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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

In the Matter of:

Proceeding to Assess Class I
Administrative Penalty Under
Section 309(g) of the Clean Water Act

Superior Concrete Materials, Inc.
1601 South Capitol Street, SW
Washington, DC 20003

Docket No. CWA-03-2017-0109

Respondent

**CONSENT AGREEMENT
AND
FINAL ORDER**

I. STATUTORY AND REGULATORY BACKGROUND

1. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency ("EPA") is authorized to assess administrative penalties against persons who violate Section 301(a) of the Act, *id.* § 1311(a). The Administrator has delegated this authority to the Regional Administrator of EPA Region III, who in turn has delegated this authority to the Director, Water Protection Division ("Complainant").

2. This Consent Agreement is entered into by the Complainant and Superior Concrete Materials, Inc., ("Respondent" or "Superior"), pursuant to Section 309(g) of the CWA and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22.

3. The Consolidated Rules, at 40 C.F.R. § 22.13(b) provide in pertinent part that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). Pursuant thereto, this Consent Agreement and Final Order ("CAFO") simultaneously commence and conclude this administrative proceeding against Respondent.

4. Section 309(g)(2)(A) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(A), authorizes the assessment of administrative penalties against any person who violates any NPDES permit condition or limitation in an amount not to exceed \$10,000 per day for each day of violation, up to a total penalty amount of \$125,000.

5. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), any person who has violated any NPDES permit condition or limitation after January 12, 2009 is liable for an administrative penalty not to exceed \$16,000 per day for each day of violation up to a total penalty amount of \$177,500 for violations that occurred between January 12, 2009 and December 6, 2013.

6. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order.

7. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (“NPDES”) program under Section 402 of the Act, 33 U.S.C. § 1342.

8. 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. The discharges are subject to specific terms and conditions as prescribed in the permit. Section 402(b) of the Act provides for the authorization of state programs to issue NPDES permits.

9. “Discharge of a pollutant” includes “any addition of any pollutant or combination of pollutants to waters of the United States from any point source.” 40 C.F.R. § 122.2.

10. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).

11. The Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (2000 MSGP), issued in October 2000, expired at midnight on October 30, 2005. A new permit, the 2008 Multi-Sector General Permit (2008 MSGP) was issued on September 29, 2008 and Notices of Intent for coverage were required to be submitted no later than January 5, 2009.

II. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS AND CONCLUSIONS OF LAW

12. At all times relevant to this Complaint, Respondent has owned and/or operated a ready-mix concrete manufacturing facility (“Facility”) located at 1601 South Capitol Street, SW, Washington, DC. The industrial activity conducted at the Facility falls within SIC Code 3273.

13. The Facility is a point source as that term is defined in 40 C.F.R. § 122.26(b)(8).

14. Respondent is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

15. The industrial activity conducted by the Respondent at the Facility is eligible for coverage under the NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity. Previously, Respondent requested and received authorization to discharge pursuant to the 2000 MSGP (DCR05A089).

16. On September 19, 2012, representatives of EPA conducted an inspection of the Respondent’s Facility (“EPA Inspection”). As a result of the Inspection, EPA found that Respondent failed to submit a Notice of Intent for coverage under the 2008 MSGP prior to January 5, 2009.

17. On September 24, 2012, Respondent submitted a Notice of Intent (NOI) for Stormwater Discharges Associated with Industrial Activity under the 2008 NPDES Multi-Sector General Permit (DCR05AA05), a “waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

18. The NOI submitted by Respondent states that discharges from the Facility discharge to the Anacostia River, an impaired water, which is a “Waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

19. According to the Site Map included in the Facility’s Stormwater Pollution Prevention Plan (SWPPP) the Facility has three (3) outfalls, identified as Outfall 001, Outfall 002 and Outfall 003, respectively. (A copy of the SWPPP Site Map is attached hereto as Exhibit A.) The SWPPP’s Site Map identified the location of the outfalls, the line of drainage and the location of stormwater intake structures that receive discharges from the Facility.

Count 1: Discharge Without a Permit from Outfalls 001 and 002

20. As depicted in the Respondent’s SWPPP Site Map, discharges from Outfall 001 flow towards a storm drain located near the corner of Potomac Avenue, SW and South Capitol Street, SE.

21. As depicted in the Respondent’s SWPPP Site Map, discharges from Outfall 002 flow to a roadside drainage system located at the corner of R Street, SW and South Capitol Street, SE.

22. Sand utilized by Respondent in its manufacturing operations was exposed to precipitation.

23. As a result of the design and operation of its Facility, pollutants discharged from Respondent’s Facility during rain events and were discharged into waters of the United States at

times when Respondent was not covered by a the MSGP during the period from January 5, 2009 to October 24, 2012.

24. Respondent's Discharges of pollutants from its Facility to Waters of the United States without an NPDES Permit is a violation of Section 301 of the Act.

Count 2: Discharge Without a Permit from Outfall 003

25. As depicted in the Respondent's SWPPP Site Map, discharges from Outfall 003 flow toward a storm drain located at the corner of South Capitol Street, SE and R Street, SW.

