

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM FOR ADMINISTRATIVE ACTIONS

This form was originated by Wanda I. Santiago for Jeffrey Kopf 9/6/18
Name of Case Attorney Date

in the ORC (RAA) at 918-1113
Office & Mail Code Phone number

Case Docket Number CWA-01-2018-0001

Site-specific Superfund (SF) Acct. Number _____

This is an original debt This is a modification

Name and address of Person and/or Company/Municipality making the payment:

J.G. MacLellan Concrete Co., Inc.
180 Phoenix Ave
Lowell, MA 01852

Total Dollar Amount of Receivable \$ 50,000 Due Date: 10/16/18

SEP due? Yes No Date Due 10/31/18

Installment Method (if applicable)

INSTALLMENTS OF:

1ST \$ _____ on _____

2ND \$ _____ on _____

3RD \$ _____ on _____

4TH \$ _____ on _____

5TH \$ _____ on _____

For RHC Tracking Purposes:

Copy of Check Received by RHC _____ Notice Sent to Finance _____

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
in the Financial Management Office

_____ Phone Number



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
FIVE POST OFFICE SQUARE SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

RECEIVED

SEP 06 2018

EPA ORC WS
Office of Regional Hearing Clerk

September 6, 2018

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region I
5 Post Office Square
Suite 100, Mail Code ORC 04-6
Boston, MA 02109-3912

BY HAND

RE: *In the Matter of: J.G. MacLellan Concrete Co., Inc.*; Docket No. CWA-01-2018-0001

Dear Ms. Santiago,

Enclosed for filing, please find an original and one copy of the Consent Agreement and Final Order (CAFO) both initiating and settling the matter referenced above.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeffrey Kopf".

Jeffrey Kopf
Senior Enforcement Counsel
EPA Region 1

Enclosures

cc: Dianne Phillips, Esq., Holland & Knight LLP

RECEIVED

SEP 06 2018

EPA ORC 105
Office of Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

)
In the matter of)
)
J.G. MACLELLAN CONCRETE CO., INC.)
)
180 PHOENIX AVE)
)
LOWELL, MA 01852)
)
Respondent.)

Docket No. CWA-01-2018-0001

**CONSENT AGREEMENT AND
FINAL ORDER FOR CLASS II
CIVIL PENALTY UNDER THE
CLEAN WATER ACT**

The Regional Administrator of the United States Environmental Protection Agency, Region 1 (“EPA”) issues this Consent Agreement and Final Order (“CAFO”) to J.G. MacLellan Concrete Co., Inc. (“JGM” or “Respondent”). EPA alleges that Respondent violated Sections 301(a), and 311(j) of the Clean Water Act (“CWA”), 33 U.S.C. §§ 1311(a), and 1321(j). The parties agree to resolve this action by the issuance of this CAFO as provided under 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) of EPA’s 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 (“Part 22”).

I. DESCRIPTION OF VIOLATIONS

1. EPA alleges that Respondent: (1) failed to comply with specific stormwater pollution prevention requirements in its National Pollutant Discharge Elimination System (“NPDES”) permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and 40 C.F.R. Part 122; and (2) failed to comply with Section 311(j) of the CWA, 33 U.S.C. § 1321(j) and the Oil Pollution Prevention regulations set forth at 40 C.F.R. Part 112.

Statutory and Regulatory Authority

2. EPA takes this action under the authority of Sections 309(g) and 311(b)(6) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. §§ 1319(g) and 1321(b)(6), as amended by

the Oil Pollution Act of 1990. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), EPA has notified the Commonwealth of Massachusetts and the State of New Hampshire of this action.

General Allegations

National Pollutant Discharge Elimination System

3. The CWA is designed to restore and maintain the chemical, physical, and biological integrity of the nation's waters. Section 101(a) of the CWA, 33 U.S.C. § 1251(a).

4. To accomplish the objectives of the CWA, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person except in compliance with a permit issued pursuant to Section 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, and EPA's implementing regulations, found at 40 C.F.R. Part 122.

5. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines "person" to include "an individual, corporation, partnership, [or] association."

6. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), defines "person" to include "an individual, firm, corporation, association, [or] partnership."

7. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source."

8. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines "pollutant" to include, among other things, garbage, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, and industrial waste discharged into water.

9. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines "point source" to include "any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged."

10. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as "the

waters of the United States, including the territorial seas.”

11. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes the Administrator of EPA to require the owner or operator of any point source to provide such information as the Administrator may reasonably need to carry out the objectives of the CWA, including, among other things, the development and issuance of NPDES permits under Section 402 of the CWA, 33 U.S.C. § 1342.

12. Pursuant to Sections 308 and 402 of the CWA, 33 U.S.C. §§ 1318 and 1342, EPA promulgated stormwater discharge regulations at 40 C.F.R. § 122.26.

13. 40 C.F.R. § 122.26(b)(13) defines “stormwater” to include stormwater runoff, snow melt runoff, and surface runoff and drainage.

14. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), authorizes the Administrator of EPA to issue NPDES permits for the discharge of pollutants into navigable waters in compliance with the CWA.

15. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulation 40 C.F.R. § 122.26(a)(1)(ii) require stormwater discharges associated with industrial activity to be authorized by a NPDES permit.

16. 40 C.F.R. § 122.26(c)(1) provides that dischargers of stormwater associated with industrial activity are required to apply for an individual permit, apply for a permit through a group application, or seek coverage under a general permit.

17. 40 C.F.R. § 122.26(b)(14)(ii) specifies that facilities engaging in industrial activity include facilities classified as Standard Industrial Classification (“SIC”) code 32, including SIC code 3273 (ready-mix concrete).

18. 40 C.F.R. § 122.26(b)(14)(iii) specifies that facilities engaging in industrial activity

include facilities classified as SIC code 14, including active or inactive mining operations, including SIC code 1429 (crushed and broken stone).

19. 40 C.F.R. § 122.26(b)(14) specifies that the term “stormwater discharge associated with industrial activity” includes stormwater discharges from, among other things, industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater. Material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product.

20. On September 29, 1995, EPA issued the NPDES Stormwater Multi-Sector General Permit for Industrial Activities (“1995 MSGP”). 60 Fed. Reg. 50804 (Sept. 29, 1995). EPA reissued the Multi-Sector General Permit for Industrial Activities on October 30, 2000 (“2000 MSGP”), 65 Fed. Reg. 64746 (Oct. 30, 2000), and again on September 29, 2008 (“2008 MSGP”), 73 Fed. Reg. 56572 (Sept. 29, 2008), and again on June 4, 2015 (“2015 MSGP”), 80 Fed. Reg. 34403 (June 16, 2015).

21. The 2008 and 2015 MSGPs contain terms and conditions designed to ensure the implementation of practices to minimize the pollutants in stormwater discharge associated with industrial activity.

22. Section 309(g) of the CWA, 33 U.S.C. § 1319, provides for the assessment of penalties for violations of Sections 301 and 308 of the CWA, 33 U.S.C. §§ 1311, 1318, and for violating any condition or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

Oil and Hazardous Substances Liability

23. Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances . . . from onshore and offshore facilities, and to contain discharges...”

24. Under the authority of Section 311(j)(1) of the CWA, the Oil Pollution Prevention regulations, found at 40 C.F.R. Part 112, establish procedures, methods, and requirements for preventing the discharge of oil. These requirements apply to owners or operators of non-transportation-related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products which, due to their location, could reasonably be expected to discharge oil in harmful quantities (as defined in 40 C.F.R. Part 110) to navigable waters of the United States or adjoining shorelines. 40 C.F.R. § 112.1(b).

25. Under 40 C.F.R. § 112.3(a)(1), an owner or operator of an onshore facility that became operational prior to August 16, 2002 and that has discharged or, due to its location, could reasonably be expected to discharge, oil in harmful quantities unto or upon the navigable waters of the United States must prepare and fully implement a Spill Prevention, Control, and Countermeasure (“SPCC”) plan in accordance with 40 C.F.R. § 112.7.

26. Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), provides for the assessment of penalties for violations of Section 311(j) of the CWA, 33 U.S.C. § 1321(j), and the Oil

Pollution Prevention regulations, found at 40 C.F.R. Part 112.

Findings of Violation

27. J.G. MacLellan Concrete Co., Inc. is a corporation organized under the laws of the Commonwealth of Massachusetts with its principal place of business in Massachusetts.

28. Respondent is a “person” within the meaning of Sections 311(a)(7) and 502(5) of the CWA, 33 U.S.C. §§ 1321(a)(7), 1362(5), and 40 C.F.R. § 112.2.

29. Respondent operates a facility located at 180 Phoenix Ave., Lowell, Massachusetts (“Lowell Facility”). At the Lowell Facility, Portland Cement Concrete is manufactured and loaded into concrete mixer trucks for delivery to construction sites. Its primary SIC code is 3273 (ready-mixed concrete) and the Lowell Facility falls under Sector E, Subsector E2 (Concrete, Gypsum, and Plaster Products) of the MSGP.

