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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of

FLYNCO, INC.
an Arkansas Corporation,

Respondent

Permit No. ARR152383

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Docket No. CWA-06-2008-1877

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the United States Environmental Protection Agency ("EPA") pursuant to Section 309(g) of the Clean Water Act (herein "the Act"), 33 U.S.C. § 1319(g). This CAFO is issued to simultaneously commence and conclude this proceeding to assess a civil penalty in accordance with 40 C.F.R § 22.13(b) and § 22.18(b)(2) and (3), as described in the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits."

2. The Parties agree that settlement of the relevant matters without litigation will save time and resources, that it is in the public's interest, and that the entry of this CAFO is the most appropriate means of resolving such matters. Compliance with all the terms and conditions of this CAFO resolves only those violations specified in this CAFO.

3. Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific Findings of Fact and Conclusions of Law contained in this CAFO. This CAFO states a claim(s) upon which relief may be granted.

4. Respondent expressly waives any right to contest the factual allegations or Conclusions of Law contained in this CAFO, and waives its right to appeal the Final Order set forth herein.

5. Before the taking of any testimony, and without adjudication of any issue of law or fact, the parties agree to the terms of this CAFO and to its issuance. Respondent consents to the assessment and payment of a civil penalty in the amount and by the method stated below.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

6. Flynco, Inc. (herein "Respondent") is a corporation, which was incorporated under the laws of the State of Arkansas, and as such, Respondent is a "person," as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

7. At all times relevant to the violations alleged herein ("relevant time period"), Respondent owned or operated the U.S. Department of Labor Little Rock Job Corps Center, a 19 acre commercial construction site, located at 6900 Scott Hamilton Drive, Little Rock, Pulaski County, Arkansas 72219-1468 (herein "the facility"), and was therefore an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

8. During the relevant time period, the facility was a "point source" of a "discharge" of "pollutants" with its storm water discharges to the receiving waters of Fourche Creek, thence to the Arkansas River, which is a "water of the United States" within the meaning of 40 C.F.R. § 122.2.

9. Because Respondent owned or operated a facility that is a point source of discharges of pollutants to waters of the U.S., Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System (NPDES) program.

10. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

11. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit.

12. Respondent applied for and was issued NPDES permit coverage under the permit described above, and was assigned NPDES Permit No. ARR152383, effective on July 20, 2007. Beginning on the effective date, Respondent was authorized to discharge pollutants to waters of the United States, but only in compliance with the specific terms and conditions of the permit.

13. Respondent engages in industrial activities identified under 40 C.F.R. § 122.26(b)(14)(x) and is subject to the General Permit for Storm Water Discharges Associated with Construction Activity issued by the Arkansas Department of Environmental Quality (ADEQ) on November 1, 2000.

14. Respondent and the facility were subject to the provisions of the Act, 33 U.S.C.

§ 1251 et seq., and the NPDES program; and Respondent violated Section 301 of the Act, 33 U.S.C. § 1311, by violating permit conditions of the ADEQ Storm Water Construction General Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342:

- a. Part II.A. of the permit was violated in that the best management practices (BMPs) designed for the site are/were inadequate to control the run-off of pollutants from the site as required by the permit.
- b. Part II.A.4. of the permit was violated in that the Storm Water Pollution Prevention Plan (SWPPP) failed to identify the Arkansas River as the receiving stream and failed to include the discharge point on the site map.
- c. Part II.A.4.d. of the permit was violated in that the inspection revealed little or no BMP maintenance at the site. The sedimentation pond on the site was full of silt and discharging sediment-laden water to the receiving stream at the time of the inspection.
- d. Part II.A.4.e. of the permit was violated in that all BMPs were not inspected during regular storm water inspections and many were in poor shape and in need of redesign/replacement or repair. The hay bales were in very poor condition, the silt fence had water channeling underneath it and the rip-rap at the outfall had been washed away.

15. Rain events for the area indicate discharge from the construction site on fifteen (15)

occasions:

DATE	RAINFALL AMOUNT
September 5, 2007	2.47 inches
September 10, 2007	0.93 inches
October 1, 2007	1.14 inches
October 15, 2007	1.57 inches
October 17, 2007	1.07 inches
October 22, 2007	0.91 inches
October 23, 2007	0.64 inches
November 25, 2007	2.01 inches
December 12, 2007	0.63 inches
December 15, 2007	0.87 inches
December 20, 2007	0.95 inches
January 31, 2008	0.81 inches
February 12, 2008	1.31 inches
February 16, 2008	1.28 inches
February 21, 2008	0.57 inches

16. The State of Arkansas was notified and given an opportunity to consult with EPA regarding the proposed assessment of an administrative penalty against Respondent.

