

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

FILED
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REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of

Lockwood Construction Company

Respondent

Permit No. NMR15FV79

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Docket No. CWA-06-2009-1873

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the United States Environmental Protection Agency ("EPA") pursuant to Section 309(g) of the Clean Water Act (herein "the Act"), 33 U.S.C. § 1319(g). This CAFO is issued to simultaneously commence and conclude this proceeding to assess a civil penalty in accordance with 40 C.F.R §§ 22.13(b) and 22.18(b)(2) and (3), as described in the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits."

2. The Parties agree that settlement of the relevant matters without litigation will save time and resources, that it is in the public's interest, and that the entry of this CAFO is the most appropriate means of resolving such matters. Compliance with all the terms and conditions of this CAFO resolves only those violations specified in this CAFO.

3. Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific Findings of Fact and Conclusions of Law contained in this CAFO. This CAFO states a claim upon which relief may be granted.

4. Respondent expressly waives any right to contest the factual allegations or Conclusions of Law contained in this CAFO, and waives its right to appeal the Final Order set forth herein.

5. Before the taking of any testimony, and without adjudication of any issue of law or fact, the parties agree to the terms of this CAFO and to its issuance. Respondent consents to the assessment and payment of a civil penalty in the amount and by the method stated below.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

6. Lockwood Construction Company (herein "Respondent") is a partnership, duly formed under the laws of the State of New Mexico, and as such, Respondent is a "person," as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

7. At all times relevant to the violations alleged herein ("relevant time period"), Respondent owned or operated the Public Employees Retirement Association of New Mexico, a commercial development operating under SIC 1542, located at 33 Plaza La Prensa, Santa Fe, New Mexico 87507 (herein "the facility"), and was therefore an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

8. During the relevant time period, the facility was a "point source" of a "discharge" of "pollutants" with its storm water discharges to the receiving waters of the Santa Fe River, which is a "water of the United States" within the meaning of 40 C.F.R. § 122.2.

9. Because Respondent owned or operated a facility that is a point source of discharges of pollutants to waters of the United States, Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System (NPDES) program.

10. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

11. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit.

12. The facility is an industry identified under 40 C.F.R. § 122.26(b)(14)(x) and is subject to the General Permit for Storm Water Discharges Associated with Construction Activity issued by the EPA on July 1, 2008.

13. Respondent applied for and was issued coverage under the Permit, and was assigned NPDES Permit No. NMR15FV79 by the EPA. Beginning on February 28, 2008, Respondent was authorized to discharge pollutants to waters of the United States, but only in compliance with the specific terms and conditions of the permit. From the beginning of active construction, March 2008, to the time of the inspection, January 2009, the construction site had six (6) rain events of .50 inches or greater that resulted in discharges from the site.

14. Respondent and the facility were subject to the provisions of the Act, 33 U.S.C. § 1251 et seq., and the NPDES program; and Respondent violated Section 301 of the Act, 33 U.S.C. § 1311, by failing to comply with the conditions of the permit as follows:

- a. Part 3.8. of the permit was violated in that the Respondent failed to insure that the storm water pollution prevention plan (SWPPP) was consistent with state/tribal/local regulations and permits.
- b. Part 4. of the permit was violated in that the Respondent failed to conduct storm water inspections at the required frequency (once every two weeks and/or after every ½ inch rainfall event) as required in the SWPPP and the EPA Permit.
- c. Part 5.2.B. of the permit was violated in that the Respondent failed to list the total area of the site that was disturbed as 4.8 acres; instead, the disturbed area was given as 3.7 acres in the SWPPP.
- d. Part 5.2.C.7. of the permit was violated in that the site map in the SWPPP did not show the locations of the drainage patterns/outfalls.
- e. Part 5.3.B. of the permit was violated in that the SWPPP did not identify the contractors and timing by which stabilization and structural practices would be implemented at the site.
- f. Part 5.3.C. of the permit was violated in that no specific dates were listed for major grading activities, temporary/permanent construction cessation, and initiation of stabilization practices.
- g. Part 5.4. of the permit was violated in that the SWPPP failed to include a specific list of best management practices to be used at the site for non-storm water discharges.
- h. Part 5.10. of the permit was violated in that the SWPPP had not been revised or updated to reflect any problems or changes found at the site during storm water inspections.
- i. Part 5.11.D. of the permit was violated in that the SWPPP was not signed and certified by any of the operators at the site.

15. The State of New Mexico was notified and given an opportunity to consult with EPA regarding the proposed assessment of an administrative penalty against Respondent.

16. EPA notified the public of the proposed CAFO and afforded the public forty (40) days to comment on the proposed penalty. At the expiration of the notice period, EPA had received no comments from the public.