30. Granite State Concrete Co., Inc., (“Granite State Concrete”) which is a subsidiary of J.G. MacLellan Concrete Co., Inc., and which is located at 408 Elm St., Milford, New Hampshire (“Milford Facility”) owns and/or operates the Milford Facility. At the Milford Facility, Portland Cement Concrete is manufactured and loaded into concrete mixer trucks for delivery to construction sites. In addition, sand, gravel and stone is crushed, screened and washed to produce construction aggregates. Its primary SIC code is also 3273 (ready-mixed concrete) and the Milford Facility falls under Sector E, Subsector E2 (Concrete, Gypsum, and Plaster Products) of the MSGP.

31. Respondent controls daily business and industrial operations at the Facilities, and otherwise meet the definition of “owner or operator” of the Facilities, as defined at Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.

32. Since at least November 2012, Respondent has conducted “industrial activity,” within the meaning of 40 C.F.R. § 122.26(b)(14)(ii) and 40 C.F.R. § 122.26(b)(14)(iii) at the Facilities.

33. Both Facilities have been operating under the MSGP since at least November 2012.

34. The Lowell Facility has operated under NPDES MAR050000 (NPDES ID MAR053684).

35. The Milford Facility has operated under NPDES NHR050000 (NPDES ID NHR053213).

36. The 2015 MSGP authorizes Respondent to discharge stormwater from outfalls 001 and 002 at the Lowell Facility to an “unnamed waterbody,” subject to the terms and conditions in the MSGP.

37. The 2008 MSGP authorizes Respondent to discharge stormwater from outfalls 001 and 002 at the Lowell Facility to the Merrimack River and Concord River via the City of Lowell Municipal Separate Storm Sewer System (“MS4”), subject to the terms and conditions in the MSGP.

38. Both the 2008 and 2105 MSGP authorize Respondent to discharge stormwater from outfall 001 at the Milford Facility to the Souhegan River (via Tucker Brook), subject to the terms and conditions in the MSGP.

39. The unnamed waterbody, the Merrimack River, the Concord River, the Souhegan River, and Tucker Brook, are waters of the United States and, thereby, “navigable waters,” as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

40. During the time frames described in this CAFO, each of the Facilities had at least 1,320 gallons of oil storage capacity.

41. On November 23, 2016, authorized representatives of EPA inspected the Milford Facility for compliance with federal environmental laws and regulations under the CWA (the “Milford Inspection”).

42. On January 4, 2017, authorized representatives of EPA inspected the Lowell Facility for compliance with federal environmental laws and regulations under the CWA (the “Lowell Inspection”).

Count 1: Discharge of stormwater not in compliance with the 2008 MSGP and 2015 MSGP permit terms and conditions (Lowell Facility)

43. From at least November 2012 through the present, Respondent has discharged “storm water associated with industrial activities” within the meaning of 40 C.F.R. § 122.26, from two outfalls into the MS4 for the City of Lowell which ultimately flows into the Merrimack River.

44. The release of stormwater associated with industrial activity from the point sources mentioned above constitute a “discharge of pollutants” within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

45. Since at least November 2012, Respondent was authorized under the 2008 MSGP and the 2015 MGSP to discharge stormwater to the Merrimack River. The 2008 MSGP and the 2015 MGSP contain terms and conditions designed to ensure the implementation of practices to reduce the pollutants in stormwater discharges associated with industrial activity at the Facility.

Inspections

46. Section 4.1 of the 2008 MSGP and Section 3.1 of the 2015 MSGP require that a permittee conduct routine facility inspections, at least quarterly, including but not limited to:

- a. Areas where industrial materials or activities are exposed to stormwater;
- b. Areas identified in the SWPPP and those that are potential pollutant sources;
- c. Areas where spills and leaks have occurred in the past three years;
- d. Discharge points; and

- e. Control measures used to comply with the effluent limits contained in the permit.

47. Section 4.1.2 of the 2008 MSGP and Section 3.1.2 of the 2015 MSGP require that a permittee document all findings of the routine facility inspections on a facility inspection report.

48. From at least December 2012 through March 2017, for certain quarters, Respondent did not fully document that all of the industrial areas were fully inspected as required by the 2008 MSGP and 2015 MSGP for 2012 (Q4), 2015 (Q1, Q2, Q4), 2016 (Q1, Q2, Q3, Q4), and 2017 (Q1).

