

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2
2010 FEB 18 AM 7:47
REGIONAL HEARING
CLERK

IN THE MATTER OF

Landmark at Rahway, LLC
1200 Sunnyview Oval
Keasbey, New Jersey 08832

Park Square, Rahway, New Jersey
NPDES Tracking No. NJU002030

Respondent

Proceeding pursuant to Section 309(g) of
the Clean Water Act, 33 U.S.C. § 1319(g)

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. CWA-02-2009-3405

I. PRELIMINARY STATEMENT

Complainant, the United States Environmental Protection Agency ("EPA"), having filed the Complaint referenced herein on June 29, 2009, against Respondent, Landmark at Rahway, LLC; and Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order ("CAFO" or "Agreement") without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of 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:

II. PROCEDURAL AND FACTUAL BACKGROUND

1. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g).
2. The Complaint alleges that Respondent is liable for twelve (12) distinct violations of the Clean Water Act, some of which have continued for over two (2) years, in the operation of its construction site at West Main Street and Elizabeth Avenue in Rahway, New Jersey, which have resulted, among other things, in the discharge of stormwater pollution into waters of the United States, in violation of Sections 301 and 402 of the Act, 33 U.S.C. § 1311 and § 1342, respectively, and proposes to assess a civil penalty of one hundred thirty thousand dollars (\$130,000).
3. Respondent filed an Answer and requested a hearing pursuant to 40 C.F.R. Part 22.

4. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this Complaint. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual allegations contained in the Complaint, consents to the terms of this Agreement.
5. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

III. TERMS OF SETTLEMENT

6. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the nature of the violations, and other relevant factors, EPA has determined that **eighty-five thousand dollars (\$85,000)** is an appropriate civil penalty to settle this action.
7. Respondent consents to the issuance of this Consent Agreement and Final Order, and consents, for the purposes of settlement, to the payment of the civil penalty cited in the foregoing paragraph.
8. Not more than ninety (90) days after the Final Order is signed by the Regional Administrator of EPA Region 2, Respondent shall submit a cashier's or certified check, payable to the "Treasurer of the United States of America," for thirty thousand dollars (\$30,000). Beginning within ninety (90) days after the initial payment, Respondent shall quarterly submit a cashier's or certified check, payable to the "Treasurer of the United States of America," for eighteen thousand three hundred thirty-four dollars (\$18,334), eighteen thousand three hundred thirty-three dollars (\$18,333) and eighteen thousand three hundred thirty-three dollars (\$18,333), respectively, for a total of three quarterly payments totaling fifty-five thousand dollars (\$55,000). The entire penalty must be paid in full no more than three hundred sixty (360) days after the Final Order is signed by the Regional Administrator. All of the checks submitted for payment shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document, and shall be mailed to:

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

Respondent shall also send copies of the checks to each of the following:

Christopher Saporita, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2

290 Broadway, 16th floor
New York, NY 10007

and

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007

9. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
10. If any of the payments are not received on or before the applicable due date(s), interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15) will be assessed for each thirty (30) day period (or any portion thereof) following a due date in which an overdue balance remains unpaid. A six percent (6%) per annum penalty also will be applied on any principal amount not paid within ninety (90) days of a due date.

In addition, pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. § 1319(g)(9), if any of the payments are not received by the applicable due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is twenty percent (20%) of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.

11. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondent's federal or state taxes.
12. This Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
13. This Agreement constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), for the violations alleged in the Complaint. Compliance with this Agreement shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with all such laws and regulations.

14. Each undersigned representative of the parties to this Agreement certifies that she or he 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.
15. The provisions of this Agreement shall be binding upon the Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns.
16. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Agreement.
17. Respondent consents to service upon it by delivery of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT:

LANOMARK AT RAILWAY, LLC

BY:


SIGNATURE

2/1/2010
DATE

ERIC HAWITT
NAME (Please print)

MANAGING MEMBER
TITLE (Please print)

COMPLAINANT:

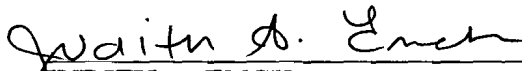

DORE LAPOSTA

Director, Division of Enforcement and Compliance Assistance
United States Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

FEBRUARY 2, 2010
DATE

IV. FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.



JUDITH A. ENCK
Regional Administrator
United States Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007

2-9-10
DATE

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CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed, by certified mail, return-receipt-requested, a copy of this "**Consent Agreement and Final Order**" to:

✓ Mr. Eric Harvitt
Landmark at Rahway, LLC
1200 Sunnyview Oval
Keasbey, NJ 08832

I further certify that, on the date noted below, I caused to be mailed, by EPA internal mail (pouch), the original and a copy of this "**Consent Agreement and Final Order**" to:

✓ Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007-1866

I further certify that, on the date noted below, I caused to be mailed, by EPA internal mail (pouch), a copy of this "**Consent Agreement and Final Order**" to:

✓ Honorable Susan L. Biro
U.S. Environmental Protection Agency
1099 14th Street, N.W., Suite 350
Washington, DC 20005

2/12/10
Date

K. Zuckerman
Signature

KATHERINE Zuckerman
Print Name

Secretary Air Branch
Title