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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of

§
§

WILGER Enterprises Inc,
A New Mexico Corporation,

§
§

Respondent

§

Docket No. CWA-06-2008-2029

§
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Permit No. NMR15FX01

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§

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(s) 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. Wilger Construction, (herein "Respondent") is a corporation, which was incorporated 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. 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 City of Albuquerque MS4 conveyance system, thence to the Rio Grande, which is a "water of the United States" within the meaning of 40 C.F.R. § 122.2.

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

9. 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.

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.

10. Respondent made timely application for permit coverage for its activities at the facility, and was covered by NPDES permit number NMR15FX01 at the time of the April 7, 2008, inspection.

11. Respondent and the facility were subject to the provisions of the Act, 33 U.S.C.

§ 1251 *et seq.*, and the National Pollutant Discharge Elimination System (NPDES) program; and Respondent violated Section 402 of the Act, 33 U.S.C. § 1342(a), by failing to update the storm water pollution prevention plan (SWPPP) and the site map as required. The Respondent also failed to follow the recommendations of the SWPPP; and properly maintain and install the best management practices at the site. Also, the Respondent failed to have a qualified inspector conduct the storm water site inspections

12. Rain events for the area indicate discharge from the construction site on at least two (2) occasions.

13. 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.

14. 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

15. 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 one thousand eight hundred dollars (\$1,800) to settle the violations specified in this CAFO.
16. Payment shall be made by one of the following methods within thirty (30) days of the effective date of this CAFO to one of the following addresses:
- a. By mailing a cashier's check or certified check, payable to "Treasurer of the United States," to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO 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
Government Lockbox 979078
U.S. EPA Fines & Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
Phone: 314-418-1087

d. By credit card payments to <https://www.pay.gov/paygov/>

In the Matter of Wilger Construction, Docket No. CWA-06-2008-2029 should be clearly marked on the check to ensure credit for payment.

17. Respondent shall send simultaneous notice of payment, including a copy of the check, 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.

18. 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.

19. 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).
20. 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.
21. 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 nonpayment penalty for each quarter

during which such failure to pay persists. Such nonpayment penalty shall be 20 percent of the aggregate amount of such person's outstanding penalties and nonpayment 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

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

Ms. Darlene Whitten-Hill (GEN-WC)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

23. 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.

24. 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.

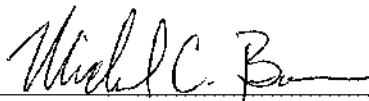
25. Each party agrees to bear its own costs and attorneys' fees in this matter, except to the extent that Respondent may be responsible for reasonable costs and expenses of enforcement and collection proceedings for failure to comply with the terms of this

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:

May 28, 2009



Regional Judicial Officer
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 28 day of May, 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. Scott McLelland, Vice President
Wilger Construction
425 Edmon, NE
Albuquerque, NM 87107

Copy:

Mr. Glenn Saums, Acting Chief
Surface Water Quality Bureau
New Mexico Environment Department
P.O. Box 26110
Santa Fe, NM 87502