Monitoring

49. Section 4.2 of the 2008 MSGP and Section 3.2 of the 2015 MSGP require that a permittee conduct quarterly visual assessments of stormwater samples from each designated outfall. Furthermore, whenever the visual assessment shows evidence of stormwater pollution, the permittee must initiate the corrective action procedure.

50. Section 4.2.2 of the 2008 MSGP and Section 3.1.2 of the 2015 MSGP require that a permittee document all findings of the quarterly visual assessments on site.

51. From at least December 2012 through March 2017, Respondent did not fully document quarterly visual assessments as required by the 2008 MSGP and the 2015 MSGP for 2013 (Q2), 2014 (Q3) and 2016 (Q3).

SWPPP

52. Section 5 of the 2008 MSGP and 2015 MSGP require a permittee to develop and implement a SWPPP for the facility in accordance with requirements specified in each permit.

53. Section 5.1.2 of the 2008 MSGP and Section 5.2.2 of the 2015 Permit require the permittee to include in the SWPPP a site map providing the location of all stormwater

conveyances, potential pollution sources, stormwater control measures, stormwater inlets and outfalls, and the location of fueling stations, liquid storage tanks, among others.

54. Section 8.1.4 of the 2008 MSGP and Section 5.2.4 of the 2015 MSGP require that the SWPPP include a description of control measures used by the Facility to meet technology based and water quality based effluent limits.

55. From at least December 2012 through March 2017, Respondent failed to properly prepare a SWPPP in accordance with the terms and conditions of the 2008 MSGP and the 2015 MSGP by failing to include adequate site maps that contained all required components.

56. By discharging stormwater from the Facility into waters of the U.S. in violation of certain terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and by failing to comply with all the conditions in the 2008 MSGP and the 2015 MSGP, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a) from at least December 2012 through March 2017.

Count 2: Unauthorized Discharge of Process Water (Lowell Facility)

57. During the Lowell Inspection, EPA inspectors observed one of Respondent's employees washing off a concrete truck in the driveway of the Lowell Facility. Process water from such activity contains sand, residue from concrete operations, and oil and grease which are "pollutant[s]" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6). Process water flowing down the driveway enters the City's MS4, which discharges into the Merrimack River.

58. Section 1.1.3.1 of the 2015 MSGP lists all allowable non-stormwater discharges authorized under the permit. The process water discharges described in the previous paragraph are not listed as authorized discharges; nor were these discharges authorized under any other

state or federal permit.

59. By discharging industrial process wastewater into the Merrimack River without authorization under the CWA, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 3: Failure to Maintain and Fully Implement an SPCC Plan (Lowell Facility)

60. At all times relevant to the allegations in this CAFO, Respondent engaged in storing, using, and consuming “oil” or oil products located at the Facility within the meaning of 40 C.F.R. § 112.2.

61. At all times relevant to the allegations in this CAFO, the Lowell Facility had an aboveground oil storage capacity greater than 1,320 gallons in containers each with a shell capacity of at least 55 gallons.

62. The Lowell Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

63. The Lowell Facility became operational prior to August 16, 2002.

64. The Lowell Facility is a “non-transportation-related” facility within the meaning of Appendix A to 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.

65. Accordingly, the Lowell Facility is a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to navigable waters of the United States or its adjoining shorelines in a harmful quantity.

66. Respondent is therefore subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112 at the Facility.

67. Respondent prepared an SPCC plan for the Lowell Facility which was signed and stamped by a professional engineer on January 3, 2000.

68. Respondent did not update the SPCC plan for the Lowell Facility again until February 1, 2017, when it completed a Tier II Qualified Facility SPCC Plan for the Lowell Facility.

69. During the Lowell Inspection and based on additional information submitted by Respondent, EPA determined that Respondent had failed to maintain and fully implement an SPCC Plan for the Facility from at least November 2012 until February 1, 2017, in violation of Section 311(j) of the Act.

70. Respondent failed to adequately provide measures which would prevent the discharge of oil from reaching waters of the United States and failed to implement specific requirements listed in 40 C.F.R. §§112.5-112.7. Respondent's failure to maintain and fully implement an SPCC plan includes the following deficiencies:

- a. Failure to have adequate secondary containment around all oil storage containers of at least 55 gallons;
- b. Failure to maintain audible overfill alarms.
- c. Failure to amend the SPCC plan within six months of any commissioning, decommissioning, replacement, reconstruction or movement of any oil containers at the facility; and,
- d. Failure to review the SPCC plan once every five years.

