



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I  
ONE CONGRESS STREET SUITE 1100  
BOSTON, MASSACHUSETTS 02114-2023

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March 25, 2009

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region I  
One Congress Street  
Suite 1100, Mail Code RAA  
Boston, MA 02114-2023

EPA ORC  
OFFICE OF  
REGIONAL HEARING CLERK  
**BY HAND**

Re: In the Matter of: Consolidated Concrete Corp.  
Docket No. CWA 01-2009-0014

Dear Ms. Santiago,

Enclosed for filing, please find a Consent Agreement and Final Order (CAFO) settling the matter referenced above.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeffrey Kopf".

Jeffrey Kopf  
Senior Enforcement Counsel  
EPA Region 1

Enclosure

cc: George Pesce, Vice President, Consolidated Concrete

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

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In the Matter of: )  
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)  
Consolidated Concrete Corporation )  
East Providence, RI )  
)  
Respondent. )  
\_\_\_\_\_)

Docket No. CWA-01-2009-0014  
CONSENT AGREEMENT AND  
FINAL ORDER FOR CLASS II  
CIVIL PENALTY UNDER  
CLEAN WATER ACT

REGIONAL HEARING CLERK

The Regional Administrator of the United States Environmental Protection Agency, Region I ("EPA"), issues this Consent Agreement and Final Order ("CAFO") to the Consolidated Concrete Corporation ("Respondent"). EPA alleges that Respondent violated Sections 301(a), 308 and 311 of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §§ 1311(a), 1318 and 1321. The parties agree to resolve this action by the issuance of this CAFO as provided under 40 C.F.R. § 22.13(b) of EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits," 40 C.F.R. Part 22 ("Part 22").

**I. DESCRIPTION OF VIOLATIONS**

1. EPA alleges that Respondent: 1) discharged process water containing pollutants into navigable waters of the United States without authorization in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a); 2) discharged storm water associated with industrial activity into navigable waters of the United States without authorization in violation of Section 301(a) of the CWA, 33 U.S.C. §1311(a); 3) failed to apply for a

National Pollutant Discharge Elimination System (“NPDES”), or State equivalent, permit in violation of Sections 308(a) and 402(p) of the CWA, 33 U.S.C. §§ 1318(a) and 1342(p); and 4) failed to comply with the Oil Pollution Prevention regulations set forth at 40 C.F.R. Part 112 promulgated under the authority of Section 311(j), 33 U.S.C. § 1321(j) of the CWA.

### **Statutory and Regulatory Authority**

2. EPA takes this action under the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), for violation of Sections 301(a) and 308 of the Act, 33 U.S.C. §§ 1311(a) and 1318(a) and under Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6), for violation of Section 311(j) of the Act, 33 U.S.C. § 1321(j). Pursuant to Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), EPA notified the State of Rhode Island of this action, and has consulted with the Rhode Island Department of Environmental Management (“RI DEM”) on this action.

### **General Allegations**

#### *Discharge of Process Water Containing Pollutants*

3. The CWA is designed to restore and maintain the chemical, physical and biological integrity of the nation’s waters. Section 101(a) of the CWA, 33 U.S.C. § 1251(a). To accomplish the objectives of the CWA, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person except in compliance with a permit issued pursuant to Section 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344.

4. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” to include “an individual, corporation, [or] partnership.”

5. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

6. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, dredged spoil, rock, sand and industrial waste. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including the territorial seas.” Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.”

*Discharge of Stormwater Associated with Industrial Activity*

7. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires any storm water discharge “associated with industrial activity” to be authorized by a NPDES permit.

8. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes EPA to require the owner or operator of any point source to provide such information as EPA may reasonably require to carry out the objectives of the CWA, including the issuance of NPDES permits pursuant to CWA section 402, 33 U.S.C. § 1342.

