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

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EPA REGION III, PHILA. PA

In the Matter of:	:	Proceeding to Assess Class II Administrative Penalty Under Section 309(g) of the Clean Water Act
Skanska Facchina Joint Venture	:	
11 th Street Corridor Project Washington, D.C.	:	Docket No. CWA-03-2015-0080
	:	CONSENT AGREEMENT AND FINAL ORDER
Respondent.	:	

I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY

1. This Consent Agreement is entered into by the Director, Water Protection Division, United States Environmental Protection Agency, Region III ("Complainant") and Skanska Facchina Joint Venture ("SFJV" 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 and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22. The parties having agreed to settlement of violations of the Clean Water Act by Respondent, this Consent Agreement and Final Order ("CAFO") simultaneously commences and concludes this action pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3).

2. 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 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.

3. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, any person who has violated any NPDES permit condition or limitation prior to December 6, 2013 is liable for an administrative penalty not to exceed \$ 16,000 per day for each day of violation occurring after January 12, 2009 up to a total penalty amount of \$187,500.

II. EPA's FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, and CONCLUSIONS OF LAW

4. SFJV, a joint venture business with offices at 295 Bendix Road, Virginia Beach, Virginia 23452, is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

5. At all times relevant to this CAFO, Respondent has operated a construction site in Washington, D.C.

6. Respondent's Washington, D.C. construction site consists of an area of approximately 82 acres to be disturbed, located at latitude 38.52.18 north and longitude 76.59.24 west, and involves the replacement of two bridges with three new bridges over the Anacostia River, described as the 11th Street Corridor Project, and involving construction along 11th Street, along the banks of the Anacostia River (the 11th Street Corridor Project).

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.

9. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.2 and 122.26 provide that, with some exceptions, not relevant here, storm water discharges are "point sources" subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).

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. "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.

12. Respondent is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.

13. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA issued an NPDES Construction General Permit which became effective on June 30, 2008 (the 2008 CGP). Under the 2008 CGP, EPA was the permitting authority for the District of Columbia. The 2008

CGP authorized discharges of storm water associated with construction activities, but only in accordance with the conditions of the 2008 CGP.

14. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA issued a revised CGP effective February 16, 2012 (the 2012 CGP or 2012 Permit). Under the 2012 CGP, EPA is the permitting authority for the District of Columbia. The 2012 Permit authorizes discharges of storm water associated with construction activities, but only in accordance with the conditions of the 2012 Permit.

15. The 2008 CGP and 2012 CGP both required that in order to obtain permit coverage, an applicant was required to submit to EPA a complete and accurate Notice of Intent ("NOI") for coverage prior to commencing construction activities. 2008 CGP at Section 2.4; 2012 CGP at Section 1.4.

16. On or about December 14, 2012, Respondent (through its agent or representative) submitted a NOI for coverage under the 2012 Permit for the 11th Street Corridor Project.

17. EPA determined that the 11th Street Corridor Construction Site was eligible for coverage under the 2012 CGP, effective December 28, 2012, and assigned Permit Tracking Number DCR12A022 which had an expiration date of February 15, 2017.

18. Pursuant to Section 7 of the 2012 Permit, Respondent prepared a Stormwater Pollution Prevention Plan ("SWPPP") which it maintains at the 11th Street Corridor Project construction site.

19. Any water discharge from the 11th Street Corridor Project can flow into the District of Columbia's Combined Sewer System, which collects both domestic sewage and stormwater in the same collection lines, or into the Anacostia River. Therefore, stormwater leaving the 11th Street Corridor Project that enters the combined sewer lines would discharge to either Rock Creek or the Potomac River in the event of a combined sewer overflow within the District of Columbia sewer collection system.

20. On February 20, 2013 representatives of EPA conducted an inspection of the 11th Street Corridor Project (the February 2013 Inspection).

21. On August 5, 2013, EPA prepared a final Clean Water Act Compliance Inspection Report for the 11th Street Corridor Project (EPA's Inspection Report). EPA's Inspection Report also included six appendices (exhibit log, photo log, document log, etc.).

22. SFJV received a copy of EPA's Inspection Report. SFJV prepared and submitted a response to EPA on September 6, 2013.

23. Based upon the February 2013 Inspection, EPA identified two categories of violations, among sixteen observations, which it has concluded were violations of the 2012 CGP

and Section 301 of the Act, 33 U.S.C. § 1311.

24. Section 2.1 of the 2012 CGP lists erosion and sediment control requirements applicable to all discharges from construction sites covered by the CGP. Section 2.1.1.3.b of the 2012 CGP requires the installation of all stormwater controls in accordance with good engineering practices, including applicable design specifications.

25. Section 2.1.1.4 of the 2012 CGP requires the permittee to ensure that all erosion and sediment controls remain in effective operating condition during permit coverage and are protected from activities that would reduce their effectiveness.

26. Section 2.1.2.9 of the 2012 CGP requires that if stormwater is discharged from the construction site to any storm drain inlet that carries stormwater flow from the construction site directly to a surface water (and it is not first directed to a sediment basin, sediment trap, or similarly effective control), the permittee must: a) install inlet protection measures that remove sediment from the discharge prior to entry into the storm drain inlet; and b) clean, or remove and replace, the protection measures as sediment accumulates, the filter becomes clogged, and/or performance is compromised.

27. The EPA inspection team observed two at-grade inlets located near planned Bioretention Pond #3 with compromised inlet protection. The inlet protection around one of the inlets had separated from its stake and was down. That inlet was still partially surrounded by gravel. The inlet protection around the other inlet had separated from its stake and one of the stakes was down.

