

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION II  
290 Broadway  
New York, NY 10007-1866

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2013 DEC 27 P 3:08  
REGIONAL HEARING  
CLERK

**IN THE MATTER OF:**

Mr. Robert Iovinella and BTL Properties, LLC  
90 West Campbell Road  
Schenectady, New York 12306

Beckers Crossing Phases IV and V  
Duff Bambury Court  
Rotterdam, NY 12306

SPDES Permit No. NYR10G140

**RESPONDENTS**

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-02-2013-3313**

**I. PRELIMINARY STATEMENT**

Complainant, the United States Environmental Protection Agency ("EPA"), having filed the Complaint referenced herein on September 16, 2013, against Mr. Robert Iovinella and BTL Properties, LLC ("Respondents"); and

Complainant and Respondents 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 FINDINGS**

1. The following Procedural and Factual Findings are made and the Final Order is issued pursuant to the authority vested in the Administrator of the United States EPA by the Clean Water Act, 33 U.S.C. § 1251 *et. seq.* ("CWA" or "Act"), which authority has been duly delegated to the Regional Administrator of EPA Region 2, and since further re-delegated to the Director, Division of Enforcement and Compliance Assistance, EPA Region 2.
2. EPA is concluding this proceeding for the assessment of a civil penalty, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.18(b) of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits"

("CROP"), which sets forth procedures for conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

3. EPA filed a Class I Administrative Complaint, CWA-02-2013-3313, ("Complaint"), pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g) on September 16, 2013.
4. The Complaint alleges that Respondents are in violation of the CWA by their failure to implement their Stormwater Pollution Prevent Plan ("SWPPP") and comply with the conditions of the New York State Department of Environmental Conservation ("NYSDEC") State Pollution Discharge Elimination System ("SPDES") Construction General Permit ("CGP") in the operation of its construction site located on Duff Bambury Court in Rotterdam, New York, which resulted in, among other things, 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.
5. Respondents have not filed an Answer or requested a hearing pursuant to 40 C.F.R. Part 22.

### **III. CONSENT AGREEMENT**

6. Paragraphs 1 through 5, above, are re-alleged and incorporated herein by reference.
7. EPA and Respondents agree that it is in the public interest to resolve the issues alleged in this Consent Agreement without further litigation and the expense and effort that litigation entails.
8. Based upon the foregoing and pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and the CROP, it is hereby agreed by and between EPA and Respondents, and Respondents voluntarily and knowingly agree as follows:

#### **A. TERMS OF SETTLEMENT**

9. For the purpose of this proceeding, Respondents admit the jurisdictional allegations of the Complaint as well as this CAFO but neither admit nor deny the factual allegations contained herein.
10. Respondents waive any defenses they might have as to jurisdiction or venue, and waive their right to contest the allegations, at a judicial or administrative hearing, or to appeal this CAFO.
11. Respondents consent to the terms of this Agreement, and consent to the payment of the civil penalty in the amount of *Twenty-Four Thousand Dollars (\$24,000.00)*, as stated in Paragraph 12, below.

#### **B. PAYMENT OF CIVIL PENALTY**

12. Respondents shall pay a civil penalty in the amount of *Twenty-Four Thousand Dollars (\$24,000.00)* to the "Treasurer of the United States of America."
13. The civil penalty payments shall be paid in accordance with the following schedule:



	Due date:	Amount due:
Payment 1	December 15, 2013	\$1000.00
Payment 2	January 15, 2014	\$1000.00
Payment 3	February 15, 2014	\$1000.00
Payment 4	March 15, 2014	\$1000.00
Payment 5	April 15, 2014	\$1000.00
Payment 6	May 15, 2014	\$1000.00
Payment 7	June 15, 2014	\$1000.00
Payment 8	July 15, 2014	\$1000.00
Payment 9	August 15, 2014	\$1000.00
Payment 10	September 15, 2014	\$1000.00
Payment 11	October 15, 2014	\$1000.00
Payment 12	November 15, 2014	\$1000.00
Payment 13	December 15, 2014	\$1000.00
Payment 14	January 15, 2015	\$1000.00
Payment 15	February 15, 2015	\$1000.00
Payment 16	March 15, 2015	\$1000.00
Payment 17	April 15, 2015	\$1000.00
Payment 18	May 15, 2015	\$1000.00
Payment 19	June 15, 2015	\$1000.00
Payment 20	July 15, 2015	\$1000.00
Payment 21	August 15, 2015	\$1000.00
Payment 22	September 15, 2015	\$1000.00
Payment 23	October 15, 2015	\$1000.00
Payment 24	November 15, 2015	\$1000.00
	<b>TOTAL:</b>	\$24,000.00

14. Payments can be made by debit/credit card, check, or electronically. Electronic payments fall into two categories: wires and Automated Clearinghouse (ACH). Wires are same day and more costly. ACH is the next day or any future scheduled day and is less expensive. Please note that wires and ACH payments must be conducted through the sender's bank. The checks (cashier's or certified checks only) 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. Payment methods are described below:

Type of Payment	Payment Information	
<b>Debit and Credit Card Payments</b>	<a href="https://www.pay.gov/paygov/">https://www.pay.gov/paygov/</a>	
<b>Checks from U.S. Banks</b>	<b>U.S. Postal Service</b>	<b>UPS, Federal Express, or Overnight Mail</b>
<b>Finance Center Contacts:</b>		
<b>Craig Steffen (513-487-2091)</b>	<b>US Environmental Protection Agency Fines and Penalties Cincinnati Finance Center</b>	<b>U.S. Bank Government Lockbox 979077 US EPA Fines &amp; Penalties</b>

	<b>PO Box 979077</b> <b>St. Louis, MO 63197-9000</b>	<b>1005 Convention Plaza</b> <b>SL-MO-C2-GL</b> <b>St. Louis, MO 63101</b> <b>314-418-1028</b>
<b>Checks drawn on foreign banks with no USA branches (any currency)</b>	<b>Cincinnati Finance</b> <b>US EPA, MS-NWD</b> <b>26 W ML King Drive</b> <b>Cincinnati, OH 45268-0001</b>	
<b>Wire Transfers (any currency)</b>  <b>Details on format and content of wire transfer –</b> <b><a href="http://www.epa.gov/ocfo/finservices/required_info.htm">www.epa.gov/ocfo/finservices/required_info.htm</a></b>	<b>Federal Reserve Bank of New York</b> <b>ABA: 021030004</b> <b>Account Number: 68010727</b> <b>SWIFT address: FRNYUS33</b> <b>33 Liberty Street</b> <b>New York, NY 10045</b> <b>Field Tag 4200 of the Fedwire message should read:</b> <b>"D 68010727 Environmental Protection Agency"</b>	
<b>ACH - Automated Clearinghouse for receiving US currency Finance Center Contacts:</b>  <b>John Schmid</b> <b>(202-874-7026)</b>  <b>REX (Remittance Express),</b> <b>1-866-234-5681</b>	<b>US Treasury REX / Cashlink ACH Receiver</b> <b>ABA: 051036706</b> <b>Account Number: 310006, Environmental Protection Agency</b> <b>CTX Format Transaction Code 22 – checking</b>  <b>Physical location of US Treasury facility:</b> <b>5700 Rivertech Court</b> <b>Riverdale, MD 20737</b>	

#### **ON LINE PAYMENT:**

There is now an On Line Payment Option, available through the Department of Treasury. This payment option can be accessed from the following information: WWW.PAY.GOV. Enter sfo 1.1 in the search field. Open form and complete required fields.

Respondents shall also send copies of each payment to each of the following:

Katherine Mann  
 Division of Enforcement and Compliance Assistance  
 U.S. EPA, Region 2  
 290 Broadway, 20th Floor  
 New York, New York 10007



and

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

The payment must be received at the above addresses on or before the due dates specified in paragraph 13, above.

15. 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.
16. Further, if the payment is not received on or before the due dates, 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 dates 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 dates 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.
17. In addition, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), if payment is not received by the due dates, 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. Respondents also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
18. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondents' federal or State of New York taxes.


**C. GENERAL PROVISIONS**

19. The provisions of this CAFO shall be binding upon Respondents, their officers, directors, agents, servants, authorized representatives and successors or assigns, including, but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve Respondents of their obligation to comply with this CAFO.
20. The Respondents waive 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 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. Except for the specific violations alleged herein, 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 Respondents' violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondents' violation of any applicable provision of law.

- 22. This CAFO shall not relieve Respondents 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.
- 23. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations by the Respondents alleged herein. Nothing in this CAFO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of the Respondents. Compliance with this CAFO 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 Respondents 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 CAFO.

***For Respondents: Mr. Robert Iovinella and BTL Properties, LLC hereby consent to the issuance of the ORDER and agrees to be bound thereby.***

BY: 

DATE: 12/4/13

**Mr. Robert Iovinella, Owner**  
BTL Properties, LLC  
90 West Campbell Road  
Schenectady, New York 12306

***For the Complainant, the United States Environmental Protection Agency:***

BY: 

DATE: December 24, 2013

**Dore LaPosta, Director**  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency, Region 2  
290 Broadway

New York, New York, 10007



#### IV. FINAL ORDER

The Regional Administrator of the United States Environmental Protection Agency, Region 2, vested by authority delegated by the Administrator of the United States Environmental Protection Agency and having further re-delegated such authority to the Director of the Division of Enforcement and Compliance Assistance, United States 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, United States Environmental Protection Agency, Region 2, New York, New York.

DATED: DECEMBER 24, 2013



Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, NY 10007-1866



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 Broadway  
New York, NY 10007-1866

U.S. ENVIRONMENTAL PROTECTION AGENCY-REG.II  
2013 DEC 27 P 3:07  
REGIONAL HEARING CLERK

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Mr. Robert Iovinella and BTL Properties, LLC  
90 West Campbell Road  
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**RESPONDENTS**

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Clean Water Act, 33 U.S.C. § 1319(g)

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**CERTIFICATE OF SERVICE**

I certify that I have on this day caused to be sent the foregoing Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and one copy by hand to:  
Office of the Regional Hearing Clerk  
U.S. Environmental Protection Agency  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007

Copy by Certified Mail Return Receipt Requested:  
Mr. Robert Iovinella, Owner  
BTL Properties, LLC  
90 West Campbell Road  
Schenectady, New York 12306

Dated: 12/27/13  
New York, New York

Marie St. Germain