9. Pursuant to Sections 308 and 402 of the CWA, 33 U.S.C. §§ 1318 and 1342, EPA promulgated storm water discharge regulations at 40 C.F.R. § 122.26. Forty C.F.R. 122.26(c) requires dischargers of storm water “associated with industrial activity” to apply for an individual permit or to seek coverage under a promulgated general permit.

Forty C.F.R. § 122.26(b)(13) defines “storm water” to include storm water runoff, snow melt runoff, and surface runoff and drainage.

10. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), provides that the Administrator of EPA may authorize a state to issue NPDES permits in accordance with the requirements of the CWA. On September 17, 1984, the Administrator granted the State of Rhode Island, through the Rhode Island Department of Environmental Management (“RIDEM”), the authority to issue Rhode Island Pollutant Discharge Elimination System (“RIPDES”) permits pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b).

11. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), implementing regulation 40 C.F.R. § 122.26(a)(1)(ii), and RIPDES Rule 31(a)(1)(ii), all require that facilities discharging storm water “associated with industrial activity” are required to obtain a permit.

12. Forty C.F.R. § 122.26(b)(14)(ii) and RIPDES Rule 31(b)(15)(ii) specify that “storm water discharge associated with industrial activity” includes storm water discharge from facilities classified under Standard Industrial Classification (“SIC”) code 32 (including 3273 -- Ready-Mixed Concrete).

13. In March 2003, RIDEM issued RIPDES General Permit for Storm Water Discharges Associated with Industrial Activities (“2003 IGP”). The expiration date for the 2003 IGP was set for March 19, 2004.

14. In April 2006, RIDEM issued RIPDES Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activities (“2006 RIMSGP”). Although the expiration date for the 2003 IGP was set for March 19, 2004, it remained in effect until

the effective date of the 2006 RIMSGP, which was May 1, 2006. The expiration date of the 2006 RIMSGP is April 30, 2011.

*Oil Pollution Prevention Regulations*

15. Section 311(j)(1) of the Act, 33 U.S.C. § 1321(j)(1), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from onshore and offshore facilities, and to contain such discharges . . . .”

16. Under the authority of Section 311(j)(1) of the Act, the Oil Pollution Prevention regulations establish procedures, methods, and requirements for preventing the discharge of oil. These requirements apply to owners or operators of non-transportation-related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil or oil products that, due to their location, could reasonably be expected to discharge oil in harmful quantities (as defined in 40 C.F.R. Part 110) to navigable waters of the U.S. or adjoining shorelines.

17. Under 40 C.F.R. § 112.3 an owner or operator of an onshore facility subject to the Oil Pollution Prevention regulations must prepare a Spill Prevention Control and Countermeasure (“SPCC”) Plan in writing in accordance with 40 C.F.R. § 112.7, and fully implement such plan.

## Findings of Violation

### *Unauthorized Process Water and Stormwater Discharges and Failure to Apply for Stormwater Permit Coverage*

18. Consolidated is a Rhode Island company with its principal place of business located at 835 Taunton Avenue, East Providence, Rhode Island. It is a “person” as defined at Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

19. Consolidated operates a ready-mix concrete plant at 835 Taunton Avenue in East Providence, Rhode Island (the “Site”) and leases the property from owner Lehigh Realty LLC. Ready-mix concrete facilities are classified under SIC code 3273.

20. Consolidated controls all daily business and industrial operations on the Site, and otherwise meets the definition of “operator” of the Site as defined at 40 C.F.R. § 122.2 and under the 2006 RIMSGP. Consolidated has operated the Site since 1975.

21. At times, during certain wet-weather events, process waters from the concrete truck unloading operations at the Site flowed through gaps in catch basins and entered an unnamed brook in the southeastern portion of the Site.

22. At times, during certain wet-weather events, storm water from the Site flowed into an unnamed brook in the southeastern portion of the Site.

23. At times, during certain wet-weather events, process water and storm water flowed from the concrete truck wash out settling pits in the northwestern area of the site into a road-side ditch along Commercial Way.