17. EPA notified the public of the proposed CAFO and afforded the public forty (40) days to comment on the proposed penalty. At the expiration of the notice period, EPA had received no comments from the public.

III. TERMS OF SETTLEMENT

A. PENALTY PROVISIONS

18. Based on the foregoing Findings of Fact and Conclusions of Law, EPA Region 6, considering the relevant criteria pursuant to Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), and acting pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), hereby orders that Respondent shall pay to the United States a civil penalty in the amount of nine thousand dollars (\$9,000.00) to settle the violations specified in this CAFO.

19. Payment shall be made by one of the following methods within thirty (30) days of the effective date of this CAFO to one of the following addresses:

- a. by mailing a cashier's check or certified check, payable to "Treasurer of the United States," to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

b. by wire transfer 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"

c. by overnight mail (Express, FedEx, DHL, etc.) 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
Phone: 314-418-4087

d. by credit card payments to <https://www.pay.gov/paygov/>
(enter sfo 1.1 in the search field)

In the Matter of Flynco, Inc., Docket No. CWA-06-2008-1877 should be clearly marked on the check to ensure credit for payment.

20. Respondent shall send simultaneous notice of payment, including a copy of the check, to each of the following:

- (1) Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
- (2) Chief, NPDES Compliance Section (6EN-WC)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
- (3) Chief, Water Legal Enforcement Branch (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent's adherence to these procedures will ensure proper credit when payment is received by EPA.

21. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

22. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will 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. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. 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). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

23. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

24. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), any person who fails to pay, on a timely basis, a civil penalty ordered or assessed under this section shall be required to

pay, in addition to such penalty and interest, the United States enforcement expenses including, but not limited to, attorneys' fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 20 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter. In such a collection action, the validity, amount, and appropriateness of the penalty assessed by this CAFO, and the terms of this CAFO shall not be subject to review.

B. GENERAL PROVISIONS

25. To execute this Agreement, Respondent shall forward this copy of the CAFO, with original signature, to:

Ms. Darlene Whitten-Hill (6EN-WC)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

26. Issuance of this CAFO does not relieve Respondent from responsibility to comply with all requirements of the Act and the requirements of any permits issued thereunder, as described in Section 309(g)(7) of the Act, 33 U.S.C. § 1319(g)(7), nor does it constitute a waiver by EPA of its right to enforce compliance with the requirements of Respondent's permits or other requirements of the Act by actions pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

27. In any action to enforce this CAFO, Respondent shall not assert as a defense any act or failure to act by any of its officers, directors, employees, agents, servants, contractors, subcontractors, successors or assigns.

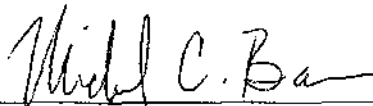
28. Each party agrees to bear its own costs and attorneys' fees in this matter, except to the extent that Respondent may be responsible for reasonable costs and expenses of enforcement and

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the CAFO. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers', agents', servants', employees', successors', or assigns') obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. This CAFO shall become effective thirty (30) days after the issuance date specified below.

Issuance Date:

May 14, 2009



Regional Judicial Officer
U.S. EPA, Region 6

CERTIFICATE OF SERVICE

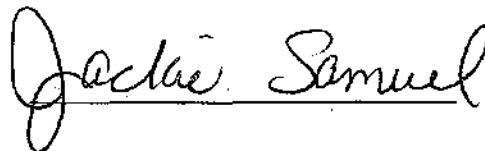
I hereby certify that on the 18 day of May, 2009, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA, Region 6 (6RC-D), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy was placed in the United States mail, by certified mail, return receipt requested, addressed to the following:

Copy by certified mail,
return receipt requested:

Mr. David F. Beggs, President
Flynco, Inc.
7711 Distribution Drive
Little Rock, AR 72219-1468

Copy:

Mr. Steve Drown, Manager
NPDES Enforcement
Arkansas Department of Environmental Quality
P.O. Box 8913
Little Rock, AR 72219-8913

A handwritten signature in cursive script that reads "Jackie Samuel". The signature is written in black ink and is positioned above a horizontal line.