

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

2016 DEC 12 PM 3:48

In the Matter of:

High Tech Corridor Development, LLC.  
600 White Oaks Boulevard  
Bridgeport, West Virginia 26330

Respondent

Adjacent to Interstate 79,  
Between Original Terminus of  
White Oaks Boulevard and State Route 131  
Bridgeport, WV 26330  
Harrison County  
Latitude 39.339517  
Longitude -80.228942

Phase II Site

Class II Proceeding Pursuant to  
Section 309(g)(2)(B) of the Clean  
Water Act, 42 U.S.C. § 1319(g)(2)(B)

EPA Docket No. CWA 03-2016-0216  
**CONSENT AGREEMENT &  
FINAL ORDER**

**I. STATUTORY AND REGULATORY AUTHORITY**

1. This Consent Agreement and Final Order (“CAFO”) is entered into by Director of the Environmental Assessment and Innovation Division (“EAID”), United States Environmental Protection Agency (“EPA”), Region III (“Complainant”) and High Tech Corridor Development, LLC (“Respondent”), pursuant to Section 309(g) of the Clean Water Act (“CWA” or “Act”), 42 U.S.C. § 1319(g), and 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*, 40 C.F.R. Part 22 (the “Consolidated Rules”).
2. The authority to settle this matter is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator for EPA Region III, who in turn has delegated this authority to the Director of the Environmental Assessment and Innovation Division.
3. The parties have agreed to settlement of violations of the CWA by Respondent. This CAFO simultaneously commences and concludes this action pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) & (3).

4. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Civil Monetary Inflation Rule, 40 C.F.R. Part 19, any person violating the CWA is liable for an administrative penalty in an amount not to exceed \$20,628 per day for each day of the violation, up to a total penalty of \$257,848 for violations effective after December 6, 2013.

## **II. EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW**

5. Respondent is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
6. At all times relevant to this CAFO, Respondent, High Tech Corridor Development, LLC (High Tech) is the owner of the property located on and around Phase II of the White Oaks Business Park Development located in the City of Bridgeport, Harrison County, West Virginia (39.339517, -80.228942), identified hereinafter as "the Phase II Site."
7. On March 23, 2016, U.S. Army Corps of Engineers, Pittsburgh District (USACE), representatives inspected the Phase II Site and observed site conditions indicating that work authorized by the modification to the DA Permit No. LRP-2007-231 (Permit) on February 24, 2016 was completed prior to Permit issuance.
8. The inspection resulted in the issuance of a Cease and Desist Order (C&D) by USACE to Respondent on March 25, 2016 for CWA violations at the Phase II Site.
9. Upon receipt of the C&D, the West Virginia Department of Environmental Protection (WVDEP) issued a letter to Respondent on April 7, 2016 denying the 401 Water Quality Certification for the Phase II Site.
10. On June 20, 2016, USACE suspended the Permit No. LRP-2007-231 and its subsequent permit modification. The permit and modification were suspended due to the performance of proposed work prior to receiving federal authorization and a failure to comply with compensatory mitigation requirements, respectively.
11. The Phase II Site contains unnamed tributaries of Thomas Fork, which drain to Thomas Fork, which flows to Booths Creek, which flows to West Fork, a navigable-in-fact body of water. Some of the unnamed tributaries of Thomas Fork at the Phase II Site and certain wetlands at the Phase II Site that have a substantial nexus to such tributaries which constitute "waters of the United States" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2
12. The term "fill material" within the meaning of 40 C.F.R. § 232.2, includes any material which replaces portions of the "water of the United States" with dry land or which changes the bottom elevation of a water body.
13. On information and belief, work began on or about July 13, 2015 at the Phase II Site and Respondent and/or persons acting on behalf of Respondent, operated equipment

in the process of constructing five, non-contiguous pads and a connector road. In the process, Respondent discharged dredged and/or fill material to waters of the United States on the Phase II Site, resulting in impacts to approximately 2,595 linear feet of stream and 0.189 acres of wetland.

