

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Bi-State Group, LLC and
Larry Sinn

East St. Louis, IL

Respondents.



DOCKET NO. CWA-05-2018-0004

PROCEEDING TO ASSESS A CLASS II
CIVIL PENALTY UNDER SECTION
309(g) OF THE CLEAN WATER ACT,
33 U.S.C. § 1319(g)

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This is an administrative action commenced and concluded under section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and sections 22.13(b) and 22.18(b)(2)-(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (the Consolidated Rules) as codified at 40 C.F.R. part 22.
2. The Complainant is, by lawful delegation, the Director of the Water Division, U.S. Environmental Protection Agency (EPA), Region 5.
3. Respondents are Bi-State Group, LLC, an Illinois Limited Liability Corporation doing business in St. Clair County, specifically at 1 Twin Lake Drive, East Saint Louis, Illinois 62203-1140, and Larry Sinn, owner of Bi-State Group, LLC (Respondents).
4. Where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). *See* 40 C.F.R. § 22.13(b).
5. The parties agree that settling this action without the filing of a complaint or the adjudication

Bi-State Group, LLC
Larry Sinn

of any issue of fact or law is in their interest and in the public interest.

6. Respondents consent to the terms of this CAFO, including the assessment of the civil penalty specified below.

II. JURISDICTION AND WAIVER OF RIGHT TO HEARING

7. Respondents admit the jurisdictional allegations in this CAFO, and neither admit nor deny the factual allegations set forth in this CAFO.
8. Respondents waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondents may have with respect to any issue of fact or law set forth in this CAFO including, but not limited to, their right to request a hearing under 40 C.F.R. § 22.15(c) and sections 309(g)(2)(B) and (4)(C) of the CWA, 33 U.S.C. § 1319(g)(2)(B) and (4)(C); their right to appellate review under section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B); their right to seek federal judicial review of the CAFO pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-06; any right to contest the allegations in this CAFO; and their right to appeal this CAFO. Respondents also consent to the issuance of this CAFO without further adjudication.

III. STATUTORY AND REGULATORY BACKGROUND

9. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters except in compliance with, *inter alia*, a permit for the discharge of dredged or fill material into navigable waters pursuant to section 404 of the CWA, 33 U.S.C. § 1344.
10. Section 404 of the CWA, 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers, U.S. Army Corps of Engineers (Corps), to issue permits for the discharge of dredged or fill material into navigable waters.

11. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines the term "person" as "an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body."
12. Section 502(12)(A) of the CWA, 33 U.S.C. § 1362(12)(A), defines the term "discharge of pollutants" as "any addition of any pollutant to navigable waters from any point source"
13. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines the term "pollutant" as "solid waste, . . . biological materials, . . . rock, sand, cellar dirt, . . . and agricultural waste discharged into water."
14. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines the term "point source" as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or other vessel or floating craft, from which pollutants are or may be discharged."
15. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines the term "navigable waters" as "the waters of the United States"
16. The term "waters of the United States" is defined as:
 - (1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
 - (2) All interstate waters including interstate wetlands;
 - (3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:
 - (i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or
 - (ii) From which fish or shellfish are or could be taken and sold in interstate or foreign

- commerce; or
(iii) Which are used or could be used for industrial purposes by industries in interstate commerce;
- (4) All impoundments of waters otherwise defined as waters of the United States under this definition;
 - (5) Tributaries of waters identified in paragraphs [(1) through (4) above];
 - (6) The territorial sea;
 - (7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs [(1) through (6) above] 40 C.F.R. § 230.3(s).¹

17. The term “wetlands” is defined as “those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.” 40 C.F.R. § 230.3(t).

18. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a Class II civil penalty under section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), when the Administrator finds, on the basis of any information available, that a person has violated section 301 of the CWA, 33 U.S.C. § 1311. EPA may conduct such enforcement consistent with the January 1989 Memorandum Between The Department of the Army and The Environmental Protection Agency, Federal Enforcement for the section 404 Program of the Clean Water Act.

IV. FACTUAL ALLEGATIONS AND ALLEGED VIOLATIONS

19. At all times relevant to this Order, Bi-State Group, LLC owned parcels located in the Northwest ¼ of section 22, Township 2 North, Range 9 West, East Saint Louis, St. Clair

¹ Citations to 40 C.F.R. § 230.3 in this CAFO are to the regulations effective through August 27, 2015. *See In re E.P.A.*, 803 F.3d 804 (6th Cir. 2015) (issuing a temporary nationwide stay of EPA and United States Army Corps of Engineers final rule defining the scope of waters protected under the CWA effective on August 28, 2015).

County, Illinois. The City of East St. Louis and Bi-State Truck Repair, Inc. own parcels adjacent to Bi-State Group, LLC's property (the Adjacent Parcels). The Adjacent Parcels were also affected by the activities described in paragraph 20, below. The Site consists of Bi-State Group, LLC's property and the Adjacent Parcels. See Figure 1 for a map of the Site.

20. From May 2015 through March 2016, and at other times known to Respondents, using a backhoe, skid loader, John Deere crawler, and bulldozer, Respondents discharged woody debris and dredged and fill material into approximately 1.15 acres of wetland on the Site. These activities made the Site usable as a loading/unloading area for trailers and a parking lot.
21. At no time relevant to this discharge did Respondents have or apply for a permit pursuant to section 404 of the CWA, 33 U.S.C. § 1344, for the discharge of dredged or fill material described in paragraph 20.
22. Respondents are "persons" as defined in section 502(5) of the CWA, 33 U.S.C. § 1362(5).
23. The woody debris and dredged and fill material referenced in paragraph 20 are "pollutants" as defined in section 502(6) of the CWA, 33 U.S.C. § 1362(6).
24. Respondents used mechanized equipment, including a backhoe, skid loader, John Deere crawler, and bulldozer to discharge pollutants into the wetlands on the Site. The backhoe, skid loader, John Deere crawler, and bulldozer are "point sources" as defined in section 502(14) of the CWA, 33 U.S.C. § 1362(14).
25. The discharge of woody debris and dredged and fill material into the wetlands described in paragraph 20 is a "discharge of pollutants" as defined in section 502(12) of the CWA, 33 U.S.C. § 1362(12).

