

## Case Filing


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Case Name: Ft. Lincoln Retail, LLC, a/k/a Fort Lincoln Retail, CWA, Complaint  
Case Number: CWA-03-2015-0037

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### Filing Information

Filing Information		
Type	Consent Agreement and Final Order	<a href="#">Add an Additional Attachment</a>
Title (Description)	Consent Agreement And Final Order	
Filing Number	7	
Filing Date	09/29/2015	
Document File	 2015-09-29- Ft Lincoln - consent agreement and final order	
*Page Count		
Submitter Information		
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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 II
	:	Administrative Penalty Under
	:	Section 309(g) of the Clean Water Act
Ft. Lincoln Retail, LLC,	:	
	:	Docket No. CWA-03-2015-0037
a/k/a Fort Lincoln Retail, LLC	:	
	:	
Respondent	:	<b>CONSENT AGREEMENT AND</b>
	:	<b>FINAL ORDER</b>
	:	

**I. STATUTORY AND REGULATORY AUTHORITY**

1. This Consent Agreement and Final Order ("CAFO") is entered into by the Director of the Water Protection Division, United States Environmental Protection Agency, Region III ("Complainant") and Ft. Lincoln Retail, LLC a/k/a Fort Lincoln Retail, LLC ("Respondent") 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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits* ("Consolidated Rules"), 40 C.F.R. Part 22.
2. The parties have agreed to settlement of the alleged violations of the CWA by Respondent in the above-captioned matter. This CAFO concludes this action pursuant to 40 C.F.R. §§ 22.18 and 22.31.

**II. FINDINGS OF FACT AND JURISDICTIONAL ALLEGATIONS**

3. Complainant initiated this proceeding for assessment of a Class II Administrative Penalty pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), by issuing an Administrative Penalty Complaint and Notice of Opportunity to Request Hearing ("Complaint") to Respondent on April 29, 2015.
4. This CAFO incorporates by reference the findings of fact and jurisdictional allegations contained in Paragraphs 1 through 91 of the Complaint, and adopts them as Complainant's findings of fact and jurisdictional allegations herein.

### **III. CONCLUSIONS OF LAW**

5. This CAFO incorporates by reference the conclusions of law contained in Paragraphs 1 through 91 of the Complaint and adopts them as Complainant's conclusions of law herein.
6. Complainant concludes that Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, and is liable to the United States for a civil penalty in accordance with Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

### **IV. GENERAL PROVISIONS**

7. For the purpose of this proceeding:
  - a. Respondent admits to the jurisdictional allegations of the Complaint and this CAFO;
  - b. Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in the Complaint and this CAFO;
  - c. Respondent agrees to undertake all actions required by this CAFO;
  - d. 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;
  - e. Respondent waives its right to appeal this CAFO under Section 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B).
8. Respondent agrees not to contest Complainant's jurisdiction to issue and enforce the terms of this CAFO.
9. Each party to this agreement shall pay its own costs and attorney's fees.
10. This CAFO does not relieve Respondent of its obligations to comply with all applicable provisions of federal, state, and local law. This CAFO shall not be interpreted to be a permit or modification of any existing permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, or any other law. 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.
11. This CAFO resolves only the civil claims against Respondent for the specific violations alleged in the Complaint. Complainant reserves the right to commence an action against any person, including Respondent, in response to any condition that Complainant 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, 40 C.F.R. § 22.18(c).

12. Further, Complainant reserves any and all rights and remedies available to it under the CWA, 33 U.S.C. §§ 1251 *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this CAFO, following its effective date.
13. Complainant reserves the right to institute a new and/or separate action should Respondent fail to comply with the terms of this CAFO. That right shall be in addition to all other rights and causes of action, civil or criminal, Complainant may have under law or equity in such event.
14. Entry of this CAFO is a final settlement of all violations alleged in the Complaint. Complainant shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in the Complaint if Complainant 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, that Complainant may have under law or equity in such event.
15. This CAFO may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which together shall constitute one agreement. The execution of one counterpart by any party shall have the same force and effect as if that party had signed all other counterparts.
16. 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, 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.
17. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors, and assigns.
18. 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.
19. 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.

**V. PENALTY**

20. For the purposes of this proceeding, Respondent consents to the assessment of a civil penalty in the amount of **ninety-nine thousand dollars (\$99,000.00)** in full and complete settlement of the civil claims as set forth in the Complaint.
21. The civil penalty specified in Paragraph 20 shall represent civil penalties assessed by Complainant and shall not be deductible for purposes of Federal taxes.

