



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 8**  
**1595 WYNKOOP STREET**  
**DENVER, CO 80202-1129**  
**Phone 800-227-8917**  
**<http://www.epa.gov/region08>**

2012 JUN 12 AM 8:05

FILED  
 EPA REGION VIII  
 READING BLK

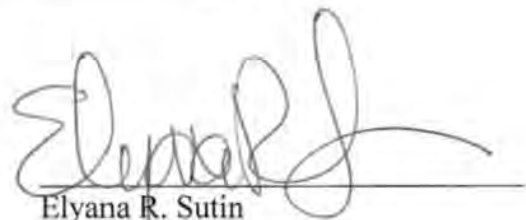
**DOCKET NO.: CWA-08-2011-0039**

IN THE MATTER OF: )  
 )  
**GOWAN CONSTRUCTION, INC.** )  
 P. O. Box 228 )  
 Oslo, MN 56744 )  
 )  
 And )  
 )  
**NORTH DAKOTA DEPARTMENT OF** )  
**TRANSPORTATION** )  
 608 E. Boulevard Avenue )  
 Bismarck, ND 58505 )  
 )  
**RESPONDENTS** )

**FINAL ORDER**

Pursuant to 40 C.F.R. §22.18(b)(2) of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

SO ORDERED THIS 12<sup>th</sup> DAY OF June, 2012.

  
 Elyana R. Sutin  
 Regional Judicial Officer

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

2012 JUN 12 AM 8:05

FILED  
EPA REGION VIII  
BISMARCK, ND EPA

<b>IN THE MATTER OF:</b>	)	<b>CONSENT AGREEMENT</b>
	)	
<b>Gowan Construction, Inc.</b>	)	Docket No. CWA-08-2011-0039
<b>P.O. Box 228</b>	)	
<b>Oslo, MN 56744</b>	)	
<b>and</b>	)	
<b>North Dakota Dept. of Transportation</b>	)	
<b>608 E. Boulevard Ave.</b>	)	
<b>Bismarck, ND 58505</b>	)	
	)	
<b>Respondents.</b>	)	

**I. BACKGROUND**

1. On September 30, 2011, Complainant issued a Complaint against Respondents alleging certain violations of the Clean Water Act, 33 U.S.C. § 1251 *et seq.* (the Act). The Complaint proposed a civil penalty for the violations alleged therein.

2. After receiving an extension of time within which to file their answer, Respondents filed their answer on December 1, 2011, requesting a hearing.

**II. JURISDICTION**

3. Respondents admit the jurisdictional allegations of the Complaint and neither admit nor deny the specific factual allegations of the Complaint.

4. Respondents waive their right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint, or in this Consent Agreement (Agreement), and their right to appeal this Agreement and the final order that will incorporate this Agreement.

### **III. PARTIES BOUND**

5. This Agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondents and Respondents' successors and assigns. Any change in ownership or corporate status or governmental structure of Respondents including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondents' responsibilities under this Agreement. This Agreement contains all terms of the settlement agreed to by the parties.

### **IV. CIVIL PENALTY**

6. Respondent Gowan Construction, Inc. consents and agrees to pay a civil penalty in the amount of FORTY THOUSAND DOLLARS (\$40,000) in three payments, in the manner described below in this paragraph.

a. Payment of THIRTEEN THOUSAND THREE HUNDRED

THIRTY-THREE DOLLARS (\$13,333) is due within thirty (30) calendar days from the date written on the Final Order issued by the Regional Judicial Officer that incorporates this Consent Agreement.

b. Payment of THIRTEEN THOUSAND THREE HUNDRED

THIRTY-THREE DOLLARS (\$13,333) is due within one hundred sixty-five (165) calendar days from the date written on the Final Order issued by the Regional Judicial Officer that incorporates this Consent Agreement.

c. Payment of THIRTEEN THOUSAND THREE HUNDRED

THIRTY-FOUR DOLLARS (\$13,334) is due within three hundred sixty-five (365) calendar days from the date written on the Final Order issued by the Regional Judicial Officer that incorporates this Consent Agreement.

d. If the due date of any of the three payments falls on a weekend or legal

federal holiday, the due date is the next business day. Payments must be received by 11:00

a.m. Eastern Time to be considered as received that day.

e. Payments shall be made by any of the methods set forth in Appendix 1 to this Agreement.

f. Notice that each payment has been made shall be provided, at the same time that payment has been made, to:

Seth Draper  
Environmental Scientist  
Water Technical Enforcement Program (8ENF-W-NP)  
U.S. EPA Region 8  
1595 Wynkoop St.  
Denver, CO 80202-1129

and

Tina Artemis  
Regional Hearing Clerk (8RC)  
U.S. EPA Region 8  
1595 Wynkoop St.  
Denver, CO 80202-1129

If payment is made by cashier's or certified check, the notice shall include a copy of the check. If payment is made in any other manner, the notice shall include documentation demonstrating that the payment was made.

g. In the event a payment is not received by the specified due date, interest on that late payment shall accrue from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (*e.g.*, on the 1<sup>st</sup> late day for the first payment, 30 days of interest accrues).

h. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 31<sup>st</sup> calendar day from the date of the Final Order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per

annum penalty shall be assessed on any unpaid principal amount if payment is not received within ninety (90) calendar days of the due date (i.e., the 121st calendar day from the date the final order is signed). Payments are first applied to handling charges, 6% penalty interest, late interest, and any balance is then applied to the outstanding principal amount.

i. If any of the three civil penalty payments required by Subparagraphs a, b or c of this Paragraph 6 are not paid within the time specified, EPA, in its sole, unreviewable discretion, may elect to accelerate any remaining payments, such that the remaining payment(s) will be due within thirty (30) days of Gowan's receipt of notice of such acceleration from EPA. The provisions of Subparagraphs d, e, f, g, h and j of this Paragraph 6 shall apply to such accelerated payment.

j. Respondent Gowan Construction, Inc. agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

#### **V. COMPLIANCE WITH CLEAN WATER ACT**

7. Nothing in this Agreement shall relieve Respondents of the duty to comply with the Clean Water Act and its implementing regulations.

8. Failure by Respondents to comply with any of the terms of this Agreement shall constitute a breach of the Agreement and may result in referral of the matter to the Department of Justice for enforcement of this Agreement and for such other relief as may be appropriate.

9. In order to ensure future compliance with the storm water requirements of the Clean Water Act on the part of its contractors and on its own behalf, Respondent North Dakota Department of Transportation (NDDOT) consents and agrees to undertake all of the following measures through January 15, 2015:

a. Continue to administer NDDOT's National Pollution Discharge Elimination System (NPDES) and Municipal Separate Storm Sewer System (MS4)

programs, including periodically reviewing Storm Water Pollution Prevention (SWPP) Plans prepared by NDDOT; reviewing a representative sample, consisting of at least ten percent (10%) of the total number, of SWPP Plans prepared by NDDOT's contractors; overseeing associated requirements for NDDOT construction activities; visiting a representative sample of projects on a yearly basis; and conducting reviews to ensure NDDOT and its contractors are complying with the Clean Water Act and its implementing regulations, and the North Dakota Department of Health's (NDDH) general permit (NDPDES Permit No. NDR10-0000 – referred to hereafter as the Permit) authorizing discharges of storm water associated with construction activities.

b. Continue developing a webpage that specifically focuses on storm water and storm water management, to include, at a minimum: (1) the NDDOT Erosion and Sediment Control Handbook; (2) links to the NDDH Construction Permit website; (3) links to the EPA Construction General Permit webpage and the EPA National Menu of Best Management Practices; and (4) course materials from storm water-related and other Clean Water Act-related training conferences.

c. Continue conducting training opportunities for NDDOT construction oversight staff and outside engineering consultants.

d. Continue to evaluate and implement ways to offer training to contractors, including making course materials from training conferences available online.

e. Continue taking appropriate steps to work with contractors to foster a better understanding of and ensure compliance with storm water and other provisions of the Clean Water Act.

f. Continue partnering with the NDDH on training related to the Clean Water Act, including requirements related to storm water.

g. Continue reviewing the NDDOT standard drawings to make sure they reflect the proper installation of BMPs for erosion control and other storm water requirements under the Permit.

10. NDDOT shall work with the NDDH to amend the April 2006 Memorandum of Agreement on construction storm water discharge permit requirements between NDDOT and NDDH, to incorporate the requirements set forth in Paragraph 9.a through g of this Agreement. NDDOT shall make every effort to complete such amendment by September 30, 2012.

11. Within ninety (90) calendar days of the issuance of the final order of the Regional Judicial Officer incorporating this Agreement into such final order, NDDOT shall submit a report to EPA outlining the steps that have been taken to comply with the requirements set forth in Paragraphs 9.a through g and 10 of this Agreement. NDDOT shall thereafter submit annual reports on January 15, 2013, January 15, 2014, and January 15, 2015, outlining the steps that were taken during each 12-month calendar period preceding the reporting deadline to comply with the requirements set forth in Paragraphs 9.a through g and 10 of this Agreement, and providing a summary of the NDDOT construction projects planned for the next twelve (12) months that will involve a SWPP Plan. Each report shall be submitted to Seth Draper at the address set forth in Paragraph 6.f of this Agreement.

