

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

RECEIVED

JUN 09 2011

EPA ORC

Office of Regional Hearing Clerk

In the Matter of:

Bishop's Bend  
Development Corp.  
fka PRM Concrete  
Corporation  
775 School Street  
Pawtucket, RI 02860

Respondent

Docket No. CWA-01-2010-0050

CONSENT AGREEMENT AND  
FINAL ORDER FOR CLASS II  
CIVIL PENALTY UNDER  
CLEAN WATER ACT

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) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), in accordance with 40 C.F.R. § 22.18(b) of EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 C.F.R. Part 22.

**I. PRELIMINARY STATEMENT**

1. EPA initiated this proceeding against Bishop's Bend Development Corp., fka PRM Concrete Corporation ("Respondent"), pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), by filing an administrative complaint ("Complaint"), Docket No. CWA-01-2010-0050, on September 30, 2010.

2. On September 22, 2010, Respondent ceased operations at its ready-mix concrete facility, in Pawtucket, Rhode Island, where the CWA violations alleged in the Complaint are alleged to have occurred.

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

4. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and in accordance with 40 C.F.R. § 22.38(b), the State of Rhode Island has been given an opportunity to consult with EPA regarding the assessment of the administrative penalty for CWA violations against Respondents.

5. Section 309(g)(4)(A) of the CWA, 33 U.S.C. 1319(g)(4)(A), provides that, prior to issuing an order assessing a penalty under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA must provide public notice of, and reasonable opportunity to comment on, the proposed issuance of such order. EPA has satisfied this requirement by providing public notice and opportunity to comment on the proposed penalty from September 30, 2010 to November 1, 2010. EPA did not receive any comments during the public notice and comment period.

## **II. CONSENT AGREEMENT**

EPA and Respondent agree that settlement of this cause of action is in the public interest, and that entry of this CAFO without further litigation and the expenditure of additional time and resources is the most appropriate means of resolving this matter. Therefore, before taking any testimony, upon the pleadings, without adjudication of any

issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

6. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint.

7. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the facts and violations alleged in the Complaint, consent to the terms of this CAFO.

#### **Waiver of Rights**

8. Respondent waives the right to a hearing under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and to appeal any Final Order in this matter under Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B). Respondent consents to the issuance of a Final Order without further adjudication.

#### **Penalty**

9. Based on EPA's consideration of the statutory penalty factors set forth in Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), including Respondent's cessation of operations and inability to pay the proposed penalty amount, EPA proposes, and Respondent consents to, the assessment of a civil penalty of Sixty Thousand Dollars (\$60,000).

#### **Payment Terms**

10. Respondent shall pay a total penalty of \$60,000 for violations of Sections 301 and 308 of the CWA, 33 U.S.C. §§ 1311, 1318, which shall be due no later than 10 calendar days after the final date of this CAFO.

11. Respondent shall pay the penalty, and any interest thereon, by submitting a bank, cashier's, or certified check, payable to "Treasurer, United States of America."

This check shall be sent to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Respondent shall note the case name and respective docket numbers ("In the Matter of Bishop's Bend Development Corp, fka PRM Concrete Corporation," Docket No. CWA-01-2010-0050) on the check and in accompanying cover letters and shall provide copies of the checks and letters to:

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region I  
5 Post Office Square, Suite 100  
Mail Code: ORA18-1  
Boston, MA 02109-3912

and

Amanda J. Helwig  
Enforcement Counsel  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., NW  
Mail Code: 2243-A  
Washington, DC 20460

12. The penalty provided for herein is a penalty within the meaning of 26 U.S.C. § 162(f) and is not tax deductible for purposes of federal, state, or local law.

### **General Provisions**

13. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), a failure by the Respondent to pay the penalty assessed by this CAFO in full by its due date shall



subject Respondent to a civil action to collect the assessed penalty, plus interest at current prevailing rates, from the effective date of this CAFO. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(b), promulgated under 31 U.S.C. § 3717. Any person who fails to pay on a timely basis the amount of an assessed penalty shall be required to pay, in addition to such amount and interest, attorney's fees, 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 twenty percent of the aggregate amount of such person's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

14. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, successors, or assigns.

15. The Final Order does not constitute a waiver, suspension, or modification of the requirements of Sections 301 and 308 of the CWA, 33 U.S.C. §§ 1311, 1318, or any regulations promulgated thereunder, and does not affect the right of the EPA Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's alleged liability for federal civil penalties for the alleged violations and facts incorporated by reference herein.

16. Except as described in paragraph 13 of this Consent Agreement, each party shall bear its own costs and attorney's fees in connection with the action resolved by this CAFO.