28. The EPA observations described in Paragraph 27 of this CAFO are a violation of the erosion and sediment control requirements of Section 2.1 of the 2012 CGP and the specific requirement to protect storm drain inlets in accordance with Section 2.1.2.9.

29. Section 2.3.3.3 of the 2012 CGP requires the permittee to minimize the exposure to stormwater of any of the products, materials, or wastes listed in that section that are present at the site. For diesel fuel, oil, hydraulic fluids, other petroleum products, and other chemicals, to prevent the discharge of fuels, oils or other pollutants used in vehicle and equipment operation and maintenance, the permittee must store chemicals in water-tight containers, and provide either (1) cover to prevent these containers from coming into contact with rainwater, or (2) a similarly effective means designed to prevent the discharge of pollutants from these areas, or provide secondary containment.

30. During the February 2013 Inspection, the EPA inspection team observed buckets labeled "Toluene" with corroded lids and others labeled "KAUFMAN Exterior Curing Compound" sitting on pallets exposed to the elements. EPA also observed a fifty-gallon drum sitting on a pallet exposed to the elements and several used drums and buckets with various

markings uncovered and filled with fluids. The contents of the drums and buckets were unknown to the EPA at the time of the February 2013 Inspection.

31. The EPA observations described in Paragraph 30 of this CAFO are a violation of the storage and handling requirements of Section 2.3.3.3 of the 2012 CGP.

32. Based upon the February 2013 Inspection, EPA has concluded that Respondent's failures to: 1) maintain storm water drain inlet protection, and 2) properly store and handle petroleum products and minimize their exposure to stormwater, violate the 2012 CGP and Section 301 of the Act, 33 U.S.C. § 1311.

III. CONSENT AGREEMENT AND FINAL ORDER

33. For the purpose of this proceeding, Respondent admits the jurisdictional allegations set forth in this CAFO.

34. Respondent neither admits nor denies EPA's Findings of Fact and Conclusions of Law set forth in this CAFO.

35. 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 the proposed final order accompanying the consent agreement.

36. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.

37. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consents to issuance of this CAFO without adjudication.

38. Each party to this action shall bear its own costs and attorney fees.

39. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.

40. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter. By entering into this CAFO, SFJV does not admit any liability for the civil claims alleged herein.

41. 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. In addition, pursuant to Section 309(g)(1)(A), EPA has consulted with the District of Columbia Department of the Environment (DCDOE) regarding this action, and will mail a copy of this document to the appropriate DCDOE official.

42. 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 pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA HEREBY ORDERS AND Respondent HEREBY CONSENTS and agrees to pay a civil penalty in the amount of ten thousand dollars (\$10,000) in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.

43. Respondent shall pay the total administrative civil penalty of ten thousand dollars (\$10,000) within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c). Payment shall be made by one of the following methods set forth below.

Payment by check to "United States Treasury":

By regular mail:

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

Contact Eric Volck (513-487-2105)

By overnight delivery:

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

Contact: Eric Volck (513-487-2105)

By Wire Transfer:

Federal Reserve Bank of New Lancaster
ABA = 021030004
Account = 68010727

SWIFT Address = FRNYUS33
33 Liberty Street
New Lancaster, NY 10045
(Field Tag 4200 of the wire transfer message should read:
D 68010727 Environmental Protection Agency)

By Automated Clearinghouse (ACH) Transfers for receiving U. S. currency (also known as REX or remittance express):

PNC Bank
ABA = 051036706
Environmental Protection Agency
Account Number: 310006
CTX Format
Transaction Code 22 - checking
808 17th Street, NW
Washington, D.C. 20074

Contact for ACH: John Schmid (202-874-7026)

On-Line Payments:

The On-Line Payment Option, available through the Dept. of Treasury, can be accessed from the information below:

WWW.PAY.GOV
Enter sfo 1.1 in the search field
Open form and complete required fields.

Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

Respondent shall send notice of such payment, including a copy of the check if payment is made by 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-

Robert J. Smolski
Mail Code 3RC20
Office of Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

44. 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.

45. 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 payments as required herein 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 it is due. 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).

46. 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).

47. This Consent Agreement and 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 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.

48. 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 applicable provision of law.

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

50. 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, inaccurately provided by Respondent. 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.

51. 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.

52. 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.

IV. EFFECTIVE DATE

Pursuant to 40 C.F.R. § 22.45, this CAFO shall be issued after a 40-day public notice period is concluded. This CAFO will become final and effective 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).

FOR RESPONDENT, Skanska Facchina Joint Venture:

Date: 4/14/15
By: [Signature]
Name: John Hellman
Title: Project Executive

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 5/7/15 [Signature]
Jon M. Capasa, Director
Water Protection Division

SO ORDERED, pursuant to 33 U.S.C. 1319(g), and 40 C.F.R. Part 22,

this 1 day of July, 2015

[Signature]
Shawn M. Garvin
Regional Administrator
U.S.EPA Region III

JUL 1 2015

Skanska Facchina Joint Venture.
Docket No. CWA-03-2015-0080

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:

Michael G. Di Paolo, Esquire
Senior Vice President & General Counsel
Skanska USA Civil
75-20 Astoria Blvd
East Elmhurst, New York 11370

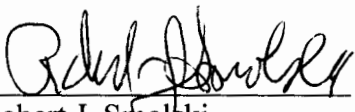
and the original and a copy delivered by hand to:

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

Additionally, I caused to be sent by first class mail a copy of this "Consent Agreement and Final Order" to the following persons:

Sheila Besse
District of Columbia Department of the Environment
SW-Construction
51 N Street, NE #5
Washington, D.C. 20002

Date: July 1, 2015


Robert J. Smolski
Senior Assistant Regional Counsel