#### **VI. NONCOMPLIANCE WITH AGREEMENT**

12. Nothing in this Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondents' failure to perform pursuant to the terms of this Agreement.

## **VII. MISCELLANEOUS**

13. The undersigned representative of each Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Agreement and to bind that Respondent to the terms and conditions of this Agreement.

14. The parties agree to submit this Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.

15. Each party shall bear its own costs and attorneys fees in connection with this matter.


16. This Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.




**UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8**

Complainant.

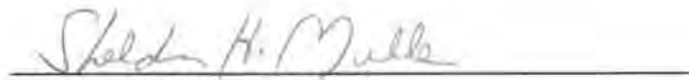
Date: June 7, 2012

  
\_\_\_\_\_  
Arturo Palomares, Director  
Water Technical Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice

Date: 6/7/12

  
\_\_\_\_\_  
James H. Eppers, Supervisory Attorney  
Regulatory Enforcement Unit  
Legal Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice

Date: June 7, 2012

  
\_\_\_\_\_  
Sheldon H. Muller, Senior Attorney  
Regulatory Enforcement Unit  
Legal Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice

In the Matter of Gowan Construction, Inc. and North Dakota Department of Transportation,  
Docket No. CWA-08-2011-0039

**GOWAN CONSTRUCTION, INC.**

Respondent.

Date: JUNE - 4 - 2012



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Milt Gowan, President  
Gowan Construction, Inc.

In the Matter of Gowan Construction, Inc. and North Dakota Department of Transportation,  
Docket No. CWA-08-2011-0039

**NORTH DAKOTA DEPARTMENT OF  
TRANSPORTATION**

Respondent.

Date: \_\_\_\_\_

6/4/12

  
\_\_\_\_\_  
Francis Ziegler, Director  
North Dakota Department of Transportation

### **Consent Agreement - Appendix 1**

The following are acceptable payment methods for the civil penalty required to be paid pursuant to the Agreement.

1. If payment is being made by cashier's or certified check, submit the check, including the name and docket number of this case, payable to "Treasurer, United States of America," to:

Regular Mail:

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

Federal Express, Airborne, or other commercial carrier:

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

Contact: Natalie Pearson  
314-418-4087

2. Wire Transfers:

Wire transfers must indicate the name and docket number of this case and be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 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 "

3. ACH (also known as REX or remittance express):

ACH payments must indicate the name and docket number of this case and be paid in accordance with the following information:

Automated Clearinghouse (ACH) for receiving US currency  
PNC Bank  
808 17th Street, NW  
Washington, DC 20074  
Contact - Jesse White 301-887-6548  
ABA = 051036706  
Transaction Code 22 - checking  
Environmental Protection Agency  
Account 310006  
CTX Format

4. On-line Payment:

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below:

[www.pay.gov](http://www.pay.gov)

Enter "sfo 1.1" (without the quotation marks) in the "Search Public Forms" field.

Click on the first link to open the form, complete required fields, and then click on "Submit Data" button at bottom of form.

## CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER**, in the matter of **GOWAN CONSTRUCTION, INC., and NORTH DAKOTA DEPARTMENT OF TRANSPORTION; DOCKET NO.: CWA-08-2011-0039** was filed with the Regional Hearing Clerk on June 12, 2012.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to Sheldon Muller, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested on June 12, 2012, to:

Respondent's Attorney's:

Michael C. Waller  
Crowley, Fleck PLLP  
400 East Broadway, Suite 600  
Bismarck, ND 58502-2798

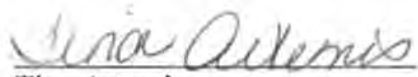
DeWayne Johnston  
Johnston Law Office  
221 S. 4<sup>th</sup> Street  
Grand Forks, ND 58201

E-mailed to:

Honorable Barbara A. Gunning  
Administrative Law Judge (1900L)  
U. S. Environmental Protection Agency  
1200 Pennsylvania Ave. NW  
Washington, DC 20460

Elizabeth Whitsel  
U. S. Environmental Protection Agency  
Cincinnati Finance Center  
26 W. Martin Luther King Drive (MS-0002)  
Cincinnati, Ohio 45268

June 12, 2012

  
Tina Artemis  
Paralegal/Regional Hearing Clerk