24. The water from the unnamed brook flows westerly and passes through a culvert under Commercial Way where it resurfaces on the western side of Commercial Way.

25. The water from the road-side ditch passes through a culvert under Commercial Way, where it resurfaces on the western side of Commercial Way.

26. The combined waters on the western side of Commercial Way flow south-westerly into an unnamed wetland. A stream flows out of this wetland and into the Runnins River. The Runnins River flows into the Barrington River, which flows into Narragansett Bay.

27. The unnamed wetland, Runnins River and Barrington River are all “waters of the United States,” as defined at 40 C.F.R. § 122.2, and thereby are “navigable waters,” as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

28. The process water discharges from the Site result in the “discharge of pollutants,” as defined at Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

29. From at least June 1, 2003 through July 31, 2007, Consolidated conducted activities in association with the operation of a ready-mix concrete plant that has resulted in the discharge of process waters to waters of the U.S. in violation of Section 301(a) of the CWA, 33 U.S.C. §1311(a).

30. From at least June 1, 2003 through December 6, 2007, Consolidated conducted activities in association with the operation of a ready-mix concrete plant that have resulted in the discharge of “storm water associated with industrial activity,” as defined at 40 C.F.R. §122.26(b)(14)(ii) and RIPDES Rule 31(b)(15)(ii), to waters of the U.S. This storm water has been conveyed through ditches, culverts, swales, gullies, channels, basins and pits through the Site and has been contaminated with cement, aggregate, and potential admixtures.

31. These materials discharged into waters of the U.S. constitute “pollutant[s]” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6). The ditches, culverts, swales, gullies, channels, basins and pits discharging pollutants constitute “point source[s]” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

32. As “operator” of the Site, Consolidated was required to obtain NPDES permit coverage for the industrial activity at the Site, and then comply with all requirements and conditions for operation under the CWA, its regulations and the applicable permit.

33. Consolidated did not apply for coverage under the RISMGP until December 7, 2007.

34. Therefore, from at least June 1, 2003, through December 6, 2007, Consolidated conducted activities in association with the operation of a ready-mix concrete plant that have resulted in the discharge of “storm water associated with industrial activity,” as defined at 40 C.F.R. §122.26(b)(14)(ii), to waters of the U.S. in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

35. In addition, by failing to timely apply for an individual permit or submit an NOI for coverage under the 2003 IGP and the 2006 RIMSGP, Respondent violated Section 308(a) of the CWA, 33 U.S.C. § 1318(a), each day from at least June 1, 2003 through December 6, 2007, in violation of Section 308 of the CWA, 33 U.S.C. § 1318.

*Failure to Comply with the Oil Pollution Prevention Regulations*

36. Respondent is a “person” within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7), 1362(5).

37. Respondent is the “owner or operator” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), of the Site.

38. Respondent is engaged in storing, using, and consuming “oil” or oil products located at the Site within the meaning of 40 C.F.R. § 112.2.

39. The Site has an aggregate above-ground storage capacity greater than 1,320 gallons of oil in containers each with a shell capacity of at least 55 gallons.

40. The Site is an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

41. The Site is a “non-transportation-related” facility within the meaning of 40 C.F.R. § 112.2 Appendix A, as incorporated by reference within 40 C.F.R. § 112.2.

42. “Navigable waters” of the United States are defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1.

43. Based on the above, each of the Site is therefore a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to a navigable waters of the United States or its adjoining shorelines in a harmful quantity.

44. Respondent is therefore subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112 at each of the Facilities.

45. The Site neither prepared nor implemented an SPCC Plan until June 10, 2007.

46. Respondent failed to adequately provide for measures which would prevent the discharge of oil from reaching waters of the United States and to implement specific requirements listed in 40 C.F.R. §§ 112.7 and 112.8. The facility lacked appropriate

secondary containment for some of its aboveground bulk oil storage tanks as required by 40 C.F.R. §§ 112.7(c) and 112.8(c), in violation of Section 311(j) of the CWA, 33 U.S.C. § 1321(j).

