

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

In The Matter of)

Vico Construction Corporation)
and Amelia Venture Properties, LLC,)

Respondents)
_____)

Dkt. No. CWA-03-2001-0021

CONSENT AGREEMENT AND FINAL ORDER

I. STATUTORY AUTHORITY

This Consent Agreement and Final Order ("CAFO") is issued pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties*, 40 C.F.R. Part 22 ("*Consolidated Rules*").

II. STIPULATIONS AND FINDINGS

1. The Directors of the Environmental Assessment and Innovation Division, and the Water Protection Division, U.S. EPA, Region III ("Complainants"), initiated this proceeding for assessment of a Class II Administrative Penalty pursuant to Section 309(g)(2)(B) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(B), by issuing an Administrative Complaint to Vico Construction Corporation ("Vico") and Amelia Venture Properties, LLC on or about May 21, 2001. A First Amended Complaint was filed November 19, 2001. An initial decision was filed by ALJ Charneski on December 13, 2004, the Board affirmed the Initial Decision on September 29, 2005 (12 E.A.D. 298). An appeal was taken to the U.S. Court of Appeals for the Fourth Circuit. Following issuance of the U.S. Supreme Court's decision in *United States v. Rapanos*, 547 U.S. 715 (2006), this matter was remanded to the Office of Administrative Law Judges for further proceedings. ALJ Moran issued a Decision Upon Remand on September 8, 2008, and that Initial Decision Upon Remand was appealed to the Environmental Appeals Board.
3. An Administrative Order for Compliance on Consent ("AO"), Dkt. No. CWA-03-2009-0211DW has been issued. AO EPA Dkt. No. CWA-03-2009-0211DW supersedes Administrative Order Dkt. No. III-2000-026-DW-DN.
4. Respondents neither admit nor deny any of the factual or legal allegations, findings, conclusions or determinations made by EPA in the First Amended Complaint or in this CAFO. However, for the purpose of settlement and resolution of the allegations in the First Amended Complaint, Respondents consent to the issuance of this CAFO, and agree to undertake all actions required by its terms and conditions.

5. Respondents agree not to contest EPA's jurisdiction to issue and enforce this CAFO in any action by EPA to enforce the terms of the CAFO. Respondents further agree not to contest EPA's jurisdiction to issue and enforce Administrative Order for Compliance on Consent, Dkt. No. CWA-03-2009-0211DW.
6. Respondents hereby expressly waive their right to a hearing under Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B), and waive their right to appeal this Final Order under Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B).
7. Each party to this agreement shall pay its own costs and attorney's fees.
8. The parties agree that settlement of this matter without further litigation is in the public interest and that entry of a CAFO is the most appropriate means of resolving this matter.

III. FINDINGS OF FACT

9. This Consent Agreement incorporates by reference the allegations contained in Paragraphs 1 through 36 of the First Amended Complaint, and adopts them as the Findings of Fact herein, which Respondents neither admit nor deny.

IV. CONCLUSIONS OF LAW

10. EPA concludes that Respondents have violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and are liable to the United States for a civil penalty in accordance with Section 309(g) of the CWA, 33 U.S.C. § 1319(g), which Respondents neither admit nor deny.

V. FINAL ORDER

11. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the alleged violation(s), Respondents' prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, ability to pay, Respondents' compliance with Administrative Order No. CWA-03-2009-0211DW, and such other matters as justice may require, and under the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA HEREBY ORDERS AND RESPONDENTS HEREBY CONSENT to pay a civil penalty in the total amount of fourteen thousand dollars (\$14,000) in settlement of the civil violations alleged in EPA Docket No. CWA-03-2001-0021 and CWA App. Nos. 05-01 and 08-03.
12. Respondents shall pay the civil penalty of a total of fourteen thousand dollars (\$14,000) (the "Civil Penalty") within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c). Payment of the penalty shall be made by any of the methods below. A transmittal message identifying the case name and docket number identified above shall the remittance and the copies of the check or transfer instrument:

-Sending a certified or cashier's check made payable to the United States Treasury, but

regular U.S. Postal Service mail:

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

Payment by Respondent shall reference Respondent's name and address, and the EPA docket Number.