71. By failing to maintain and fully implement an SPCC plan for the Facility in accordance with the requirements of 40 C.F.R. §§ 112.7 and 112.8, as described above, Respondent violated 40 C.F.R. § 112.3 and Section 311(j) of the CWA, 33 U.S.C. § 1321(j), from at least November 2012 until February 1, 2017.

Count 4: Discharge of stormwater not in compliance with the 2008 MSGP and 2015 MSGP permit terms and conditions (Milford Facility)

72. From at least November 2012 through the present, Respondent has discharged “storm water associated with industrial activities” within the meaning of 40 C.F.R. § 122.26, from two outfalls to Tucker Brook which flows into the Souhegan River.

73. The release of stormwater associated with industrial activity from the point sources mentioned above constitute a “discharge of pollutants” within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

74. Since at least November 2012, Respondent was authorized under the 2008 MSGP and the 2015 MGSP to discharge stormwater to the Souhegan River. The 2008 MSGP and the 2015 MGSP contain terms and conditions designed to ensure the implementation of practices to reduce the pollutants in stormwater discharges associated with industrial activity at the Facility.

Inspections

75. Section 4.1 of the 2008 MSGP and Section 3.1 of the 2015 MSGP require that a permittee conduct routine facility inspections, at least quarterly, including but not limited to:

- a. Areas where industrial materials or activities are exposed to stormwater;
- b. Areas identified in the SWPPP and those that are potential pollutant sources;
- c. Areas where spills and leaks have occurred in the past three years;
- d. Discharge points; and
- e. Control measures used to comply with the effluent limits contained in the permit.

76. Section 4.1.2 of the 2008 MSGP and Section 3.1.2 of the 2015 MSGP requires that a permittee document all findings of the routine facility inspections on a facility inspection report.

77. From at least December 2012 through March 2017, Respondent did not fully

document that all of the industrial areas were fully inspected as required by the 2008 MSGP and 2015 MSGP for 2012 (Q4); 2013 (Q1, Q2); 2015 (Q1, Q4); 2016 (Q1, Q2, Q3, Q4), and 2017 (Q1).

SWPPP

78. Section 5 of the 2008 MSGP and 2015 MSGP require a permittee to develop and implement a SWPPP for the Facility in accordance with requirements specified in each permit.

79. Section 5.1.2 of the 2008 MSGP and Section 5.2.2 of the 2015 Permit require the permittee to include in the SWPPP a site map providing the location of all stormwater conveyances, potential pollution sources, stormwater control measures, stormwater inlets and outfalls, and the location of fueling stations, liquid storage tanks, among others.

80. From at least November 2012 through January 4, 2017, Respondent failed to properly prepare a SWPPP in accordance with the terms and conditions of the 2008 MSGP and the 2015 MSGP by failing to include adequate site maps that contained all required components.

81. Accordingly, Respondent failed to properly prepare and fully implement a SWPPP in violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

82. By discharging stormwater from the Facility into waters of the U.S. in violation of certain terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and by failing to comply with all the conditions in the 2008 MSGP and the 2015 MSGP, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a) from at least November 2012 through January 2017.

Count 5: Failure to Maintain and Fully Implement an SPCC Plan (Milford Facility)

83. At all times relevant to the allegations in this CAFO, Respondent engaged in storing,

using, and consuming “oil” or oil products located at the Milford Facility within the meaning of 40 C.F.R. § 112.2.

84. At all times relevant to the allegations in this CAFO, the Milford Facility had an aboveground oil storage capacity greater than 1,320 gallons in containers each with a shell capacity of at least 55 gallons.

85. The Milford Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

86. The Milford Facility became operational prior to August 16, 2002.

87. The Milford Facility is a “non-transportation-related” facility within the meaning of Appendix A to 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.

88. Accordingly, the Milford Facility is a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to navigable waters of the United States or its adjoining shorelines in a harmful quantity.

89. Respondent is therefore subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112 at the Facility.

90. Respondent prepared an SPCC plan for the Milford Facility which was signed and stamped by a professional engineer on January 3, 2000 and revised in February 2003.

91. Respondent did not update the SPCC plan for the Milford Facility again until February 1, 2017.

92. During the Milford Inspection and based on additional information submitted by Respondent, EPA determined that Respondent had failed to maintain and fully implement an SPCC Plan for the Facility from at least November 2012 until February 1, 2017, in violation of Section 311(j) of the Act.