14. The equipment referenced in Paragraph 13 constitutes a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
15. Section 301(a) of the Act, 33 U.S.C. § 1311(a) prohibits the discharge of dredged and/or fill material from a point source to waters of the United States except in compliance with a permit issued by the Secretary of the Army pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.
16. At no time during the discharge of dredged and/or fill material to the waters of the United States located on the Phase II Site did Respondent have a valid permit from the Secretary of the Army as required by Section 404 of the CWA, 33 U.S.C. § 1344.
17. Respondent, by discharging dredged and/or fill material to the waters of the United States without authorization, has violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

### **III. CONSENT AGREEMENT AND FINAL ORDER**

18. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.
19. For the purposes of this proceeding Respondent:
  - a. Admits the jurisdictional allegations contained in this consent agreement;
  - b. Neither admits nor denies the specific factual allegations contained in this consent agreement;
  - c. Shall perform the compensatory mitigation required by the Permit in accordance with WVDEP individual §401 Water Quality Certification, following rescission of the USACE C&D and reinstatement of the Permit. Respondent shall complete the required compensatory mitigation consistent with the terms and conditions of the Permit or Permit modification, which may include additional mitigation.
  - d. Shall notify EPA and USACE that the compensatory mitigation is completed, so the agencies may schedule an inspection and USACE may subsequently reinstate the Permit.

- e. Consents to the assessment of any stated civil penalty, to the issuance of any specified compliance or corrective action, to any conditions specified in this consent agreement; and
  - f. Waives the right to a hearing contesting the allegations contained herein and waives the right to appeal the final order accompanying this consent agreement.
20. Each party to this action shall bear its own costs and attorney's fees.
21. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), EPA provided public notice and an opportunity to comment on this CAFO prior to issuing the Final Order. 40 C.F.R. § 22.45 requires a forty (40) day notice period in advance of an order which assesses a civil penalty.
22. Pursuant to Section 309(g)(1)(A) of the CWA, 33 U.S.C. § 1319(g)(1)(A). EPA consulted with the WVDEP regarding this action and will mail a copy of this document to the appropriate West Virginia official.
23. Based on the foregoing FINDINGS OF FACT, and having taken into account the factors listed in Section 309(d) of the CWA, 33 U.S.C. § 1319(d), including but not limited to, the nature, circumstances, extent and gravity of the violation, the Respondent's knowledge, culpability and history of violations, the economic benefit to Respondent, the ability of Respondent to pay the penalty; the administrative record; and under the authority of Section 309(g)(2)(B) of the CWA, 33 U.S.C. 1319(g)(2)(B), EPA HEREBY ORDERS AND RESPONDENT HEREBY CONSENTS to pay a civil penalty in the amount of one hundred and fifty thousand dollars (\$150,000) in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.

#### **IV. PAYMENT TERMS**

24. Respondent shall pay a civil penalty of \$150,000 for the violations alleged in this CAFO within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c), in the following manner:
- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action: EPA Docket No. CWA-03-2016-0216;
  - b. All checks shall be made payable to "United States Treasury."
  - c. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency

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

Contacts: Heather Russell (513) 487-2044

- d. All payments made by check and sent by UPS, Federal Express, or overnight delivery service shall be addressed for delivery to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA, Fines & Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

Contact: (314) 418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance  
US EPA, MS-NWD  
26 W. M.L. King Drive  
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 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”

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737

Contact: Jon Schmid (202) 874-7026 or REX: (866) 234-5681

h. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

i. Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/payment\\_instructions.htm](http://www.epa.gov/ocfo/finservices/payment_instructions.htm)

j. Respondent shall send notice of such payment, including a copy of the check, to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk  
Mail Code: 3RC00  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

-and-

Pamela Lazos  
Mail Code: 3RC20  
Office of Regional Counsel  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

**V. GENERAL PROVISIONS**

25. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251, *et seq.*, or any regulations promulgated thereunder.
26. This CAFO is conditioned upon the accuracy of the Respondent's representations to EPA, including but not limited to Respondents' intent to comply with the Department of Army permit referenced in Paragraph 10 and the WVDEP §401 water quality

certification issued for the Phase II Site. EPA reserves the right to institute a new and/or separate action should Respondents fail to comply with the terms of this CAFO or the Department of Army or WVDEP Permits referenced herein. That right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.

27. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:
  - a. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
  - b. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).
  - c. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). A penalty charge not to exceed six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent for more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
28. This Consent Agreement and the accompanying Final Order resolve only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. §§ 301 *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk. Respondent reserves all rights and defenses it may have to defend itself in any such action.

