

10/13/05 12:58

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

In the Matter of:

Best G.C., Inc.
33921 Campbell Avenue
Lynchburg, VA 24506

Respondent

Property located at:
5700 Candler's Mountain Rd.
Lynchburg, VA

:
: Class I Proceeding Under
: Section 309(g)(2)(A) of the
: Clean Water Act

:
: EPA Docket No. CWA-03-2005-0145

:
: **CONSENT AGREEMENT**
: **and FINAL ORDER**

I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY

1. This Consent Agreement and Final Order ("CAFO") is entered into by the Director, Environmental Assessment and Innovation Division, United States Environmental Protection Agency, Region III ("Complainant"), and Best G.C., Inc. ("Best" or "Respondent"), pursuant to Section 309(g) of the Clean Water Act, 33 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 ("Consolidated Rules")*, 40 C.F.R. Part 22. This CAFO resolves Complainant's civil claims pertaining to violations of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), alleged in an administrative Complaint filed on August 3, 2005.
2. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, any person violating the CWA is liable for an administrative penalty under Section 309(g) of the Act, in an amount not to exceed \$11,000 per day for each day of violation, up to a total penalty amount of \$32,500.

II. FINDINGS OF FACT AND JURISDICTIONAL ALLEGATIONS

3. Respondent neither admits nor denies the factual allegations contained in Paragraphs 3 through

23 of the administrative Complaint filed on August 3, 2005.

4. Respondent admits the jurisdictional allegations contained in the Complaint.

III. CONCLUSIONS OF LAW

5. Respondent neither admits nor denies violations of Section 301 of the Clean Water Act, 33 U.S.C. § 1311, but has agreed to pay to the United States a civil penalty in accordance with Section 309(g) of the Act, 33 U.S.C. § 1319(g) in order to resolve this proceeding.

IV. CONSENT AGREEMENT AND FINAL ORDER

6. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.
7. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter and waives its right to contest the allegations pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g). Further, Respondent consents to issuance of this CAFO without adjudication and its right to appeal the proposed final order accompanying the consent agreement.
8. Each party to this action shall bear its own costs and attorney fees.
9. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.
10. The parties agree that settlement of this matter is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.
11. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require, including Respondent's settlement obligations pursuant to the Consent Decree filed in the matter of United States v. Savoy Sr. Housing Corporation, et al., Civil Action No. 6:06-cv-00031 (W.Dist. VA. 2009), wherein Respondent and other defendants collectively have agreed to pay the sum of \$1,375,000.00, part of which will serve to fund restoration of the Site, and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA HEREBY ORDERS AND Respondent CONSENTS to pay a civil penalty in

the amount of one dollar (\$1) in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.

12. Respondent shall pay the administrative civil penalty of one dollar (\$1) 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), by mailing a cashier's check or certified check for the penalty to "Treasurer, United States of America":

By regular mail:

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

By overnight delivery:

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

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 (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

-and-

Pamela J. Lazos
Mail Code 3RC20
Office of Regional Counsel
U.S. EPA Region III

1650 Arch Street
Philadelphia, PA 19103-2029

13. 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.
14. 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:

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.

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).

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 of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent 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).

15. 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 of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. §§ 1251, *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.

16. 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 other applicable provision of law.
17. The penalty specified above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
18. Entry of this CAFO is a final settlement of all violations alleged in the Complaint. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in the Complaint if the EPA obtains evidence that the information and/or representations of the Respondent are 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.
19. 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.
20. 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.

V. EFFECTIVE DATE

21. This CAFO shall become final and effective, absent a petition for review, thirty (30) days after it is lodged with the Regional Hearing Clerk, pursuant to Section 309(g)(5), 33 U.S.C. § 1319(g)(5).