III. TERMS OF SETTLEMENT

A. PENALTY PROVISIONS

17. Based on the foregoing Findings of Fact and Conclusions of Law, EPA Region 6, considering the relevant criteria pursuant to Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), and acting pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), hereby orders that Respondent shall pay to the United States a civil penalty in the amount of five thousand six hundred seventy dollars (\$5,670.00) to settle the violations specified in this CAFO.

18. Payment shall be made by one of the following methods within thirty (30) days of the effective date of this CAFO:

- a. By mailing a bank check, cashier's check or certified check, payable to "Treasurer of the United States," to:

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

- b. By wire transfer to:

Federal Reserve Bank of New York
ABA: 021030004
Account: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

c. By overnight mail (Express, FedEx, DHL, etc.) to:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Phone: 314-418-4087

d. By credit card payments to <https://www.pay.gov>
(enter sfo 1.1 in the search field)

In the Matter of Lockwood Construction Company, Docket No. CWA-06-2009-1873 should be clearly marked on the check, or other payment method, to ensure credit for payment.

19. Respondent shall send simultaneous notices of payment, including a copy of the check or other payment method to each of the following:

- (1) Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
- (2) Chief, NPDES Compliance Section (6EN-WC)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
- (3) Chief, Water Legal Enforcement Branch (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent's adherence to these procedures will ensure proper credit when payment is received by EPA.

20. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

21. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the

United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

22. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30)-day period after the payment is due and an additional \$15.00 for each subsequent thirty (30)-day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

23. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), any person who fails to pay, on a timely basis, a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States' enforcement expenses including, but not limited to, attorneys' fees and costs incurred by the United States for collection proceedings, and a quarterly non-payment penalty for each quarter during which such failure to pay persists. Such non-payment penalty shall be 20 percent of the aggregate amount of such person's outstanding penalties and non-payment penalties accrued as of the beginning of each quarter. In such a collection action, the validity, amount, and appropriateness of the penalty assessed by this CAFO, and the terms of this CAFO shall not be subject to review.

B. GENERAL PROVISIONS

24. To execute this Agreement, Respondent shall forward this copy of the CAFO, with original signature, to:

Mr. Efren Ordoñez, Esq. (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

25. Issuance of this CAFO does not relieve Respondent from responsibility to comply with all requirements of the Act and the requirements of any permits issued thereunder, as described in Section 309(g)(7) of the Act, 33 U.S.C. § 1319(g)(7), nor does it constitute a waiver by EPA of its right to enforce compliance with the requirements of Respondent's permits or other requirements of the Act by actions pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

26. In any action to enforce this CAFO, Respondent shall not assert as a defense any act or failure to act by any of its officers, directors, employees, agents, servants, contractors, subcontractors, successors or assigns.

27. Each party agrees to bear its own costs and attorneys' fees in this matter, except to the extent that Respondent may be responsible for reasonable costs and expenses of enforcement and collection proceedings for failure to comply with the terms of this CAFO. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorneys' fees under the Equal Access to Justice Act (5 U.S.C. § 504), as amended by the Small Business Regulatory Enforcement Fairness Act (P.L.104-121), and any regulations promulgated pursuant to those Acts.

28. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement and to execute and legally bind that party to it.

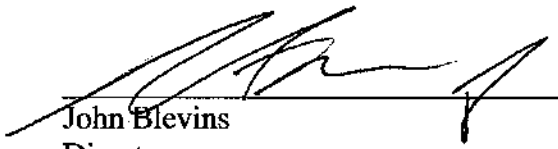
In recognition and acceptance of the foregoing:



For: Lockwood Construction Company

9/4/09

Date



John Blevins
Director
Compliance Assurance and
Enforcement Division

11-12-09

Date

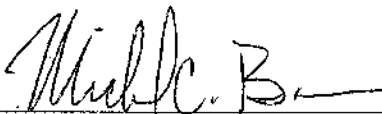
FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified.

This Final Order shall not in any case 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 Final Order shall resolve only those causes of action alleged in the CAFO. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers', agents', servants', employees', successors', or assigns') obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. This CAFO shall become effective thirty (30) days after the issuance date specified below.

Issuance Date: November 19, 2009



Regional Judicial Officer
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 20 day of September 2009, the original of the foregoing Consent Agreement and Final Order was hand-delivered to the Regional Hearing Clerk, U.S. EPA, Region 6 (6RC-D), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy was placed in the United States mail, by certified mail, return receipt requested, addressed to the following:

Copy by certified mail,
return receipt requested:

Mr. Robert E. Lockwood
President
Lockwood Construction Company
406 Botolph Lane, Suite 3
Santa Fe, NM 87505

Copy:

Mr. Glenn Saums
Acting Bureau Chief
Surface Water Quality Bureau
New Mexico Environment Department
P.O. Box 5469
Santa Fe, NM 87502-5469

