



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

**Certified Mail - Return Receipt Requested**

August 29, 2012

Jim Cunningham, President  
537 Commons, LLC  
Briarcliff Hand Car Wash and Detail Center  
537 North State Road  
Briarcliff, New York 10510

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2012 AUG 29 P 3:06  
REGIONAL HEARING  
CLERK

RE: In the Matter of 537 Commons, LLC  
Docket No. CWA-02-2012-3305

Dear Mr. Cunningham:

Enclosed is a Consent Agreement and Final Order (CA/FO) in the above-referenced matter. The Final Order was fully executed by the Regional judicial Officer on August 24, 2012.

Please note that the penalty of \$15,000 is required to be paid in full and received by EPA no later than forty-five days from the date the Final Order was issued.

Sincerely,

Diane Gomes  
Assistant Regional Counsel

Enclosure

✓ cc: Karen Maples  
Regional Hearing Clerk (w/enclosures)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

In the Matter of:

**537 Commons, LLC**

Briarcliff Hand Car Wash and Detail Center  
537 North State Road  
Briarcliff, New York 10510

**RESPONDENT**

Proceeding pursuant to Section 309(g) of the Clean  
Water Act, 33 U.S.C. § 1319(g)

**CONSENT AGREEMENT  
AND FINAL ORDER**

**DOCKET NUMBER  
CWA-02-2012-3305**

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
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**I. PRELIMINARY STATEMENT**

1. This is a civil administrative proceeding for the assessment of a civil penalty instituted pursuant to Section 309(g) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1319(g).
2. The following Findings of Fact are made and Order issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by the Act, 33 U.S.C. § 1251 *et. seq.*, which authority has been duly delegated to the Regional Administrator of Region 2, EPA and since further re-delegated to the Director, Division of Enforcement and Compliance Assistance, Region 2, EPA.
3. EPA is initiating and concluding this proceeding for the assessment of a civil penalty, pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g), and 40 CFR §22.13(b) of 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" (CROP), which sets forth procedures for simultaneous commencement and conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18 (b)(2) and (3).

**II. FINDINGS OF FACT**

4. 537 Commons LLC (hereinafter, "Respondent") is a corporation, duly organized under the laws of the State of New York, which owns a commercial building located at 537 North State Road, Briarcliff Manor, New York.

*In the Matter of 537 Commons, LLC  
Consent Agreement and Final Order  
Docket Number CWA-02-2012-3305*

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13. The Respondent's Facility is subject to the NPDES requirements pursuant to Section 402 of the Act, 33 U.S.C. §1342 and Section 301(a) of the Act, 33 U.S.C. §1311(a).
14. Based upon the Findings of Fact set forth above, Respondent operated the Facility in violation of Sections 301 and 402 of the Act.
15. EPA has jurisdiction over the subject matter of this action, pursuant to Section 309 of the Act, 33 U.S.C. § 1319, and over the Respondent.

**IV. CONSENT AGREEMENT**

16. Paragraphs 1 through 15, above, are re-alleged and incorporated herein by reference.
17. EPA and Respondent agree that it is in the public interest to resolve the issues alleged in this Consent Agreement without further litigation and the expense and effort that litigation entails.
18. Based upon the foregoing and pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and the CROP, it is hereby agreed by and between EPA and Respondent, and Respondent voluntarily and knowingly agrees as follows:

**V. TERMS OF SETTLEMENT**

19. For the purpose of this proceeding, Respondent:
  - a. Admits the jurisdictional allegations of this CA/FO;
  - b. Neither admits or denies the factual allegations contained herein;
  - c. Waives its right to contest the allegations, at a judicial or administrative hearing, or to appeal this CA/FO;
  - d. Consents to the payment of the civil penalty in the amount of *Fifteen Thousand Dollars (\$15,000.00)*, as stated in Paragraph 20, below.

**VI. PAYMENT OF CIVIL PENALTY**

20. Respondent shall pay a civil penalty in the amount of *Fifteen thousand dollars (\$15,000.00)* to the "Treasurer of the United States of America."
21. Payments can be made by debit/credit card, check, or electronically. Electronic payments fall into two categories: wires and Automated Clearinghouse (ACH). Wires are same day and more costly. ACH is the next day or any future scheduled day and is less expensive. Please note that wires and ACH payments must be conducted through the sender's bank.

**ON LINE PAYMENT:**

There is now an On Line Payment Option, available through the Department of Treasury. This payment option can be accessed from the information below: WWW.PAY.GOV. Enter sfo 1.1 in the search field. Open form and complete required fields.

Respondent shall also send copies of this payment to each of the following:

Philip Greco  
Division of Enforcement and Compliance Assistance  
U.S. EPA, Region 2  
290 Broadway, 20th Floor  
New York, New York 10007-1866

and

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007.

The payment must be received at the above address on or before forty-five (45) calendar days after the date of signature of the Final Order at the end of this document (the date by which payment must be received shall hereafter be referred to as the "due date").

22. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for Collection.
23. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.
24. In addition, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties, which are unpaid as of the beginning of such quarter. You also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.

*For the Complainant, the United States Environmental Protection Agency:*

BY:



**Dore LaPosta, Director**

Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, New York, 10007

DATE:

8/16/12

***For Respondent: Briarcliff Hand Car Wash and Detail Center hereby consents to the issuance of the ORDER and agrees to be bound thereby.***

BY:

*Eric Messer* *pres*

**Eric Messer, President  
537 Commons, LLC  
537 North State Road  
Briarcliff Manor, New York 10510**

DATE:

8/8/12

**VII. FINAL ORDER**

The Regional Administrator of the United States Environmental Protection Agency, Region 2, vested by authority delegated by the Administrator of the United States Environmental Protection Agency ("EPA") and having further re-delegated such authority to the Regional Judicial Officer, Region 2, EPA, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.

DATED: 8/24/12

Helen Ferrara

Helen Ferrara  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, NY 10007-1866

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

**In The Matter of**

**537 Commons, LLC**

Briarcliff Hand Car Wash and Detail Center  
537 North State Road  
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**RESPONDENT**

Proceeding pursuant to Section 309(g) of the Clean  
Water Act, 33 U.S.C. § 1319(g)

**DOCKET NO. CWA-02-2012-3305**

**CERTIFICATE OF SERVICE**

I certify that, on the date noted below, I served the foregoing fully executed Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner.

Copy by Certified Mail  
Return Receipt Requested:

Jim Cunningham, President  
537 Commons, LLC  
537 North State Road  
Briarcliff Manor, New York 10510

Original and One Copy  
By Internal Mail (pouch):

Karen Maples, Regional Hearing Clerk  
U.S. Environmental Protection Agency  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866

Copy By Internal Mail (pouch):

Helen Ferrara  
U.S. Environmental Protection Agency  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866

8/29/12  
Date

  
Secretary