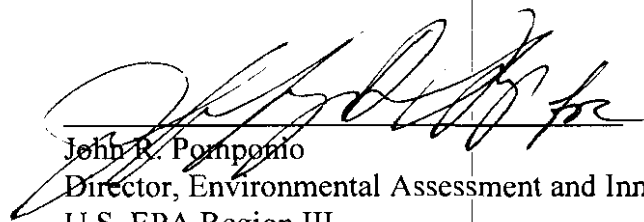
FOR RESPONDENT BEST G.C., INC.,

By:  _____

Name: LEWIS T FAULSTICH

Title: DAW

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

A handwritten signature in black ink, appearing to read "John R. Pomponio", is written over a horizontal line. The signature is fluid and cursive, with a large initial "J" and "P".

John R. Pomponio

Director, Environmental Assessment and Innovation Division

U.S. EPA Region III

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1650 Arch Street
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In the Matter of:

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Respondent

Property located at:
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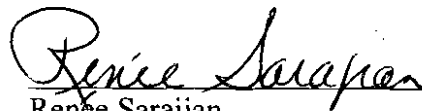
:
: Class I Proceeding Under
: Section 309(g)(2)(A) of the
: Clean Water Act

:
: EPA Docket No. CWA-03-2005-0145

:
: **FINAL ORDER**
:

NOW THEREFORE, PURSUANT TO Section 309(g) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties (*Consolidated Rules*), 40 C.F.R. Part 22, and based upon the representations made in the Consent Agreement, having determined that the penalty agreed to in the Consent Agreement is based upon a consideration of the factors set forth in Section 309(g)(2)(B)(3) of the CWA, including Respondent's ability to pay, IT IS HEREBY ORDERED that Respondent pay a penalty of one dollar (\$1) in accordance with Section IV. of this document.

Dated: 8/31/09



Renee Sarajian
Regional Judicial Officer
EPA Region III

CERTIFICATE OF SERVICE

I hereby certify that on this day, I caused to be filed with the **Regional Hearing Clerk**, EPA Region III, the original Consent Agreement and Final Order, and that copies of this document were sent to the following individuals in the manner described below:

By hand delivery:

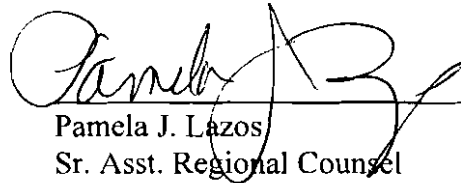
Regional Judicial Officer Renee Sarajian
EPA Region III
1650 Arch St.
Philadelphia, PA 19103

By first class, certified mail, return receipt requested:

L.T. Falwell, Jr., President
Best G.C., Inc.
33921 Campbell Avenue
Lynchburg, VA 24506

Date: _____

9/9/09



Pamela J. Lazos
Sr. Asst. Regional Counsel
US EPA Region III



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

Pamela J. Lazos
Sr. Assistant Regional Counsel
(215) 814-2658 - phone
(215) 814-2603 - fax
lazos.pamela@epamail.epa.gov

September 9, 2009

Lori D. Thompson
LeClair Ryan
1800 Wachovia Tower
Drawer 1200
Roanoke, VA 24006

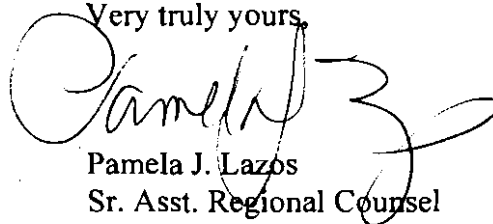
Re: Best G.C., Inc.
EPA Docket No. CWA-03-2005-0145

Dear Ms. Thompson:

Enclosed please find the executed Consent Agreement and Final Order. I have filed the original this day with the Regional Hearing Clerk.

Thank you for your attention and cooperation in this matter.

Very truly yours,


Pamela J. Lazos
Sr. Asst. Regional Counsel

cc: RJO Renee Sarajian

Customer Service Hotline: 1-800-438-2474