26. The wetlands on the Site are connected to Harding Ditch, which is a tributary to the Mississippi River, a traditional navigable water. The 1.15 acres of wetland that was filled as described in paragraph 20 above, the Harding Ditch, and the Mississippi River, are "waters of the United States" pursuant to 40 C.F.R. § 230.3(s) and "navigable waters" as defined in section 502(7) of the CWA, 33 U.S.C. § 1362(7).
27. Therefore, the Respondents are persons who discharged pollutants from point sources into waters of the United States, without a permit issued under section 404(a) of the CWA, 33 U.S.C. § 1341(a), in violation of section 301 of the CWA, 33 U.S.C. § 1311.
28. Each day the Respondents' discharged pollutants remained in the waters of the United States constitutes an additional day of violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

V. CIVIL PENALTY

29. Under section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, the Administrator may assess a Class II civil penalty of up to \$21,393 per day of violation up to a total of \$267,415 for violations of section 301 of the CWA that occurred after November 2, 2015 and are assessed on or after January 15, 2018.
30. Based upon the facts alleged in this CAFO, and upon the nature, circumstances, extent and gravity of the violations alleged, as well as Respondents' ability to pay, prior history of such violations, degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$28,084.

31. Within 30 days after the effective date of this CAFO, Respondents must pay the \$28,084 civil penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA, Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

32. The check must note the case caption and the docket number of this CAFO.

33. A transmittal letter, stating Respondents' names and complete addresses, and the case docket number must accompany the payment. Respondents must write the case docket number on the face of the check and send copies of the check and transmittal letter to:

Regional Hearing Clerk
U.S. EPA, Region 5
77 West Jackson Blvd., E-19J
Chicago, IL 60604

Yone Yu
Watersheds and Wetlands Branch
U.S. EPA, Region 5
77 West Jackson Blvd., WW-16J
Chicago, IL 60604

Sarah Stillman
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd., C-14J
Chicago, IL 60604

34. This civil penalty is not deductible for federal tax purposes.

35. If Respondents do not timely pay the civil penalty, U.S. EPA may request the United States Department of Justice bring a civil action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States' enforcement

expenses for the collection action. Respondents acknowledge that the validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

36. Respondents must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established pursuant to 26 U.S.C. § 6621(a)(2); 31 U.S.C. § 3717. In addition to the assessed penalty and interest, Respondents must pay the United States attorney's fees and costs for collection proceedings, and Respondents must pay a nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 20 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. *See* 33 U.S.C. § 1319(g)(9).

VI. GENERAL PROVISIONS

37. Pursuant to 40 C.F.R. § 22.5, the parties consent to service of this CAFO by email at the following email addresses: stillman.sarah@epa.gov (for Complainant) and penni@livingstonlaw.biz (for Respondents). *See* 40 C.F.R. §§ 22.5-6.

38. Respondents' full compliance with this CAFO shall only resolve Respondents' liability for federal civil penalties for the violations alleged in the CAFO.

39. This CAFO does not affect the rights of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

40. This CAFO does not affect Respondents' responsibility to comply with the CWA and other applicable federal, state and local laws and regulations.

41. This CAFO is a "final order" for purposes of 40 C.F.R. § 22.31 and the EPA's Clean Water Act Section 404 Settlement Penalty Policy (Dec. 2001).

42. The terms of this CAFO bind Respondents and their successors and assigns.
43. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to the terms of this CAFO.
44. Each party agrees to bear its own costs and attorney's fees in this action.
45. This CAFO constitutes the entire agreement between the parties.
46. The effective date for this CAFO is the date it is filed with the Regional Hearing Clerk, after it has been subjected to the notice requirements of sections 309(g)(4)(C) and 309(g)(5) of the CWA, 33 U.S.C. §§ 1319(g)(4)(C), (5), and 40 C.F.R. §§ 22.38, 22.45.

In the Matter of:
Bi-State Group, LLC and Larry Sinn
Docket No: CWA-05-2018-0004

Bi-State Group, LLC and Larry Sinn, Respondents

Date: 2-7-18

By: *Bi State Group*
Larry Sinn
Larry Sinn
Bi-State Group, LLC

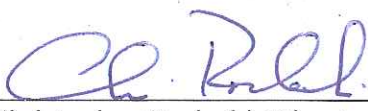
Date: 2-7-18

By: *Larry Sinn*
Larry Sinn

In the Matter of:
Bi-State Group, LLC and Larry Sinn
Docket No: CWA-05-2018-0004

U.S. Environmental Protection Agency, Complainant

Date: 2/13/18

By: 
Christopher Korleski, Director
Water Division
United States Environmental Protection Agency
Region 5

Enclosure:
Figure 1

In the Matter of:
Bi-State Group, LLC and Larry Sinn
Docket No: CWA-05-2018-0004





FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Consent Agreement and Final Order concludes this proceedings pursuant to 40 C.F.R. §§ 22.18 and 22.31. **IT IS SO ORDERED.**

Date: _____ By: _____
Ann Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Figure 1 (April 16, 2016 Aerial Photo)



- Legend**
-  Fill boundary (4-16-16)
 -  Filled wetland (1.15 ac)
 -  Bi-State Group
 -  Adjacent Parcels

