP.

3.30.1. Upon request by EPA and after the CSI inspections were complete, Respondents submitted inspection records for review.

3.30.2. Section 6 of Respondents' SWPPP, dated February 14, 2013, states that Respondents' stormwater pollution prevention inspections are to take place at least once every 14 days and within 24 hours of a rain event greater than 0.25 inches.

3.30.3. Although over 0.25 inches of precipitation fell on November 16, 2013, Respondents did not conduct an inspection within 24 hours of the November 16, 2013 rain event.

3.31. Respondents violated Part 4.1.2 of the 2012 CGP when Respondents failed to conduct inspections at a frequency of at least once every 7 calendar days, or once every 14 calendar days and within 24 hours of the end of a storm event of 0.25 inches or greater.

#### **Counts 10-11**

3.32. Part 4, Paragraph H of the 2008 CGP contains inspection report requirements, which require Respondents to include in each inspection report, *inter alia*, a description of the weather and precipitation since the last inspection, whether any discharges were occurring or had occurred, locations where best management practices need to be maintained, and locations where best management practices have failed, performed inadequately, or need to be implemented.

3.32.1. For at least the period between December 20, 2011 and April 25, 2012, Respondents' inspection documents did not include weather information for the period since the last inspection or a description of any discharges which had occurred.

3.32.2. For at least the period between December 20, 2011 and April 25, 2012, Respondents' inspection documents did not include the locations where best management practices had failed, performed inadequately, needed to be maintained, or needed to be implemented.

3.33. Appendix G, Paragraph 11 of the 2008 CGP requires all documents required under the 2008 CGP to be signed and certified by the applicant or a duly authorized representative of the applicant.

3.33.1. For at least the period between December 20, 2011 and April 25, 2012, Respondents' inspection documents did not include the signature or certification required under Appendix G, Paragraph 11 of the 2008 CGP.

3.34. Respondents violated Part 4, Paragraph H of the 2008 CGP when Respondents failed to record in their inspection report the applicable rain gauge or weather station readings that triggered inspections which were conducted due to rainfall measuring 0.25 inches or greater, descriptions of any discharges, and locations of BMPs that needed to be maintained.

3.35. Respondents violated Appendix G, Paragraph 11 of the 2008 CGP when Respondents failed to include the signature or certification described therein on the required inspection reports.

### **Counts 12-13**

3.36. Parts 4.1.6 and 4.1.7.1 of the 2012 CGP detail the requirements of the inspection reports, which require Respondents to include in each inspection report elements, *inter alia*, a description of the weather and precipitation since the last inspection, whether any discharges occurred, locations where best management practices needed maintenance, and locations where best management practices failed, performed inadequately, or needed to be implemented.

3.36.1. For five inspection reports during the period between December 26, 2012 and March 6, 2013, Respondents did not record the applicable rain gauge or weather station readings that triggered the inspection, when that inspection was conducted due to rainfall measuring 0.25 inches or greater, or the existence and characteristics of any discharge(s) from the Site.

3.37. Part 4.1.7.2 and Appendix I, Part I.11 of the 2012 CGP requires all inspection Reports required under the 2012 CGP to be signed and certified by the applicant or a duly authorized representative of the applicant.

3.37.1. For eight inspection reports during the period between December 26, 2012 and March 6, 2013, Respondents' inspection documents did not include the signature or certification required under Appendix I, Part I.11 of the 2012 CGP.



3.38. Respondents violated Parts 4.1.6 and 4.1.7.1 of the 2012 CGP when Respondents failed to record in their inspection report the applicable rain gauge or weather station readings that triggered inspections which were conducted due to rainfall measuring 0.25 inches or greater and whether discharges existed.

3.39. Respondents violated Part 4.1.7.2 and Appendix I, Part I.11 of the 2012 CGP when Respondents failed to include the signature or certification described therein on the required inspection reports.

#### **Count 14**

3.40. Part 5.2, Paragraph C of the 2008 CGP required Respondents to have a SWPPP and to update the Site map to reflect areas of soil disturbance, areas where the soil would not be disturbed, locations of major stormwater controls identified in the SWPPP, locations of equipment storage areas, and locations of construction and waste materials stored onsite.

3.41. Part 5.10, Paragraph A of the 2008 CGP required Respondents to update the SWPPP to reflect modifications to stormwater control measures made in response to a change in design, construction, operation, or maintenance at the Site that has or could have a significant effect on the discharge of pollutants to the waters of the United States.

3.41.1. Section 6.2 of Respondents' 2012 SWPPP noted that changes and updates to the SWPPP would be recorded on the SWPPP Amendment Log located in the SWPPP's Appendix G.

3.41.2. Although Site changes which should have been noted in Appendix G had occurred between February 10, 2012 and April 26, 2012, when Respondents' 2012 SWPPP was reviewed on April 26, 2012, Appendix G was blank.

