

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION 7
 11201 RENNER BOULEVARD
 LENEXA, KANSAS 66219

UNITED STATES
 ENVIRONMENTAL PROTECTION
 AGENCY - REGION 7
 2018 DEC 10 AM 10:33

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
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)
 Mark Severson,)
)
 &)
)
 Bruening Rock Products, Inc.,)
)
)
 Respondents.)
)
)
 Proceedings under Section 309(g) of the)
 Clean Water Act, 33 U.S.C. § 1319(g))
)
 _____)

Docket No. CWA-07-2018-0287
 CONSENT AGREEMENT AND
 FINAL ORDER

CONSENT AGREEMENT AND FINAL ORDER

This proceeding for the assessment of a civil penalty was initiated on or about September 27, 2018, pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g), when the United States Environmental Protection Agency (“Complainant” or “EPA”) issued to Mr. Mark Severson and Bruening Rock Products, Inc. (“Respondents”), a Complaint and Notice of Opportunity for Hearing.

The Complaint charged Respondents with violations of Sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344, and the regulations promulgated thereunder. The Complaint proposed a civil penalty of \$46,500. The parties entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order (“CA/FO”) is the result of those negotiations.

CONSENT AGREEMENT

1. Respondents admit the jurisdictional allegations of this CA/FO and agree not to contest EPA’s jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

2. As this is a settlement, Respondents neither admit nor deny the factual allegations contained in the Complaint referenced above.

3. Respondents consent to the issuance of the Final Order.

4. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States alleged in the Complaint.

5. Respondents are bound to comply with a Findings of Violation and Order for Compliance, CWA-07-2018-0225, issued by EPA on September 27, 2018. Respondents certify that they are in compliance with the terms of that Order and agree to maintain compliance with the requirements of that Order until that Order is terminated. The effect of the settlement described in Paragraph 4 above is conditioned upon the accuracy of this certification.

6. Respondents waive any right to contest the allegations and any right to appeal the proposed Final Order accompanying this Consent Agreement.

7. Respondents and Complainant each agree to bear their own costs and attorneys' fees.

8. Nothing contained in the Final Order shall alter or otherwise affect Respondents' obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

9. EPA reserves the right to enforce the terms of this CA/FO by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

10. With respect to matters not addressed in this CA/FO, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties, and punitive damages.

11. No portion of the civil penalty or interest paid by Respondents pursuant to the requirements of this CA/FO shall be claimed by Respondents as a deduction for federal, state, or local income tax purposes.

12. Respondents' failure to pay the civil penalty assessed herein in accordance with the provisions of this CA/FO may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest thereon at the applicable statutory rate.

13. Respondents agree that a failure to submit the penalty payment by the due date will result in the entire remaining balance becoming immediately due and payable, along with any costs, handling charges, penalties, and accumulated interest.

14. Respondents certify that they are fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondents to it.

PENALTY

IT IS HEREBY AGREED BY THE PARTIES, pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), that:

15. Respondents consent to the payment of a civil penalty of \$41,000. Payment is due within thirty (30) days of the effective date of this CA/FO.

16. Such payment shall identify Respondent or Respondents by name and docket number and shall be certified or cashier's check made payable to the "United States Treasury" and sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

17. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and

Kate Reitz
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

18. Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

Parties Bound

19. This CA/FO shall apply to and be binding upon Respondents, their agents, successors, and assigns. Respondents shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for them with respect to matters included herein comply with the terms of this CA/FO.

Effective Date

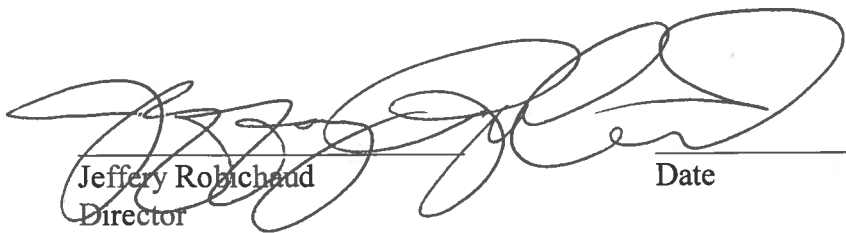
20. This CA/FO shall become effective upon filing pursuant to 40 C.F.R. § 22.31(b). All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

Opportunity for Public Comment

21. In accordance with Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, on October 15, 2018, EPA provided notice on a proposed administrative penalty assessment in this matter. The public comment period ended on November 14, 2018. No comments were received.

COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY


Jeffery Robichaud
Director
Water, Wetlands, and Pesticides Division

12/4/18
Date


Katherine Reitz
Attorney Advisor

12/3/18
Date

RESPONDENT:

MARK SEVERSON

MARK J Severson
Printed Name

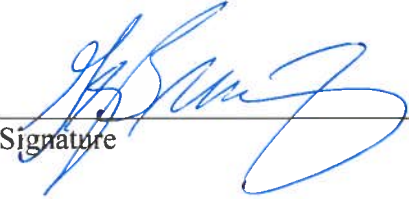
Mark J Severson
Signature

11-28-2018
Date

RESPONDENT:

BRUENING ROCK PRODUCTS, INC.

Greg. A. Bruening
Printed Name


Signature

President
Title

12/13/18
Date

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Karina Borromeo

Karina Borromeo
Regional Judicial Officer

Dec. 10, 2018

Date

CERTIFICATE OF SERVICE

I certify that that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy via Email to Attorney for Complainant:

reitz.katherine@epa.gov

Copy via Email to Attorney for Respondent Mark Severson:

Ted Warpinski
TWarpinski@dkattorneys.com

Copy via Email to Attorney for Respondent Bruening Rock Products, Inc.:

Ron Fadness
rdf@brueningrock.com

AND

Copy via Certified Mail, Return Receipt Requested to Respondent Mark Severson:

Mr. Mark Severson
Severson Service, Inc.
1795 Main Street
P.O. Box 122
Lansing, Iowa 52151

Dated this 10 day of December, 2018.



Signed _____