## **II. CONSENT AGREEMENT**

EPA and Respondent agree that the above matter constitutes a disputed claim and that settlement of the above matter is in the public interest, and that entry of this CAFO without litigation is the most appropriate means of resolving this matter. Therefore, before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

47. Respondent admits the jurisdictional allegations in Section I above.

48. Respondent neither admits nor denies the specific factual allegations contained in Section I above.

### **Waiver of Rights**

49. Respondent waives the right to a hearing under Sections 309(g)(2)(B) and 311(b)(6)(B)(ii) of the Act, 33 U.S.C. §§ 1319(g)(2)(B) and 1321(b)(6)(B)(ii), to appeal any Final Order in this matter under Sections 309(g)(8)(B) and 311(b)(6)(G)(ii) of the Act, 33 U.S.C. §§ 1319(g)(8)(B) and 1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication.

### **Penalty**

50. Complainant proposes, and Respondent consents to, the assessment of a civil penalty of fifty-five thousand dollars (\$55,000).

CONSENT AGREEMENT AND FINAL ORDER  
Docket No. CWA-01-2009-0014

US EPA Region 1  
One Congress St., Suite 1100  
Boston, MA 02114-2023

## Payment Terms

51. In agreeing to the penalty described in paragraph 50 above, EPA has taken into account the statutory penalty factors at Sections 309(g)(3) and 311(b)(8) of the CWA, 33 U.S.C. §§ 1319(g)(3) and 1321(b)(8). Respondents shall pay a total penalty of \$55,000 which shall be due within 15 calendar days of the effective date of this CAFO. Of this amount, \$47,000 shall represent payment for Respondents' violations of Section 309 of the CWA and \$8,000 shall represent payment for Respondents' violations of Section 311 of the CWA.

52. Respondent shall pay a penalty of **\$47,000** for violation of Sections 301 and 308 of the CWA and shall make payment by cashier's or certified check, payable to "Environmental Protection Agency," and referencing the title and docket numbers of the action ("In the Matter of Consolidated Concrete., CWA-01-2009-0014"). The payment shall be mailed via regular U.S. Postal Service mail, to:

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

53. Respondent shall pay a penalty of **\$8,000** for violation of Section 311(j) of the CWA and shall make payment by cashier's or certified check, payable to "Treasurer, United States of America," and referencing the title and docket numbers of the action ("In the Matter of Consolidated Concrete., CWA-01-2009-0014") and "Oil Spill Liability Trust Fund – 311." The payment shall be mailed via regular U.S. Postal Service mail, to:

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

54. Respondent shall note on the penalty payment checks the title and docket number of this case. Respondent shall submit copies of the checks to the following people:

Wanda Santiago  
Regional Hearing Clerk (RAA)  
U.S. Environmental Protection Agency  
Region 1  
One Congress Street, Suite 1100  
Boston, Massachusetts 02114-2023

and

Jeffrey Kopf  
Office of Environmental Stewardship (SEL)  
U.S. Environmental Protection Agency  
Region I  
One Congress Street, Suite 1100  
Boston, Massachusetts 02114-2023

55. The penalty provided for herein is a penalty within the meaning of 26 U.S.C. §162(f) and is not tax deductible for purposes of federal, state, or local law.

#### **Supplemental Environmental Projects**

56. Respondent shall undertake the following Supplemental Environmental Projects (“SEPs” or “Projects”) which the parties agree are intended to secure significant environmental and public health protection and benefits. The SEPs consist of: 1) the design, engineering, and installation of a closed loop recycling system for concrete wash waters, sand, stone and cement at the Facility; 2) the installation of a process water

CONSENT AGREEMENT AND FINAL ORDER  
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US EPA Region 1  
One Congress St., Suite 1100  
Boston, MA 02114-2023

recycling system for the impervious basin which is located adjacent to the concrete up-loading bays at the Facility; and 3) the installation of two storm water quality units at the Facility to mitigate storm water impacts.

