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EPA - REGION 10

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

BMC EAST, LLC

Everett, Washington,

Respondent.

Docket No. CWA-10-2018-0253

**COMPLAINANT'S UNOPPOSED  
RESPONSE TO ORDER TO SHOW  
CAUSE**

**COMPLAINANT'S RESPONSE**

The United States Environmental Protection Agency ("EPA" or "Complainant") respectfully submits this response to the Order to Show Cause ("Order") in this action directing the Parties to address five matters identified in the Order. Complainant's unopposed response is provided below.

1. The Order directs the Parties to "explain how the assertion of claims in Counts 5, 7, and 9 of the Consent Agreement, and the associated assessment of civil penalties for those alleged violations, is consistent with the applicable statute of limitations" or to "provide refined settlement terms which address the penalty limits for those Counts."

28 U.S.C. § 2462 provides a five-year statute of limitations for penalty actions such

as this one. The oldest violation alleged in the Consent Agreement occurred in January 2013. On August 30, 2017, Complainant notified Respondent of its intent to initiate an enforcement action for violations of the Clean Water Act (“CWA” or “Act”), including the violations identified in Counts 5, 7, and 9 of the Consent Agreement. Complainant further notified Respondent that it was authorized under CWA section 309, 33 U.S.C. § 1319, and 40 C.F.R. Part 19, to assess administrative penalties of up to \$20,965 per day of violation of the Act. This notification was provided well before the five-year statute of limitations for any of the violations had lapsed. Thus, Respondent received ample notice of EPA’s intent to file an enforcement action and to seek civil penalties prior to the expiration of the statute of limitations.

2. The Order directs the Parties to inform the Regional Judicial Officer “whether all the required statutory factors in Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), were considered when determining an appropriate penalty.” Section 309(g)(3) of the CWA provides, “In determining the amount of any penalty assessed under this subsection, the Administrator . . . shall take into account the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.” Complainant considered all of the required statutory factors when it assessed the penalty identified in Paragraph 4.3 of the Consent Agreement.

3. The Order directs the Parties to provide an explanation of the waiver of rights contained in Paragraph 4 of the Final Order. Rather than provide an explanation, Complainant hereby submits a revised Final Order that omits Paragraph 4 and the waiver contained therein. 40 C.F.R. § 22.18(b)(2) requires the consent agreement to “state that, for the purpose of the proceeding, respondent . . . waives any right to contest the allegations and its right to appeal the proposed final order accompanying the consent agreement.” This requirement is satisfied in Paragraph 4.12 of the Consent Agreement.
4. The Order directs the Parties to demonstrate that there has been compliance with the state consultation requirement in section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1). Complainant consulted with the State of Washington, consistent with CWA section 309(g)(1), 33 U.S.C. § 1319(g)(1), by providing notice of and opportunity to comment on the proposed settlement.
5. The Order directs the Parties to provide additional information regarding the public notice and comment and to confirm that it was conducted consistent with section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. Part 22. Due to a procedural error, the proper form documenting the adequacy of the public notice and comment was not provided to the Regional Judicial Officer. Complainant hereby submits Exhibit A as proof that the public notice and comment was conducted consistent with section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. Part 22. As documented in Exhibit A, public notice was provided at

<https://www.epa.gov/publicnotices/> on March 5, 2018. Comments were accepted through April 13, 2018. No comments were received during the public notice and comment period.

Respectfully Submitted this 2<sup>nd</sup> day of May, 2018.



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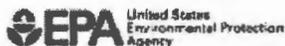
Leah Brown  
Assistant Regional Counsel  
U.S. EPA Region 10  
Suite 155, Mail Stop ORC-113  
1200 Sixth Avenue  
Seattle, Washington 98101

**EXHIBIT A**

An official website of the United States government.

We've made some changes to EPA.gov. If the information you are looking for is not here, you may be able to find it on the EPA Web Archive or the January 19, 2017 Web Snapshot.

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## Public Notice: Proposed Settlement with BMC East, LLC, for Clean Water Act Violations

### How to Comment

Comments accepted through: 04/13/2018

#### How to Comment

Written comments may be sent to the Regional Hearing Clerk at the address below within 30 days of the date of this notice. Be sure to include your name and address if you would like a response.

Comments should reference docket number **CWA-10-2018-0253** and be mailed to:

Teresa Young, Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10 (ORC-113)  
1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101-3140

**Questions?** For additional information, contact Maria Lopez ([lopez.maria@epa.gov](mailto:lopez.maria@epa.gov)) at 208-350-9097.

Publish Date: 03/05/2018

### Summary

EPA is providing notice of a proposed administrative penalty settlement with BMC East, LLC, (Respondent) for violation of the Clean Water Act at its facility located in Everett, Washington.

EPA alleges that the Respondent failed to comply with its State of Washington, Department of Ecology Industrial Stormwater General Permit (ISGP) at its BMC East Facility. The ISGP covers industrial stormwater discharges from the facility into Union Slough which ultimately discharges to Puget Sound.

Alleged violations include failure to: develop and implement an adequate Stormwater Pollution Prevention Plan (SWPPP); implement good housekeeping Best Management practices (BMPs); implement preventative maintenance BMPs and Spill Prevention and Emergency Cleanup Plan (SPECP) BMPs; conform to sampling requirements; adequately complete corrective actions; properly conduct stormwater discharge sampling; submit proper Discharge Monitoring Reports (DMRs); and conduct and/or document monthly site inspections.

This action is being simultaneously commenced and concluded in a Consent Agreement and Final Order (see "Related Documents" below). Under the proposed Consent Agreement and Final Order, BMC East, LLC, will pay a civil penalty of \$44,500.

### **Legal Authority**

This is a Class II administrative penalty proceeding governed by Section 309(g) (33 U.S.C. § 1319 (g)) of the Clean Water Act and the procedural rules found at 40 CFR Part 22.

The requirements that apply to public comment and participation are set forth in the Clean Water Act Section 309(g)(4) and 40 CFR § 22.45.

### **Applicant or Respondent**

BMC East, LLC  
3200 35th Ave NE  
Everett, WA 98201

### **Related Documents**

You may need a PDF reader to view files on this page. See EPA's [About PDF page](#) to learn more.

- [Proposed Consent Agreement and Final Order: BMC East, LLC \(PDF\)](#) (17 pp, 241 K, March 2018)  
Docket No. CWA-10-2018-0253

LAST UPDATED ON MARCH 5, 2018

Certificate of Service

The undersigned certifies that the original of the attached **COMPLAINANT'S UNOPPOSED RESPONSE TO ORDER TO SHOW CAUSE, In the Matter of: BMC East, LLC, Docket No.: CWA-10-2018-0253**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

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

Leah Brown  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, ORC-113  
Suite 155  
Seattle, Washington 98101

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

Ted Hopkins  
3333 Vaca Valley Parkway, Suite 2000  
Vacaville, CA 95688

DATED this 7 day of May, 2018, Tm Y  
Signature

Teresa Young  
Regional Hearing Clerk  
EPA Region 10