



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

2008 OCT 21 PM 12:16
RECEIVED

BY FIRST CLASS MAIL

Richard Abbott, Esq.
724 Yorklyn Rd.
Suite 250
Hockessin, DE 19707

October 21, 2008

Re: In the Matter of Frank Acierno,
Christiana Town Center, LLC, and
CTC Phase II, LLC
Docket No.CWA-03-2005-0376

Dear Rich:

I am pleased to inform you that EPA has executed the Consent Agreement and Final Order (CAFO) resolving this matter. I have enclosed a copy of the executed CAFO for your files. I have also enclosed a copy of the cover memorandum that accompanied the Final Order when I sent the Final Order to the Regional Administrator for his signature. If you have any questions pertaining to this matter, please contact me at (215) 814-2495.

Sincerely,

A handwritten signature in cursive script that reads "Philip Yeany".

Philip R. Yeany
Senior Assistant
Regional Counsel

Enclosures

cc: Lydia Guy, Regional Hearing Clerk
Chuck Schadel
Andrew Duchovnay, Esq.

4. Frank Acierno, Christiana Town Center, LLC, CTC Phase II, LLC, and EPA agree that any liability CTC East, LLC may have in this matter is also resolved by this CAFO.
5. This CAFO resolves the violations of the CWA alleged by Complainant in the Amended Complaint.
6. For purposes of this proceeding only, Frank Acierno, Christiana Town Center, LLC, and CTC Phase II, LLC (the "Respondents") admit the jurisdictional allegations set forth in the Amended Complaint.
7. The Respondents agree not to contest EPA's jurisdiction with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
8. The Respondents hereby expressly waive their right to a hearing under Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and waive their right to appeal the accompanying Final Order under Section 309(g)(8)(A) of the CWA, 33 U.S.C. § 1319(g)(8)(A).
9. The Respondents consent to the issuance of this CAFO and agree to undertake all actions required by its terms and conditions.
10. Each party to this agreement will pay its own costs and attorney's fees.
11. The undersigned representative of the Respondents certifies that he or she is fully authorized by the Respondents to enter into the terms and conditions of this CAFO and to execute and legally bind the Respondents to it.
12. The Respondents certify to EPA that, to the best of their knowledge, they are now in compliance with each of the relevant provisions of Section 301 et seq. of the CWA, 33 U.S.C. § 1311 et seq.
13. This CAFO does not constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. § 1251 et seq., or any regulations promulgated thereunder.

III. FINDINGS OF FACT

14. EPA incorporates by reference into this Consent Agreement the Allegations contained in Section II, Paragraphs 3 through 88 of the Amended Complaint as the Findings of Fact,

herein. Except for the jurisdictional allegations set forth in the Amended Complaint, the Respondents neither admit nor deny these Findings of Fact.

IV. CONCLUSIONS OF LAW

15. EPA concludes that, for the purposes of this proceeding, the Respondents violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and that they are liable to the United States for a civil penalty in accordance with Section 309(g) of the CWA, 33 U.S.C. § 1319(g). The Respondents neither admit nor deny these Conclusions of Law.

V. SETTLEMENT

16. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the alleged violations, the Respondents' prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, ability to pay, and any other matters as justice may require under the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA HEREBY ORDERS AND THE RESPONDENTS HEREBY CONSENT to pay a civil penalty of ten thousand dollars (\$10,000).
17. The Respondents shall pay the civil penalty of \$10,000 dollars (\$10,000) (the "Civil Penalty") within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c), or, in the case of additional penalties, within sixty (60) days of the date of EPA's written demand, by cashier's or certified check, payable to the "Treasurer, United States of America." Payment shall be mailed to the following address:

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

The Respondents shall note on the penalty payment check the title and docket number of this case.

18. At the time of payment, the Respondents shall submit notice of payment, along with a copy of the check to:

Regional Hearing Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103

and

Philip Yeany (3RC20)
Sr. Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103

19. Failure by the Respondents to pay in full the penalty assessed by this CAFO by the due date may subject the Respondents to a civil action to collect the assessed penalty, pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g). In any such collection action, the validity, amount and appropriateness of the penalty, and this CAFO shall not be subject to review.
20. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to 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, as more fully described below. Accordingly, the Respondents' failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date of this CAFO. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. 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).

The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will 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 such subsequent thirty (30) days the penalty remains unpaid.

A penalty charge of 6 percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

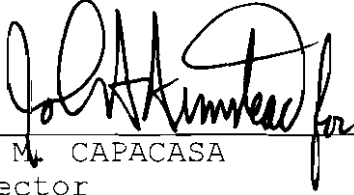
21. Nothing in this CAFO shall relieve the Respondents of their obligation to comply with all applicable federal, state or local laws and regulations.
22. This Consent Agreement and the accompanying Final Order resolve only the civil claims for the specific violations alleged in the Amended Complaint issued in the above-captioned action. EPA reserves the right to commence action against any person, including the Respondents, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.
23. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is

not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

VI. EFFECTIVE DATE

24. This CAFO shall become final and effective thirty (30) days after the Final Order, signed by the Regional Administrator of EPA -- Region III, or his designee, the Regional Judicial Officer, is lodged with the Regional Hearing Clerk, pursuant to Section 309(g)(5) of the Act, 33 U.S.C. § 1319(g)(5).

FOR Complainant UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:



JON M. CAPACASA
Director
Water Protection Division
U.S. EPA, Region III

OCT 16 2008

Date

FOR Respondents, Frank Acierno, Christiana Town Center, LLC, and
CTC Phase II, LLC:

Frank Acierno

FRANK ACIERNO
Christiana Town Center, LLC, and
CTC Phase II, LLC

9/19/08

Date

NOW, THEREFORE, PURSUANT TO Section 309(g) of the Clean Water Act, as amended, 33 U.S.C. § 1319(g) ("CWA"), and the Consolidated Rules of Practice, and having determined that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 309(g) of the CWA, 33 U.S.C. § 1319(g), IT IS HEREBY ORDERED that the Respondents pay a penalty of ten thousand dollars (\$10,000) in accordance with attached Consent Agreement and comply with the terms and conditions of the Consent Agreement.

The effective date of the foregoing Consent Agreement and this Final Order is thirty (30) days from the date on which the Final Order is lodged with the Regional Hearing Clerk.

10/20/08
Date

Donald S. Welsh
for Donald S. Welsh
Regional Administrator
U.S. Environmental Protection Agency,
Region III