



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

MAR 11 2015

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5952 6798

Mr. Michael Kelly
Kelly Development Corporation
96 South Ocean Avenue
Patchogue, New York 11772

Re: Notice of Proposed Assessment of a Civil Penalty Class I
Kelly Development Corporation
SPDES Tracking Numbers NYR10U297/NPDES NYU001027
DOCKET No. CWA-02-2015-3310

Dear Mr. Kelly:

Enclosed please find a copy of the Consent Agreement and Final Order ("CA/FO") which Kelly Development Corporation ("Respondent") has signed with the U.S. Environmental Protection Agency ("EPA") as a result of our settlement conversations to resolve Administrative Complaint CWA-02-2015-3310, issued pursuant to Section 309 of the Clean Water Act.

Please note that the effective date of this CA/FO is 3/10, 2015. Respondent's payment must be received at the addresses and in the manner indicated in paragraph ten (10) of the CA/FO. No later than sixty (60) days after 3/10, 2015, Respondent shall pay the penalty of thirty-one thousand, five hundred dollars (\$31,500.00) by cashier's or certified check, payable to the "Treasurer of the United States of America", 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.

If you have any questions or wish to discuss the settlement with the EPA, please immediately contact Lauren Fischer at the address that follows:

Lauren Fischer, Esq.
Office of Regional Counsel
U.S. EPA, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866
(212) 637-3231

Sincerely,

Douglas McKenna, Chief
Water Enforcement Branch

Enclosure

U.S. Environmental
Protection Agency-Reg 2
2015 MAR 10 PM 10:53
REGIONAL HEARING
CLERK

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Region 2**

U.S. Environmental
Protection Agency-Reg 2
2015 MAR 10 PM 10:53
REGIONAL HEARING
CLERK

IN THE MATTER OF:

Kelly Development Corporation
96 South Ocean Avenue
Patchogue, NY 11772

SPDES Tracking Number NYR10U297

Respondent,

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

DOCKET No. CWA-02-2015-3310

CONSENT AGREEMENT AND FINAL ORDER

Complainant, the United States Environmental Protection Agency ("EPA"), having issued the Complaints herein on October 17, 2014, against Respondent Kelly Development Corporation ("Respondent"), 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 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 Respondent failed to obtain and comply with the conditions and limitations in the New York State Department of Environmental Conservation ("NYSDEC" or "Department") State Pollutant Discharge Elimination System ("SPDES") General Permit for Stormwater Discharges from Construction Activity ("CGP"), GP-0-10-002, at a site Respondent owns and operates.

3. EPA notified the State of New York regarding this action and offered an opportunity for the State to confer with EPA on the proposed penalty assessment, pursuant to 40 CFR Part 22.
4. The actions were publicly noticed on October 17, 2014. No public comment was received.
5. Respondent timely Answered and requested settlement discussions in this matter.
7. This Consent Agreement and Final Order ("CA/FO") shall apply to and be binding upon Respondent, its officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.
8. Respondent stipulates that 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. Respondent waives any defenses it might have as to jurisdiction and venue, and admits the factual and legal allegations contained in the Complaint. Respondent hereby consents to the terms of this CA/FO.
9. 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.

II. TERMS OF SETTLEMENT

10. Pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), the nature of the violations, and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of thirty-one thousand, five hundred dollars (\$31,500.00).
11. For purposes of settlement, Respondent consents to the issuance of this Consent Agreement and consents to the payment of the civil penalty cited in the foregoing Paragraph.

III. PAYMENT OF CIVIL PENALTY

12. Respondent shall pay, by cashiers or certified check, a civil penalty in the amount of thirty-one thousand, five hundred dollars (\$31,500.00) plus interest payable to the "Treasurer, United States of America".
13. Any check shall be identified with a notation of the name of this matter and the docket number in this case, as set forth in the caption on the first page of this document. Payment methods are described below:

CHECK PAYMENTS:
US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000.

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
Telephone Number: (314) 18-4087.

Respondents shall also send copies of such payment to:

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

and to:

Lauren Fischer, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007.

14. The effective date of this CA/FO shall be the date of signature of the Final Order by the Director of the Division of Enforcement and Compliance Assistance.
15. Payment must be received at the above address within sixty (60) days of the effective date of the Final Order as determined in paragraph 14.

16. The date by which payment must be received shall hereafter be referred to as the "due date."
17. Failure to pay the penalty in accordance with the above provisions may result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for Collection.
18. Further, if the payment is not received on or before the 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.
19. Pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. § 1319(g)(9), if payment is not received by the 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. You also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
20. 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.

IV. GENERAL PROVISIONS

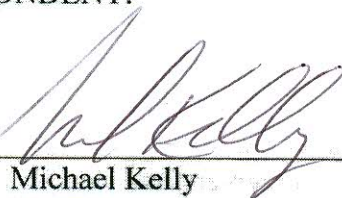
21. Respondent waives any right they may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Director where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
22. 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 herein, of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.
23. This CA/FO shall not relieve Respondent of their 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.
24. This CA/FO shall constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the violations alleged herein. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability

of the Respondents. Compliance with this CA/FO 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.

25. 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.
26. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this Consent Agreement and Order.

RESPONDENT:

BY:



Michael Kelly
Owner
Kelly Development Corporation
96 South Ocean Avenue
Patchogue, NY 11772

DATE:

3/2/15

COMPLAINANT:

BY:



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

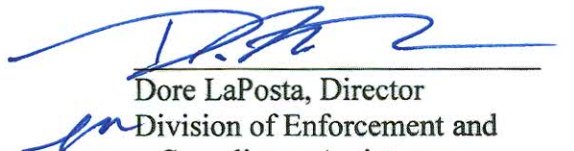
DATE:

3/10/15

V. FINAL ORDER

The Director of the Division of Enforcement and Compliance Assistance, 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.

3/10/15
Date


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

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Kelly Development Corporation
96 South Ocean Avenue
Patchogue, NY 11772

Respondents.

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

DOCKET No. CWA-02-2015-3310

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 Michael Kelly, Owner, Kelly Development Corporation
Return Receipt Requested: 96 South Ocean Avenue, Patchogue, NY 11772

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

Copy By Internal Mail: Helen S. Ferrara, Regional Judicial Officer
(pouch) U.S. Environmental Protection Agency
290 Broadway, 16th floor
New York, New York 10007-1866

Date: 3/11/15



Marie St. Germain, Secretary
New York, NY