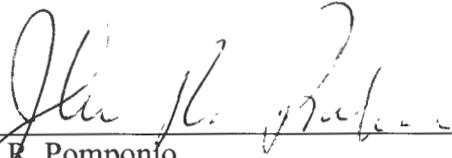
29. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondent's violation of any applicable provision of law.
30. The penalty specified above represents civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
31. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO if the EPA obtains evidence that the information and/or representations of the Respondent is false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.
32. The undersigned representative of Respondent 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.
33. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

#### **VI. PUBLIC NOTICE AND EFFECTIVE DATE**

34. Pursuant to 33 U.S.C. § 309(g)(4) and 40 C.F.R. § 22.45, this CAFO issued after the conclusion of a forty(40) day public notice period concluded. Pursuant to 40 C.F.R. § 22.45(c)(3), this CAFO will not be issued until ten (10) days after the close of the public comment notice period. This CAFO will become final and effective thirty (30) days after issuance, 33 U.S.C. § 1319(g)(5).

#### **VII. SIGNATURES**

**FOR COMPLAINANT, U.S. EPA REGION III**



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John R. Pomponio  
Director, Environmental Assessment and Innovation Division  
U.S. EPA Region III

**FOR RESPONDENT HIGH TECH CORRIDOR DEVELOPMENT, LLC:**



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Name and Title:  
H. WOOD Thrasher, Member

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:

High Tech Corridor Development, LLC.  
600 White Oaks Boulevard  
Bridgeport, West Virginia 26330

Respondent

Adjacent to Interstate 79,  
Between Original Terminus of  
White Oaks Boulevard and State Route 131  
Bridgeport, WV 26330  
Harrison County  
Latitude 39.339517  
Longitude -80.228942

Phase II Site

Class II Proceeding Pursuant to  
Section 309(g)(2)(B) of the Clean  
Water Act, 42 U.S.C. § 1319(g)(2)(B)

EPA Docket No. CWA-03-2016-0216

**FINAL ORDER**

Complainant, the Director of the Environmental Assessment and Innovation Division, U.S. Environmental Protection Agency, Region III, and Respondent, High Tech Corridor Development, LLC, have executed a document entitled "Consent Agreement and Final Order," which I hereby ratify as a Consent Agreement in accordance with 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 "Consolidated Rules"). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

NOW, THEREFORE, PURSUANT TO Section 309 of the Clean Water Act ("CWA"), 33 U.S.C. § 1319, and the Consolidated Rules, and based on the representations in the Consent Agreement, having determined that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 309(g)(3) of the CWA, 33 U.S.C § 1319(g)(3),

IT IS HEREBY ORDERED that Respondent comply with the terms and conditions of the Consent Agreement. This CAFO shall become final and effective 30 days after it is lodged with the Regional Hearing Clerk, pursuant to Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5).

  
Shawn M. Garvin  
Regional Administrator  
U.S. EPA, Region III

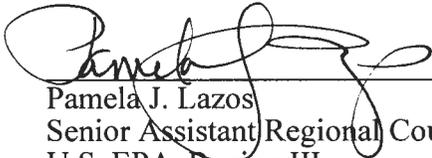
12/12/2016  
Date

CERTIFICATE OF SERVICE

The undersigned hereby certifies that I caused to be sent a true and correct copy of the Consent Decree and Final Order (CAFO), EPA Docket No. CWA-03-2016-0216 filed this day with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, to the following:

H. Wood Thrasher  
High Tech Corridor Development, LLC  
600 White Oaks Boulevard  
Bridgeport, West Virginia 26330

R. Timothy Weston, Partner  
K&L Gates, LLP  
Market Square Plaza, 18<sup>th</sup> Fl.  
17 North Second Street  
Harrisburg, PA 17101

  
\_\_\_\_\_  
Pamela J. Lazos  
Senior Assistant Regional Counsel  
U.S. EPA, Region III

12/12/16  
\_\_\_\_\_  
Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

Tim Weston, Esq.  
K&L Gates LLP  
Market Square Plaza 18th Floor  
17 North Second Street  
Harrisburg, PA 17101-1507

H. Wood Thrasher  
High Tech Corridor Development, LLC  
600 White Oaks Boulevard  
Bridgeport, WV 26330

Re: High Tech Corridor Development, LLC

Dear Messrs. Weston and Thrasher:

Enclosed please find the executed Consent Decree and Final Order (CAFO) which has been filed this day with the Regional Hearing Clerk. Please note the effective date of this CAFO is January 11, 2017, and the penalty amount of \$150,000 is due within thirty days of the effective date or by January 24, 2016.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in cursive script that reads "Pam Lazos".

Pamela J. Lazos  
Senior Assistant Regional Counsel  
USEPA Region III