57. Respondent shall complete the SEPs as described in Attachment 1 to this CAFO and spend no less than \$125,000 to complete and implement the SEPs.

58. Respondent certifies that it has not applied for or received, and will not in the future apply for or receive credit as a SEP or other penalty offset in any other enforcement action (whether brought by the federal government or not) for the Projects.

59. **SEP Completion Report.** Respondent shall submit a SEP Completion Report within 60 days of completion of each SEP. The SEP Completion Report shall contain the following information:

- a. A detailed description of the SEP as implemented;
- b. A description of any implementation problems encountered and the solutions thereto;
- c. Itemized costs for implementing the SEP;
- d. Certification by Respondent that the SEP has been fully implemented pursuant to the provisions of this CAFO and Attachment 1; and
- e. A description of the environmental and public health benefits resulting from implementation of the SEP.

60. **Quarterly Reports.** Respondent, or its designee, shall submit quarterly written reports outlining work completed to date and funds spent to date. The quarterly reports will include copies of invoices documenting funds spent towards completion of the SEP.

The reports shall be submitted to EPA by the 30th day of the month following each quarter (January, April, July, October).

61. Respondent agrees that failure to submit the reports required by paragraph 60 shall be deemed a violation of this CAFO, and Respondent shall become liable for stipulated penalties pursuant to paragraph 64 below.

62. Respondent shall submit all notices, submissions, and reports required by this CAFO to Mr. Canzano at the address set forth below, by First Class mail or any other commercial delivery service.

Joseph Canzano, Storm Water Compliance Engineer  
U.S. Environmental Protection Agency  
Region I  
One Congress Street, Suite 1100  
Boston, Massachusetts 02114-2023

63. Following receipt of the SEP Completion Report described in paragraph 59, EPA will either accept the SEP Completion Report or reject the SEP Completion Report and notify the Respondent, in writing, of deficiencies in the SEP Completion Report and any additional actions and/or information required to be taken or supplied by Respondent.

a. If Respondent objects to any EPA notification of deficiency or disapproval given pursuant to this paragraph, Respondent shall notify EPA in writing of its objection within 10 days of receipt of such notification. EPA and Respondent shall have an additional 30 days from the receipt by EPA of the notification of objection to reach agreement. If agreement cannot be reached on any such issue within this 30 day period, EPA shall provide a written statement of its decision to Respondent, which decision shall be final and binding upon Respondent.

CONSENT AGREEMENT AND FINAL ORDER  
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US EPA Region 1  
One Congress St., Suite 1100  
Boston, MA 02114-2023

#### 64. Failure to Comply with Terms of Agreement

a. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEPs described in paragraphs 56 and 57 above, and except as set out in this Paragraph below, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

i. Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to this CAFO, Respondent shall pay a stipulated penalty to the United States in the amount of: \$75,000 for failure to complete the Closed Loop Recycling System SEP; \$15,000 for failure to complete the Recycling System for Process Waters Located Adjacent to the Concrete Up-Loading Bays SEP; and \$ 35,000 for failure to complete the Storm Water Quality Control Units SEP, plus interest from the effective date of the CAFO.

ii. If any of the SEPs are not completed in accordance with paragraphs 56 and 57, but EPA determines that the Respondent: a) made good faith and timely efforts to complete the SEP; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty with respect to that SEP.

iii. If all SEPs are completed in accordance with paragraphs 56 and 57, but the Respondent spent less than 90 percent of the amount of money required to be spent as described in paragraph 57, Respondent shall pay a stipulated penalty to the United States in the amount equal to the difference between the amount of money which

was required to be spent on the SEPs, as described in paragraph 57, and the actual amount spent on the SEPs, plus interest from the date of the effective date of the CAFO.

iv. For failure to submit a SEP Completion Report for any of the three SEPs, as required by paragraph 59 above, Respondent shall pay a stipulated penalty in the amount of \$250 for each day it is late until the report is submitted.

v. For failure to submit a quarterly report required by paragraph 60 above, Respondent shall pay a stipulated penalty in the amount of \$250 for each day after the report was originally due until the report is submitted.

b. Respondent shall pay stipulated penalties within 15 days of receipt of written demand by EPA for such penalties. Stipulated penalties shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity. Method of payment shall be in accordance with the provisions of paragraphs 52 and 54 above. Interest and late charges shall be paid as stated in paragraph 67 herein.

