



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 JUN 12 PM 12:35
REGIONAL HEARING
CLERK

June 12, 2009

Karen Maples
Regional Hearing Clerk
Region 2
US EPA

RE: In the Matter of 151-45 Sixth Road Whitestone Partners LLC
Docket No. CWA-02-2009-3401

Dear Ms. Maples:

Enclosed is a Consent Agreement and Final Order (CA/FO) in the above-referenced matter. This CA/FO was fully executed on June 12, 2009.

Sincerely,


Eduardo J. Gonzalez, Esq.

Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY
2009 JUN 12 PM 12
REGIONAL HEARING
CLERK

IN THE MATTER OF: 151-45 Sixth Road Whitestone Partners LLC. Trump Tower 725 Fifth Avenue, 24 th Floor New York, New York 10022 Respondent	DOCKET NO. CWA-02-2009-3401 Proceeding pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g)
---	---

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the United States Environmental Protection Agency ("EPA"), having issued the Complaint herein on February 13, 2009, against 151-45 Sixth Road Whitestone Partners;

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 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 agreed, and ordered as follows:

I. PRELIMINARY STATEMENT

1. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319.
2. The Complaint alleges that the Respondent has violated federal National Pollutant Discharge Elimination System (NPDES) requirements in violations of the Act and its implementing regulations pursuant to §301, §308 and §402 of the CWA. The Complaint is incorporated herein by reference.
3. EPA notified the New York State Department of Environmental Conservation regarding this action and offered an opportunity for the State of New York to confer with EPA on the proposed penalty assessment, pursuant to 40 CFR Part 22.
4. This action was public noticed. No public comment was received.

In the Matter of 151-45 Sixth Road Whitestone Partners LLC
Docket No. CWA-02-2009-3401
Page 1 of 8

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 JUN 12 PM 12:35
REGIONAL HEARING
CLERK

II. JURISDICTION

5. Paragraphs 1 through 4 are re-alleged and incorporated herein by reference.
6. EPA has jurisdiction over the subject matter of this action, pursuant to Section 309 of the Act, 33 U.S.C. § 1319, and over the Respondent.

III. APPLICABILITY

7. This Consent Agreement and Final Order shall apply to and be binding upon Respondent, its officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.
8. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Respondent of its obligation to comply with this CA/FO.
9. Respondent shall provide a copy of this CA/FO to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this CA/FO.
10. In any action to enforce this CA/FO, Respondent shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this CA/FO.

IV. TERMS OF SETTLEMENT

11. For the purpose of this proceeding, Respondent stipulates that:
 - a. EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondent;
 - b. Respondent waives any defenses they might have as to jurisdiction and venue, and, without admitting or denying the factual or legal allegations contained in the Complaint;
 - c. Respondent hereby consents to the terms of this Consent Agreement and Final Order, without admitting or denying the factual or legal allegations contained in the Complaint;
 - d. 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; and,

- e. Respondent consents to the payment of the civil penalty cited in the Paragraph below.
12. Pursuant to § 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), the nature of the violations alleged in the Complaint and other relevant factors (and without Respondent admitting or denying the factual or legal allegations contained in the Complaint), Complainant and Respondent agree that an appropriate civil penalty to settle this proceeding is in the amount of Sixty Two Thousand Five Hundred dollars (\$62,500.00).

V. PAYMENT OF CIVIL PENALTY

13. Respondent shall pay a civil penalty in the amount of Sixty Two Thousand Five Hundred dollars (\$62,500.00) plus interest that accrues on the unpaid principal payable to the "Treasurer of the United States of America."
14. The effective date of this Consent Agreement shall be the date the Regional Administrator signs the Final Order accompanying this Consent Agreement.
15. Respondent agrees to pay the above stated amount in five payments, as follows:
 - a. An *initial payment* in the amount of twelve thousand six hundred and seven dollars with eighty eight cents (**\$12,607.88**) shall be made within forty-five (45) calendar days from the effective date of this Consent Agreement.
 - b. A *second payment* in the amount of twelve thousand six hundred and seven dollars with eighty eight cents (**\$12,607.88**) shall be made within seventy five (75) calendar days from the effective date of this Consent Agreement.
 - c. A *third payment* in the amount of twelve thousand six hundred and seven dollars with eighty eight cents (**\$12,607.88**) shall be made within one hundred five (105) calendar days from the effective date of this Consent Agreement.
 - d. A *fourth payment* in the amount of twelve thousand six hundred and seven dollars with eighty eight cents (**\$12,607.88**) shall be made within one hundred thirty five (135) calendar days from the effective date of this Consent Agreement.
 - e. The final *payment* in the amount of twelve thousand six hundred and seven dollars with eighty eight cents (**\$12,607.88**) shall be made within one hundred sixty five (165) calendar days from the effective date of this Consent Agreement.