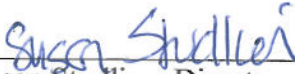
17. The undersigned representative of Respondent certifies that she is fully authorized by Bishop's Bend Development Corp. fka PRM Concrete Corporation to enter into the terms and conditions of this CAFO and to execute and legally bind Bishop's Bend Development Corp. fka PRM Concrete Corporation to it.

FOR RESPONDENT:

Rose P. McHale  
Rose McHale, President  
Bishop's Bend Development Corp.  
fka PRM Concrete Corporation

Date: 5/17/11


FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

  
\_\_\_\_\_  
Susan Studlien, Director  
Office of Environmental Stewardship  
U.S. EPA, Region 1

Date: 05/31/11

### III. FINAL ORDER

18. The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. Respondent is hereby ordered to comply with the terms of the above Consent Agreement, which will become final thirty (30) days from the date it is signed by the Regional Judicial Officer.

  
\_\_\_\_\_  
Jill A. Metcalf  
Acting Regional Judicial Officer  
U.S. EPA, Region 1

Date: June 8, 2011



CERTIFICATE OF SERVICE

I hereby certify that the foregoing Consent Agreement and Final Order was sent to the following persons on the date noted below:

Original and one copy,  
by hand delivery:

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code: ORA18-1  
Boston, Massachusetts 02109

One copy, by certified mail:

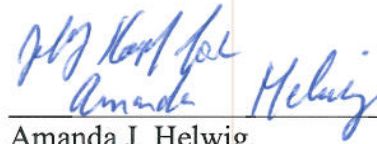
Rose McHale, President  
Bishop's Bend Development Corp.,  
fka PRM Concrete Corporation  
775 School Street  
Pawtucket, RI 02860

Jennifer R. Cervenka, Esq.  
Partridge, Snow, & Hahn LLP  
180 South Main Street  
Providence, RI 02903

One copy, by pouch mail:

The Honorable Susan L. Biro  
Chief Administrative Law Judge  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Mail Code: 1900L  
Washington, D.C. 20460

Date: 6/9/11



Amanda J. Helwig  
Enforcement Counsel  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Mail Code: 2243-A  
Washington, D.C. 20460  
Phone: (202) 564-3713  
Fax: (202) 564-0018



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FIVE POST OFFICE SQUARE – SUITE 100  
BOSTON, MASSACHUSETTS 02109-3912

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Regional Hearing Clerk  
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Boston, Massachusetts 02109

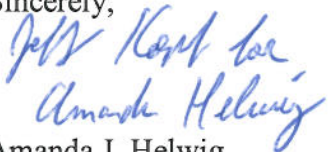
RE: In the Matter of Bishop's Bend Development Corp., fka PRM Concrete Corporation, Docket No. CWA- 01-2010-0050

Dear Ms. Santiago,

Enclosed for filing in the above-referenced matter, please find the original and one copy of the Consent Agreement and Final Order, signed by both parties and approved by the Regional Judicial Officer, and the Certificate of Service.

Thank you for your attention to this matter.

Sincerely,

  
Amanda J. Helwig  
Enforcement Counsel  
U.S. Environmental Protection Agency

cc: Rose McHale, President  
Bishop's Bend Development Corp. fka PRM Concrete Corporation

Jennifer R. Cervenka, Esq.  
Partridge, Snow, & Hahn LLP

Enclosures

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Amanda J. Helwig 6/9/11  
Name of Case Attorney Date

in the ORC (RAA) at 918-1113  
Office & Mail Code Phone number

Case Docket Number CWA-01-2010-0050

Site-specific Superfund (SF) Acct. Number \_\_\_\_\_

This is an original debt  This is a modification

Name and address of Person and/or Company/Municipality making the payment:

Bishop's Bend  
Development Corp. fka PRM Concrete Corporation  
775 School Street  
Pawtucket, RI 02860

Total Dollar Amount of Receivable \$ 60,000 Due Date: 6/24/11

SEP due? Yes \_\_\_\_\_ No  Date Due \_\_\_\_\_

Installment Method (if applicable)

INSTALLMENTS OF:  
1<sup>ST</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
2<sup>nd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
3<sup>rd</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
4<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_  
5<sup>th</sup> \$ \_\_\_\_\_ on \_\_\_\_\_

For RHC Tracking Purposes:

Copy of Check Received by RHC \_\_\_\_\_ Notice Sent to Finance \_\_\_\_\_

**TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:**

IFMS Accounts Receivable Control Number \_\_\_\_\_

If you have any questions call: \_\_\_\_\_  
in the Financial Management Office

\_\_\_\_\_  
Phone Number