65. Any public statement, oral or written, including on a website, in which Respondent refers to the SEPs shall include the following language: *“This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Water Act.”*

66. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

### General Provisions

67. Pursuant to Sections 309(g)(9) and 311(b)(6)(H) of the Act, 33 U.S.C. §§ 1319(g)(9) and 1321(b)(6)(H), a failure by the Respondent to pay the penalty assessed by this CAFO in full by its due date shall subject Respondent to a civil action to collect the assessed penalty, plus interest at current prevailing rates from the date of this CAFO. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(b), promulgated under 31 U.S.C. § 3717. Any person who fails to pay on a timely basis the amount of an assessed penalty shall be required to pay in addition to such amount and interest, attorney's fees, costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of such person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

68. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

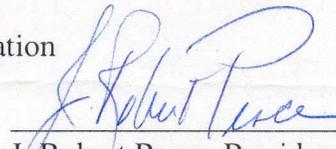
69. The Final Order does not constitute a waiver, suspension or modification of the requirements of Sections 301, 308 or 311 of the CWA or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves

only Respondent's liability for federal civil penalties for the violations and facts stipulated to herein.

70. Except as described in paragraph 67 of the Consent Agreement, each party shall bear its own costs and attorney's fees in connection with the action resolved by this CAFO.

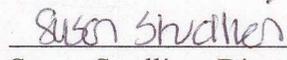
FOR Consolidated Concrete Corporation

Date: 2-2-09

  
\_\_\_\_\_  
J. Robert Pesce, President  
Consolidated Concrete Corporation

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: 02/06/09

  
\_\_\_\_\_  
Susan Studlien, Director  
Office of Environmental Stewardship  
U.S. EPA, Region 1

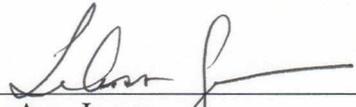
### **III. FINAL ORDER**

71. EPA has provided a thirty day opportunity for public notice and comment on this proposed CAFO pursuant to Sections 309(g)(4)(A) and 311(b)(6)(C)(i) of the Act, 33 U.S.C. §§ 1319(g)(4)(A) and 1321(b)(6)(C)(i), and 40 C.F.R. § 22.45(b), and has not received any public comments.

72. Pursuant to Sections 311(g)(2) and 311(b)(6) of the Act, 33 U.S.C. §§ 1319(g)(2) and 1321(b)(6), and the delegated authority of the undersigned, and in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits," codified at 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order.

73. The Respondent is ordered to comply with the terms of the Consent Agreement. This Consent Order shall become effective upon filing.

Date: 3/24/09

  
\_\_\_\_\_  
LeAnn Jensen  
Acting Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 1

## **ATTACHMENT 1**

### **SCOPE OF WORK FOR SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

Consolidated Concrete Corp.  
East Providence, Rhode Island

EPA Docket No. CWA-01-2009-0014

#### **I. Introduction**

As part of the settlement in the matter referenced above, the Consolidated Concrete Corp. ("Consolidated") has agreed to construct and implement a Closed Loop Recycling System, a Recycling System for Process Waters Located Adjacent to the Concrete Up-Loading Bays, and installation of two Storm Water Quality Control Units at its concrete manufacturing Facility located at 835 Taunton Avenue, East Providence, Rhode Island ("Facility"). These Supplemental Environmental Projects ("SEPs") are described in more detail below.