93. Respondent failed to adequately provide measures which would prevent the discharge of oil from reaching waters of the United States and failed to implement specific requirements listed in 40 C.F.R. §§112.5-112.7. Respondent's failure to maintain and fully implement an SPCC plan includes the following deficiencies:

- a. Failure to have adequate secondary containment around all oil storage containers of at least 55 gallons;
- b. Failure to conduct and/or maintain written records of inspections required by the SPCC regulations with the SPCC plan;
- c. Failure to amend the SPCC plan within six months of any commissioning, decommissioning, replacement, reconstruction or movement of any oil containers at the facility; and,
- d. Failure to review the SPCC plan once every five years.

94. By failing to maintain and fully implement an SPCC plan for the Facility in accordance with the requirements of 40 C.F.R. §§ 112.7 and 112.8, as described above, Respondent violated 40 C.F.R. § 112.3 and Section 311(j) of the CWA, 33 U.S.C. § 1321(j), from at least November 2012 until February 1, 2017.

II. CONSENT AGREEMENT

95. EPA and Respondent agree that settlement of this cause of action is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter. Therefore, before taking 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:

96. Respondent admits the jurisdictional allegations set forth in Section I above and

hereby waives any defenses it might have as to jurisdiction and venue.

97. Respondent neither admits nor denies the factual or non-jurisdictional allegations contained in Section I above.

Waiver of Rights

98. Respondent waives the right to a hearing under Sections 309(g)(2)(B) and 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. §§ 1319(g)(2)(B) and 1321(b)(6)(B)(ii), and to any appeal of the Final Order in this matter under Sections 309(g)(8)(B) and 311(b)(6)(G)(ii) of the CWA, 33 U.S.C. §§ 1319(g)(8)(B) and 1321(b)(6)(G)(ii). Respondent consents to the issuance of a Final Order without further adjudication.

Penalty

99. EPA proposes, and Respondent consents to, the assessment of a civil penalty of \$50,000 for all violations contained in this CAFO.

Payment Terms

100. In agreeing to the penalty described in paragraph 99 above, EPA has taken into account the statutory penalty factors at Sections 309(g)(3) and 311(b)(8) of the CWA, 33 U.S.C. §§ 1319(g)(3) and 1321(b)(8).

101. Respondent shall pay a total penalty of \$50,000 for violations of Section 301 and 311 of the CWA, 33 U.S.C. §§ 1311 and 1321, within ten (10) days of the date this Agreement becomes final.

a. Respondent shall pay a penalty of \$40,000 for the violations of Section 301 of the CWA, and shall make this payment by cashier's, certified, or company check, payable to "Treasurer, United States of America," referencing the case name and docket number of this action (*In the matter of J.G. MacLellan Concrete Co., Inc.*, No. CWA-01-2018-0001) on the face

of the check. The payment shall be made via regular U.S. Postal Service mail to:

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

b. Respondent shall pay a penalty of \$10,000 for the violations of Section 311 of the CWA, and shall make this payment by cashier's, certified, or company check, payable to "Treasurer, United States of America," referencing the case name and docket number of this action (*In the matter of J.G. MacLellan Concrete Co., Inc.*, No. CWA-01-2018-0001) and "Oil Spill Trust Liability Fund – 311" on the face of the check. The payment shall be made via regular U.S. Postal Service mail to:

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

c. At the time of payment, Respondent shall simultaneously send notice of the payments and copies of the checks to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code ORC 04-6)
Boston, MA 02109-3912

and

Jeffrey Kopf
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code OES 04-3)
Boston, MA 02109-3912

102. Pursuant to Sections 309(g)(9) and 311(b)(6)(H) of the CWA, 33 U.S.C.

§§ 1319(g)(9) and 1321(b)(6)(H), a failure by Respondent to pay the penalty assessed by this CAFO in full by its due date shall subject Respondent to a civil action to collect the assessed penalty, plus interest at the prevailing rates, from the date this Agreement becomes final. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(b), promulgated under 31 U.S.C. § 3717. Any person who fails to pay on a timely basis the amount of an assessed penalty shall be required to pay, in addition to such amount and interest, attorney's fees, costs for collection proceedings, and a quarterly non-penalty payment for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of such person's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

Supplemental Environmental Project

103. Respondent shall undertake the following Supplemental Environmental Project ("SEP" or "Project"), which the parties agree is intended to secure environmental and public health protection and benefits. The SEP consists of closing a City of Lowell stormdrain located on the east side of Phoenix Avenue adjacent to the Lowell Facility driveway, and redirecting the stormwater to a retention area at the Lowell Facility. In addition, the SEP will include regrading and paving 150 feet of Phoenix Avenue in order to direct stormwater to the south and west and off of the City owned right of way.