26. The Facility is equipped with a sump pump in the vicinity of the concrete block forming area and the maintenance building. At the time of the EPA inspection, the sump was overflowing outside of the Facility onto South Capitol Street, SE, at Outfall 003. EPA observed process wastewater flowing from Respondent's Facility and down South Capitol Street, SE. The process wastewater discharge was flowing toward the curb inlet located at the corner of South Capitol Street, SE and R Street, SW.

27. As a result of the failure of the sump pump on September 19, 2012, pollutants were discharged into waters of the United States at a time when Respondent was not covered by a the MSGP.

28. Respondent's discharge of pollutants from its Facility to Waters of the United States on September 19, 2012, without a NPDES Permit, is a violation of Section 301 of the Act, 33 U.S.C. § 1311.

III. GENERAL PROVISIONS

29. For the purpose of this proceeding:

- a. Respondent admits the jurisdictional allegations set forth in this CAFO;
- b. Respondent neither admits nor denies the Allegations of Fact set forth in this CAFO;
- c. Respondent agrees to undertake all actions required by this Consent Agreement and Final Order;
- d. Respondent waives any defenses it might have as to jurisdiction and venue, its right to contest the allegations through hearing or otherwise; and its right to appeal this Consent Agreement and Final Order;

30. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this Consent Agreement and Final Order.

31. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter and consents to issuance of this Consent Agreement and Final Order without adjudication.

32. Respondent shall bear its own costs and attorney fees.

33. The provisions of this Consent Agreement and Final Order shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.

34. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this Consent Agreement and Final Order is the most appropriate means of resolving this matter.

IV. CIVIL PENALTY

35. In full and final settlement of the Complainant's claims for civil penalties for the alleged violations identified herein, Respondent consents to the assessment of, and agrees to pay, in accordance with the terms set forth herein, the total administrative civil penalty of **twenty thousand dollars (\$20,000)** within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c).

36. The civil penalty amount set forth in Paragraph 35, above, is based on a number of factors, including 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 pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g).

37. Respondent shall pay the civil penalty amount described in Paragraph 35, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 38 through 42, below, by either cashier's check, certified check, or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action;
- 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
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Primary Contact: Craig Steffen, (513) 487-2091
Secondary Contact: Molly Williams, (513) 487-2076

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Primary Contact: Craig Steffen, (513) 487-2091
Secondary Contact: Molly Williams, (513) 487-2076

- 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 Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

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

Contact: John Schmid, (202) 874-7026
Remittance Express (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://www2.epa.gov/financial/makepayment>

j. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CAFO.

A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

Andrew Duchovnay
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC20)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. EPA, Region III (3RC00)
1650 Arch Street

Philadelphia, PA 19103-2029

38. 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 as specified herein shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

39. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct 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).

40. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will 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) days the penalty remains unpaid.

41. A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that 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).

42. The penalty specified in Paragraph 39 shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

V. APPLICABLE LAWS

43. 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.

VI. RESERVATION OF RIGHTS

44. This CAFO resolves 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 and 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. § 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.

45. Entry of this CAFO is a final settlement of all violations alleged in this CAFO. 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 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, EPA may have under law or equity in such event.

VII. FULL AND FINAL SATISFACTION

46. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for the violations alleged in this CA. Compliance with the requirements and provisions of this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and/or regulations administered by EPA.

VIII. PARTIES BOUND

47. This CAFO shall apply to and be binding upon the EPA, Respondent and Respondent's officers, employees, agents, successors and assigns. 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.

IX. EFFECTIVE DATE

48. Pursuant to 40 C.F.R. § 22.45(b), this CAFO shall be issued after a 40-day public notice period is concluded. This CAFO will become final and effective thirty (30) days after it is filed with the Regional Hearing Clerk, pursuant to Section 309(g)(5) of the Act, 33 U.S.C. § 1319(g)(5), or until a public comment process pursuant to 40 C.F.R. § 22.45(b) is concluded.

X. ENTIRE AGREEMENT

49. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

XI. FINAL ORDER

FOR RESPONDENT, SUPERIOR CONCRETE MATERIALS, INC.:

By: Todd Martineau

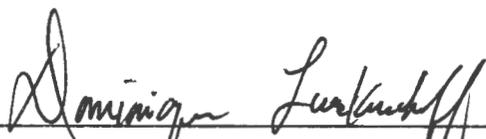
Name: Todd Martineau

Title: Vice President

Date: 1-4-17

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SO ORDERED:



Dominique Lueckenhoff, Acting Director
Water Protection Division
U.S. Environmental Protection Agency

APR 25 2017

Date

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In Re: Superior Concrete Materials, Inc.
Docket No. CWA-03-2017-0109

CERTIFICATE OF SERVICE

I certify that on this date I caused to be sent by certified mail, return receipt requested, a copy of this "Consent Agreement and Final Order," to the following persons:

Superior Concrete Materials, Inc.
C/O Paul E. Gutermann, Esq.
Law Offices of Paul Gutermann
9901 River View CT
Potomac, MD 20854

and a copy delivered by hand to:

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Date: 4/25/17

Andrew Duchovnay
Sr. Asst. Regional Counsel