#### **II. Supplemental environmental projects**

##### **1) Closed Loop Recycling System**

After an EPA inspection conducted in July 2007, Consolidated constructed an impervious concrete basin located on the north side of the Facility to capture concrete truck wash waters. Consolidated will construct and use a closed loop recycling system so that the captured process waters can be re-used in the concrete manufacturing operations. Specifically, Consolidated shall install and operate the following:

- pumping system and associated piping/fittings for recycling system;
- underground feed of process waters to the concrete plant as well as fresh water feed from the concrete plant;
- impervious concrete pads that surround the concrete basin;
- underground electrical feed to basin, electrical wiring, heating system in concrete slab for winter operation and a pipe support system for recycled water supply piping which will transfer the recycled waters into the concrete drums to rinse the interior of the drum;
- additional items required to fully implement the closed loop recycling system.

The estimated cost of the SEP is \$102,960. Consolidated shall complete installation of the Closed Loop Recycling System by May 1, 2009.

## **2) Recycling System for Process Waters Located Adjacent to the Concrete Up-Loading Bays**

After an EPA inspection conducted in July 2007, Consolidated constructed an impervious basin which is located adjacent to the concrete loading bays to collect process water. These basins capture process water that may discharge from the concrete loading area. Currently, when the basins are full the process waters are pumped into the drum of a concrete truck and then discharged into the impervious basin located on the north side of the concrete batch plant.

Consolidated shall construct and operate a pumping and underground piping system so that process water in the impervious basin located adjacent to the concrete loading bay will automatically be transferred to the closed loop recycling basin described as the Closed Loop Recycling SEP. This will eliminate the potential for human error and the possibility of process waters overflowing from the basins.

The estimated cost of the SEP is \$21,475.00. Consolidated shall complete installation of the pumping and piping system required for the Recycling System for Process Waters Located Adjacent to the Concrete Loading Bays by May 1, 2009.

## **3) Stormwater Quality Control Units**

After an EPA inspection in July 2007, Consolidated implement best management practices ("BMPs") to control the quality of storm water discharged from the Facility.

In addition to continuing to fully implement storm water BMPs as required by its current storm water permit, Consolidated will install two storm water quality control units at existing locations where storm water currently discharges from the Facility. The storm water quality control units will enhance the quality of storm water discharged from the Facility by removing oils, greases and sediment from the storm water. The two storm water quality control units will be installed: 1) at the existing storm water discharge point located southeast of the concrete plant adjacent to the intermittent stream that runs along the south side of the Facility; and, 2) at the northwest corner of the property which is adjacent to the swale which runs parallel with Commercial Way.

The estimated cost of the SEP is \$53,325.00. Consolidated shall complete installation of the Storm Water Quality Control Units by May 1, 2009.

The total estimated costs for all three SEPs is \$177,760.00.

In the Matter of: Consolidated Concrete Corp.  
Docket No. CWA 01-2009-0014

**CERTIFICATE OF SERVICE**

I certify that the foregoing Consent Agreement and Final Order was sent to the following persons, in the manner specified on the date below:

Original and 1 copy  
hand delivered:

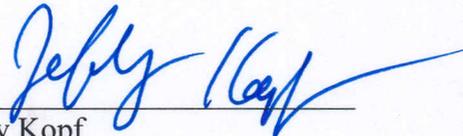
Regional Hearing Clerk  
U.S. EPA, Region I  
1 Congress Street  
Suite 1100 (RAA)  
Boston, MA 02114-2023

Copy via Certified Mail,  
Return Receipt Requested

George Pesce, Vice-President,  
Consolidated Concrete Corp.  
835 Taunton Ave  
East Providence RI 02914

Date:

3/25/09

  
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Jeffrey Kopf  
Office of Environmental Stewardship (SEL)  
U.S. Environmental Protection Agency  
Region I  
One Congress Street, Suite 1100  
Boston, MA 02114-2023  
tel: (617) 918-1796  
fax: (617) 918-0796  
email: kopf.jeff@epa.gov