OR:

-By Private Commercial Overnight Delivery:

U.S. Environmental Protection Agency
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

OR:

-Payment by ETF:

Wire Transfers

Federal Reserve Bank of New York
ABA = 0210300004
Account = 68010727
Swift Address = FRNYUS33
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the wire transfer message should read:
"D 68010727 Environmental Protection Agency")

Automated Clearing House (ACH) Transfer

PNC Bank
ABA = 051036706
Environmental Protection Agency

Account 310006
CTX Format
Transaction Code 22 - checking
808 17th Street, NW
Washington, DC 20074

Copies of the check or document used for ETF shall be mailed at the same time payment is made to:

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

and to:

Stefania D. Shamet (3RC20)
Sr. Asst. Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029.

13. This CAFO shall not relieve Respondents of their 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. This CAFO does not constitute a waiver, suspension or modification of any requirement of the CWA.
14. 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 Respondents, 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. §§ 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 effective date.

VI. EFFECTIVE DATE

20. This CAFO shall become final and effective thirty (30) days after it is lodged with the Regional Hearing Clerk, pursuant to Section 309(g)(5) of the Act, 33 U.S.C. § 1319(g)(5).

FOR RESPONDENT VICO CONSTRUCTION CORPORATION:



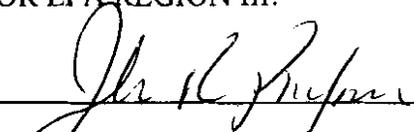
TREASURER

14. Jul. 09
Date

FOR RESPONDENT AMELIA VENTURE PROPERTIES, LLC:

_____ Date

FOR EPA REGION III:



John R. Pomponio, Director
Environmental Assessment and
Innovation Division

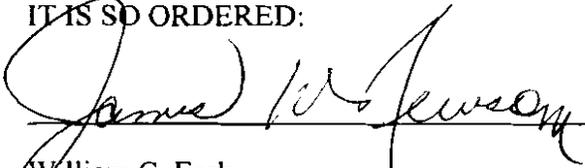
7/20/09
Date



Jon M. Capacasa, Director
Water Protection Division

7/20/09
Date

IT IS SO ORDERED:



William C. Early
Acting Regional Administrator

7/20/09
Date

VI. EFFECTIVE DATE

20. This CAFO shall become final and effective thirty (30) days after it is lodged with the Regional Hearing Clerk, pursuant to Section 309(g)(5) of the Act, 33 U.S.C. § 1319(g)(5).

FOR RESPONDENT VICO CONSTRUCTION CORPORATION:

Date

FOR RESPONDENT AMELIA VENTURE PROPERTIES, LLC:

W. Shelton Curran
Date 7-14-09

FOR EPA REGION III:

John R. Pomponio, Director
Environmental Assessment and
Innovation Division
Date

Jon M. Capacasa, Director
Water Protection Division
Date

IT IS SO ORDERED:

William C. Early
Acting Regional Administrator
Date

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused to be sent the original of the attached Consent Agreement and Final Order, delivered by hand to the:

Regional Hearing Clerk, Region III,
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

and with copies to the following at the addresses listed below, via facsimile and regular, First Class mail:

Hon. William Moran
Administrative Law Judge
Office of Administrative Law Judges
US EPA
Ariel Rios Building
1200 Pennsylvania Ave.
Washington, D.C. 20460

Hunter W. Sims, Jr., Esquire
Kaufman & Canoles
One Commercial Place
P.O. Box 3037
Norfolk, VA 23514

Date: 7/20/09


Stefania D. Shamet
Sr. Assistant Regional Counsel