**VI. PAYMENT TERMS**

22. Respondent shall pay the total administrative civil penalty of ninety-nine thousand dollars (\$99,000.00) within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c).
23. Payment by Respondent shall reference Respondent's name and address and the Docket Number of this action, i.e., CWA-03-2015-0037. Payment shall be made by one of the following methods:

a. Payment by check made payable to "United States Treasury";

i. If sent via first-class mail, to:

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

ii. If sent via UPS, Federal Express, or Overnight Delivery, to:

U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
314-418-1028

b. Via wire transfer, sent to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account No. = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Attn: "D 68010727 Environmental Protection Agency"

- c. Via Automated Clearinghouse (ACH), a/k/a Remittance Express (REX), to:

US Treasury REX / Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 Checking

Contact Remittance Express (REX): 866-234-5681  
Finance Center Contacts:  
Craig Steffen: 513-487-2091; [steffen.craig@epa.gov](mailto:steffen.craig@epa.gov)  
Molly Williams: 513-487-2076; [williams.molly@epa.gov](mailto:williams.molly@epa.gov)

- d. Via on-line payment:

WWW.PAY.GOV/PAYGOV  
Enter sfo 1.1 in the search field. Open and complete the form.

- e. Additional payment guidance is available at:  
[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

24. A copy of Respondent's check or proof of payment via wire transfer, ACH, or on-line payment shall be mailed at the same time payment is made to:

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

and

Kelly Gable  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region III (3RC20)  
1650 Arch Street  
Philadelphia, PA 19103-2029

25. 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:

- a. 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 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.

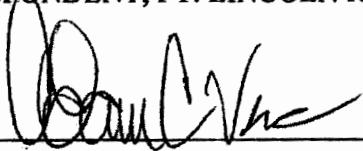
- b. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, Complainant will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the 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).
- c. 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). 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 such subsequent thirty (30) days the penalty remains unpaid.
- d. A penalty charge, not to exceed 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).

#### **VII. PUBLIC NOTICE AND EFFECTIVE DATE**

- 26. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), Complainant is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order.
- 27. Pursuant to Section 309(g)(1)(A) of the CWA, 33 U.S.C. § 1319(g)(1)(A), Complainant has consulted with the District of Columbia regarding this action and will mail a copy of this document to the appropriate District of Columbia official.
- 28. 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 CWA, 33 U.S.C. § 1319(g)(5).

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FOR RESPONDENT, FT. LINCOLN RETAIL, LLC A/K/A FORT LINCOLN RETAIL, LLC:

By: 

Name: Adam C. Weers

Title: AUTHORIZED REPRESENTATIVE

Date: 9.16.15

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FOR COMPLAINANT, THE U.S. ENVIRONMENTAL PROTECTION AGENCY:



Jon M. Capacasa, Director  
Water Protection Division

Date: 9/21/15

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SO ORDERED, pursuant to 33 U.S.C. § 1319(g) and 40 C.F.R. Part 22,  
this 23<sup>rd</sup> day of September, 2015.



Shawn M. Garvin  
Regional Administrator  
U.S. Environmental Protection Agency, 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 and one copy of the Consent Agreement and Final Order in the matter of *In re: Ft. Lincoln Retail, LLC a/k/a Fort Lincoln Retail, LLC* (Docket No. CWA-03-2015-0037).

I also hereby certify that, on this day, I caused a copy of the Consent Agreement and Final Order to be sent to the following individuals by the manner indicated:

**Via first-class mail and electronic mail:**

Andrew Emerson, Esq.  
Holland & Knight LLP  
800 17th Street N.W., Suite 1100  
Washington, DC 20006  
Email: andrew.emerson@hklaw.com

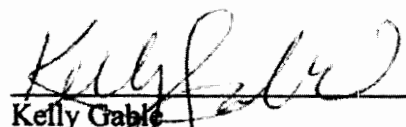
**Via inter-office mail and facsimile:**

Sybil Anderson  
Headquarters Hearing Clerk  
U.S. EPA  
Mail Code 1900R  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460-2001  
Fax No.: 202-564-1206

**Via electronic mail:**

Mary Angeles  
Office of Administrative Law Judges  
U.S. EPA  
1200 Pennsylvania Ave., N.W.  
Mail Code M1200  
Washington, DC 20004  
Fax No: 202.565.0044  
Email: angeles.mary@epa.gov

Date: 9/29/2015

  
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Kelly Gable  
Assistant Regional Counsel  
U.S. EPA Region III