These five payments satisfy the totality of the civil penalty of Sixty Two Thousand Five Hundred dollars (\$62,500.00) plus interest that accrues on the unpaid principal over the

period of less than one hundred sixty five calendar days that Respondent has requested to satisfy payment.

16. The checks shall be made payable to the "**Treasurer of the United States of America.**" The checks 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. Respondent shall perform payment pursuant to any of the following methods:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Wire transfers should be directed to the Federal Reserve Bank of New York:

WIRE TRANSFERS:

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 "

OVERNIGHT MAIL:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101
Contact: Natalie Pearson
314-418-4087

17. The initial payment required pursuant to Section 15(a) above must be received at the above address no later than forty-five (45) calendar days after the date of signature of the Final Order (at the end of this document). Each subsequent payment described in Section 15 above must be received at the above address no later than five (5) calendar days after the date for such payment as set forth in Section 15 above. The date by which each payment must be received shall hereafter be referred to as the "due date".

- a. failure to pay the penalty in full according to the above provisions will result in a referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection;
- b. further, if any payment is not received on or before the applicable due date, 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 \$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date;
- c. in addition, pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. § 1319(g)(9), if any payment is 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 20% of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter;
- d. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.

18. Respondent shall send copy of payment to the following persons and addresses:

Henry Mazzucca, P.E., Chief
Compliance Section
Water Compliance Branch
U.S. EPA, Region 2
290 Broadway, 20th Floor
New York, NY 10007

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007

19. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondent's federal or state taxes.

VI. General Provisions

20. The Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or

In the Matter of 151-45 Sixth Road Whitestone Partners LLC


Docket No. CWA-02-2009-3401

Page 5 of 8

communication addressed to the Director or the Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.

21. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or, except for the specific violations alleged in the Complaint, of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.
22. This Consent Agreement and Order 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, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent, if any, in connection with the SEP undertaken pursuant to this Agreement.
23. This Consent Agreement and Final Order constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the violations alleged in the Complaint. Nothing in this Consent Agreement and Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this Consent Agreement and Final Order 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 such laws and regulations.
24. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
25. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this Consent Agreement and Order.

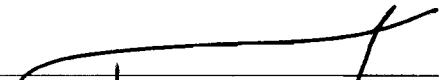
FOR RESPONDENT 151-45 SIXTH ROAD WHITESTONE PARTNERS LLC.:

BY:  _____

DATE: 5/26/9

Julius R. Schwarz
Executive Vice President of Bayrock Group L.L.C.,
sole member of Bayrock Whitestone LLC,
managing member of 151-45 Sixth Road Whitestone Partners LLC.

FOR COMPLAINANT U.S. EPA, REGION 2:

BY:  _____

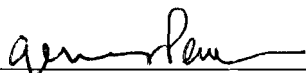
DATE: JUNE 10, 2009

Dore La Posta, Director
Division of Enforcement and
Compliance Assistance
U.S. EPA, Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866

VII. 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, NY.

6/12/09
Date


George Pavlou
Acting Regional Administrator
United States Environmental
Protection Agency-Region 2
290 Broadway
New York, NY 10007-1866

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

151-45 Sixth Road Whitestone Partners LLC.
Trump Tower
725 Fifth Avenue, 24th Floor
New York, New York 10022

DOCKET NO. CWA-02-2009-3401

Respondent.

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

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I served the foregoing fully executed Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner.

Copy by Certified Mail Julius R. Schwartz,
Return Receipt Requested: 151-45 Sixth Road Whitestone Partners LLC
Trump Tower
725 Fifth Avenue, 24th Floor
New York, New York 10022

Jesse Hiney, Esq.
Paul, Hastings, Janofsky & Walker LLP
75 East 55th Street, First Floor
New York, NY 10022

Original and One Copy Regional Hearing Clerk
By Internal Mail (pouch): U.S. Environmental Protection Agency
290 Broadway, 16th floor
New York, New York 10007-1866

Date: June 12, 2009

Ana Madera
Ana Madera, Secretary

In the Matter of 151-45 Sixth Road Whitestone Partners LLC
Docket No. CWA-02-2009-3401