3.42. Respondents violated Part 5.10, Paragraph A of the 2008 CGP in 2012 when Respondents failed to update the SWPPP Site map to reflect requisite modifications to stormwater control measures made in response to a change in design, construction, operation, or

maintenance on the eastern portions at the Site (e.g., Subdivision 3 area utility installations and West Crestline Drive utility construction activity) that have or could have a significant effect on the discharge of pollutants to the waters of the United States.

3.43. EPA may assess an administrative penalty when EPA finds that any person “has violated any permit condition or limitation” in a permit issued pursuant to Section 402 of the CWA. CWA §§ 309(g), 402; 33 U.S.C. §§ 1319(g), 1342.

3.44. EPA alleges that Respondents are liable for administrative penalties up to \$16,000 per day, per violation, during which these alleged violations occurred. CWA § 309(g), 33 U.S.C. § 1319(g); 40 C.F.R. Part 19.

#### **IV. CONSENT AGREEMENT**

4.1. Respondents admit the jurisdictional allegations contained in Part III of this CAFO.

4.2. Respondents neither admit nor deny the specific factual allegations contained in Part III of 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 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 this action is \$14,100.

4.4. Respondents agree to pay the total civil penalty set forth in Paragraph 4.3 within 30 calendar days of the effective date of the Final Order.

4.5. Payment under this CAFO 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  
P.O. Box 979077  
St. Louis, MO 63197-9000

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

4.6. Respondents must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.5 to 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

Rick Cool, Compliance Officer  
U.S. Environmental Protection Agency  
Region 10, Mail Stop OCE-133  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

4.7. If Respondents fail 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. If such a failure to pay occurs, Respondent 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.

4.7.1. 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 calendar 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 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 percent of the aggregate amount of Respondents' 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 representatives of Respondents certify that he or she is authorized to enter into the terms and conditions of this CAFO and to bind Respondents to this document.

4.10. Except as described in Subparagraph 4.7.2, above, each party shall bear its own fees and costs in bringing or defending this action.

4.11. Respondents expressly waive any right to contest the allegations and waive any right to appeal the Final Order set forth in Part V.

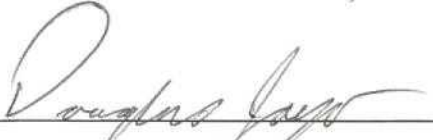
4.12. The provisions of this CAFO shall bind Respondents and their agents, servants, employees, successors, and assigns.

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

DATED:

Aug 5, 2014

FOR JAYO CONSTRUCTION, INC.

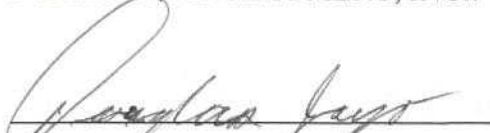


DOUGLAS JAYO, President  
Jayo Construction, Inc.

DATED:

Aug 5, 2014

FOR JAYO DEVELOPMENT, INC.:

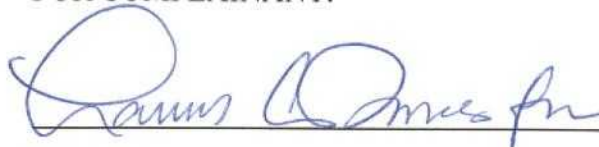


DOUGLAS JAYO, President  
Jayo Development, Inc.

DATED:

9-2-2014

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement

## **V. FINAL ORDER**

5.1. The terms of the foregoing Parts I-IV are ratified and incorporated by reference into this Final Order. Respondents are 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 Respondents' 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 Idaho Department of Environmental Quality has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondents.

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 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.

5.5. This Final Order shall become effective upon filing.

SO ORDERED this 15<sup>th</sup> day of September, 2014.

  
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: Jayo Construction, Inc.; Jayo Development, Inc., Docket No. CWA-10-2014-0144** was filed, and served as follows, on the signature date below.

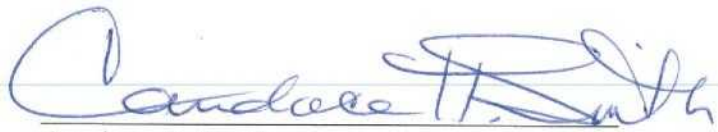
The undersigned certifies that a true and correct electronic copy of the document was delivered to:

Chris Bellovary  
U.S. Environmental Protection Agency  
Region 10, M/S: ORC-158  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of this document was placed in the United States mail, certified/return receipt, to:

Albert P. Barker  
Barker Rosholt & Simpson LLP  
1010 W Jefferson, Suite 102  
Boise, ID 83702

16 Sept 2014  
Dated

  
Candace H. Smith  
Regional Hearing Clerk  
EPA Region 10