

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

REGIONAL HEARING CLERK
EPA REGION III PHILA. PA

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RECEIVED

In the Matter of:	:	Proceeding Under Class II
	:	Section 309(g) of the
Forest City SEFC, LLC	:	Clean Water Act
1615 L Street, NW	:	
Suite 400	:	
Washington, D.C. 20036	:	
	:	
Forest City Washington, Inc.	:	Docket No. CWA-03-2015-0007
1615 L Street, NW	:	
Suite 400	:	
Washington, DC 20036	:	CONSENT AGREEMENT
	:	AND
	:	FINAL ORDER
Respondents	:	

Property known as:	:	
	:	
The Yards	:	
Tingey Street, S.E. and Fourth Street, S.E.	:	
Washington, D.C. 20003	:	

CONSENT AGREEMENT

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").

This Consent Agreement is entered into by the Complainant and Forest City SEFC, LLC and Forest City Washington, Inc. ("Respondents") 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. The parties have agreed that this CAFO resolves Complainant's civil claims pertaining to

violations of Section 301 of the CWA, 33 U.S.C. § 1311, alleged in an Administrative Complaint and Notice of Opportunity for Hearing filed on December 31, 2014, EPA Docket No. CWA-03-2015-0007 (“Complaint”).

2. Section 309(g)(2)(B) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(B), 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.

3. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), 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, and \$187,500 per proceeding for violations that occurred after December 6, 2013.

4. 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 has provided 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.

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

5. For purposes of this proceeding, Respondents neither admit nor deny the Factual and Legal Allegations set forth in Paragraphs 3 through 76 of the Complaint, which are incorporated into this Consent Agreement as if fully set forth herein.

6. Respondents admit the jurisdictional allegations contained in the Complaint.

7. Based on the Factual and Legal Allegations incorporated herein, EPA finds that Respondents have violated Section 301 of the CWA, 33 U.S.C. § 1311, and are therefore liable to the United States for a civil penalty in accordance with Section 309(g) of the Act, 33 U.S.C. § 1319(g).

III. GENERAL PROVISIONS

9. Each 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.

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

11. Each 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 CAFO without adjudication.

12. Each Respondent shall bear its own costs and attorney fees.

13. The provisions of this CAFO shall be binding upon each of the Respondents and their respective officers, principals, directors, successors and assigns.

14. 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.

IV. CIVIL PENALTY

15. In full and final settlement of the Complainant's claims for civil penalties for the violations alleged in the December 31, 2014 Complaint, Respondents consent to the assessment of, and agree to pay, in accordance with the terms set forth herein, the total administrative civil penalty of ninety-nine thousand dollars (\$99,000) within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c).

16. The civil penalty amount set forth in Paragraph 15, 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).

17. Respondent shall pay the civil penalty amount described in Paragraph 15, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 18 through 21 below, 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 Respondents' name and address, and the EPA Docket Number of this CAFO.

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

Deane H. Bartlett
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

18. 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, Respondents' 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.

19. 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 Respondents. 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).

20. 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.

21. 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).

22. The penalty specified in Paragraph 15 shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

V. APPLICABLE LAWS

23. 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. 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

24. This CAFO resolves 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 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.

25. 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 Respondents 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

26. 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 the Complaint. 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

27. This CAFO shall apply to and be binding upon the EPA and Respondent. The undersigned representative of each 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

28. 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).

X. ENTIRE AGREEMENT

29. 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.

FOR RESPONDENTS:

Forest City SEFC, LLC and Forest City Washington, Inc.

By:

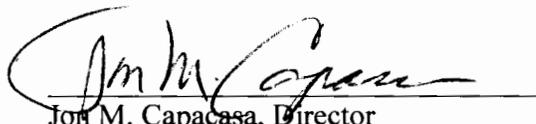


Geralyn M. Presti
Executive Vice President, General Counsel and Secretary
Forest City Enterprises

FOR EPA:

Date:

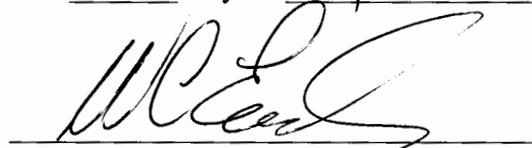
4/17/15



Jon M. Capacasa, Director
Water Protection Division
U.S. Environmental Protection Agency, Region III

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

this 20th day of April, 2015


Shawn M. Garvin
Regional Administrator
U.S.EPA Region III

CERTIFICATE OF SERVICE

I certify that on the below date the enclosed Consent Agreement and Final Order, Docket No. CWA-03-2015-0007 was delivered to the following persons in the manner indicated:

Hand delivery of original and one copy:

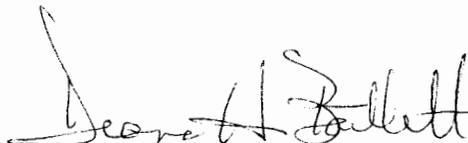
Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Copy by regular mail, postage prepaid

David V. Allen, Esq.
Assistant General Counsel
Forest City Enterprises, Inc.
50 Public Square, Suite 1360
Cleveland, Ohio 44113-2233

Devin A. Barry, Esq.
Thompson Hine LLP
127 Public Square
3900 Key Center
Cleveland, OH 44114-1291

Date: April 28, 2015



Deane H. Bartlett
Senior Assistant Regional Counsel