104. Respondent shall complete the SEP by October 31, 2018. The SEP is projected to cost approximately \$94,500 in total, including engineering costs.

105. **SEP Completion Report.** Respondent shall submit a SEP Completion Report within 60 days of completion of the Project. The SEP Completion Report shall contain the

following information for each component of the SEP: (i) a detailed description of the SEP component as implemented; (ii) a description of any implementation problems encountered and the solutions thereto; (iii) a description of the environmental and public health benefits resulting from implementation of the SEP; (iv) evidence of SEP completion (which may include but is not limited to photos, vendor invoices or receipts, and/or correspondence from the SEP Recipient); (v) a list of itemized costs for implementing the SEP; and (vi) certification by a corporate official that the SEP has been fully implemented pursuant to the provisions of this CAFO.

106. Respondent agrees that failure to submit the report required by paragraph 105 shall be deemed a violation of this CAFO, and Respondent shall become liable for stipulated penalties pursuant to paragraph 108 below.

107. Respondent shall submit all notices, submissions, and reports required by this CAFO to Jeffrey Kopf by email at kopf.jeff@epa.gov, to Alex Rosenberg by email at Rosenberg.alex@epa.gov, or by First Class mail or any other commercial delivery service to EPA at the addresses set forth below:

Jeffrey Kopf, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: OES 04-4)
Boston, MA 02109-3912

and

Alex Rosenberg
Compliance Officer
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: OES 04-3)
Boston, Massachusetts 02109-3912

108. The submission will be deemed to be made upon tendering the delivery to a

commercial delivery service for overnight delivery or upon the date of the postmark in the event of use by First Class mail.

109. After receipt of the SEP Completion Report described in paragraph 105 above, EPA will notify Respondent in writing:

- a. That EPA concludes that the SEP has been completed satisfactorily;
- b. That EPA has determined that the Project has not been completed satisfactorily and is specifying a reasonable schedule for correction of the SEP or the SEP Completion Report; or
- c. That EPA has determined that the SEP does not comply with the terms of this CAFO and is seeking stipulated penalties in accordance with paragraph 111 herein.

110. If EPA notifies Respondent pursuant to paragraph 109.b above that the SEP itself or the SEP Completion Report does not comply with the requirements of this CAFO, Respondent shall make corrections to the SEP and/or modify the SEP Completion Report in accordance with the schedule specified by EPA. If EPA notifies Respondent that the SEP itself does not comply with the requirements of this CAFO, Respondent shall pay stipulated penalties in accordance with paragraph 111 herein.

111. Stipulated Penalties.

- a. In the event that Respondent fails to comply with any of the terms or provisions of this CAFO relating to performance of the SEP, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 - i. For failure to submit the SEP Completion Report, Respondent shall

pay a stipulated penalty in the amount of \$200 for each day that Respondent is late; and

- ii. If the SEP, or any portion thereof, has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty of the dollar value of the portion of the SEP not satisfactorily completed times 1.25 plus interest from the date this Agreement becomes final. However, if Respondent spend less than \$94,500 but otherwise satisfactorily completes the SEP, Respondent shall only be required to pay a stipulated penalty in the amount equal to the difference between \$94,500 and the actual amount spent on the Project.
- b. The determination of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
- c. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.
- d. Respondent shall pay stipulated penalties not more than 15 days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of paragraph 101. Notice shall be given in accordance with the provisions of paragraph 101.c. Interest and late charges shall be paid as stated in paragraph 102.
- e. Payment of stipulated penalties shall be in addition to any other relief

available under federal law.

- f. EPA may, in its sole discretion, decide not to seek stipulated penalties or to waive any portion of the stipulated penalties that accrue pursuant to this CAFO.

112. With regard to the SEP described herein, Respondent certifies the truth and accuracy of each of the following:

- a. That all cost information provided to EPA in connection with EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimate that the cost to implement the SEP is approximately \$94,500;
- b. That, as of the date of executing this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation, nor is Respondent required to perform the SEP by agreement, grant, or as injunctive relief awarded in this or any other action in any forum;
- c. That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO;
- d. That Respondent have not received and will not receive credit for the SEP in any other enforcement action;
- e. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
- f. That for federal income tax purposes, Respondent agree that it will neither

capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP;

- g. That Respondent is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP; and
- h. That Respondent has inquired of the SEP Recipient whether it is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and have been informed by the SEP Recipient that it is not a party to such a transaction.

113. For the purposes of the certifications in paragraphs 112.g and 112.h, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, federal loan, federally-guaranteed loan, or other mechanism for providing federal financial assistance whose performance period has not yet expired.

114. Respondent agree that any public statement, oral or written, in print, film, or other media, made by Respondent making reference to any portion of the SEP under this CAFO from the date of Respondent’s execution of this CAFO shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action, In the matter of J.G. MacLellan Concrete Co., Inc. taken by the U.S. Environmental Protection Agency to enforce federal laws.”

General Provisions

115. The provisions of this CAFO shall apply to and be binding on Respondent, its officers, directors, agents, servants, employees, successors, and assigns.

116. The civil penalty provided under this CAFO, and any interest, nonpayment

penalties, and charges described in this CAFO, shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not tax deductible for purposes of federal, state, or local law. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agrees not to use those payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

117. This CAFO does not constitute a waiver, suspension, or modification of the requirements of the CWA or any regulations or permits promulgated thereunder. Payment of the penalty pursuant to this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged in Section I above.

118. This CAFO in no way relieves Respondent or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

119. 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 CAFO or of the statutes and regulations upon which the Complaint and this CAFO is based, or for Respondent's violation of any applicable provision of law.

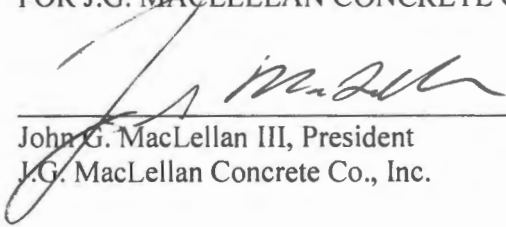
120. Except as described in paragraph 102 above, the parties shall bear their own costs and fees in this action, including attorney's fees, and specifically waive any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C § 504, or other applicable laws.

121. Respondent's obligations under the CAFO shall end when it has paid in full the scheduled civil penalty, performed the SEP, paid any stipulated penalties, and submitted the documentation required by this CAFO.

122. The terms, conditions, and requirements of this CAFO may not be modified or amended except upon the written agreement of all parties, and approval of a Regional Administrator or his or her properly authorized delegate.

123. 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 CAFO and to execute and legally bind that party to it.

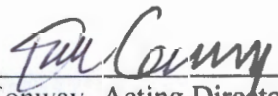
FOR J.G. MACLELLAN CONCRETE CO., INC.:



John G. MacLellan III, President
J.G. MacLellan Concrete Co., Inc.

Date: 7-20-18

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:



Tim Conway, Acting Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

Date: 7/31/18

FINAL ORDER

124. EPA has provided a thirty-day opportunity for public notice and comment on this proposed CAFO, pursuant to Sections 309(g)(4)(A) and 311(b)(6)(C)(i) of the CWA, 33 U.S.C. §§ 1319(g)(4)(A) and 1321(b)(6)(C)(i), and 40 C.F.R. § 22.45(b).

125. The foregoing Consent Agreement is incorporated by reference into this Order and is hereby ratified.

126. Respondent is hereby ordered to comply with the terms of the above Consent Agreement, which will become final 30 days from the date it is signed by the Regional Judicial Officer unless a petition to set aside the order is filed by a commenter pursuant to Sections 309(g)(4)(C) and 311(b)(6)(C)(iii) of the CWA, 33 U.S.C. §§ 1319(g)(4)(C) and 1321(b)(6)(C)(iii), and 40 C.F.R. Part 22.

Date: _____

9/5/18



LeAnn Jensen
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the matter of)	Docket No. CWA-01-2018-0001
J.G. MACLELLAN CONCRETE CO., INC.)	CERTIFICATE OF SERVICE
180 PHOENIX AVE)	
LOWELL, MA 01852)	
)	
Respondent.)	

I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following persons on the date noted below:


Original and one copy,
hand-delivered:

Ms. Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square, Suite 100
Mail Code ORC04-6
Boston, MA 02109-3912

Copy (Certified Mail,
Return Receipt Requested):

Dianne Phillips
Holland & Knight LLP
10 Saint James Avenue, 11th Floor
Boston, MA 02116

Dated: 9/6/18



Jeffrey Kopf, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code OES04-4
Boston, MA 02109-3912
Phone: 617-918-1796
Fax: 617-918-0796