

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)
)
)
 PALM BEACH CAST STONE, INC.)
)
)
 Respondent)
 _____)

DOCKET NO.: CWA-04-2020-0403(b)

Industrial Stormwater Expedited Settlement Agreement
Pursuant to Clean Water Act Section 309(g)(2)(A)

Permit No.: Non-Filer

Palm Beach Cast Stone, Inc. ("Respondent") is a "person," within the meaning of Section 502(5) of the Clean Water Act ("Act"), 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

On or about July 8, 2019, at 809 North Railroad Avenue, West Palm Beach, Florida, the Respondent had unauthorized discharge(s) of stormwater in violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311, as described on the attached "Industrial Stormwater Non-Filer Inspection Findings, Alleged Violations, and Proposed Penalty Form" ("Violations Form"), Enclosure A, which is incorporated herein by reference. By its signature, Complainant ("EPA") finds that Respondent is responsible for the alleged violations specified in the Violations Form.

The EPA finds, and Respondent admits, that Respondent is subject to Section 301 of the Act, 33 U.S.C. § 1311, and that the EPA has jurisdiction over any "person" who "discharges pollutants" from a "point source" to "waters of the United States." Respondent neither admits nor denies the specific alleged violations specified in the Violations Form.

The EPA is authorized to enter into this Expedited Settlement Agreement and Final Order ("ESA") under the authority vested in the Administrator of the EPA by Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and by 40 C.F.R. § 22.13(b). The parties enter into this Agreement to settle the civil violations alleged in this Agreement for a penalty of \$7,500. Respondent consents to the assessment of this penalty and waives the right to: (1) contest the findings specified in the Violations Form; (2) appeal the Final Order; (3) a hearing pursuant to Section 309(g)(2) of the Act, 33 U.S.C. § 1319(g)(2); and (4) appeal pursuant to Section 309(g)(8), 33 U.S.C. § 1319(g)(8).

Additionally, Respondent certifies, subject to civil and criminal penalties for making a false statement to the United States Government, that the Respondent has taken corrective actions that will prevent future unauthorized discharges and has addressed the alleged violations identified in the Violations Form by either a) developing and implementing a Stormwater Pollution Prevention Plan and submitting to the permit authority a Notice of Intent to be covered by the applicable industrial stormwater permit; or b) acting to meet eligibility requirements for a waiver from industrial stormwater permit requirements as allowed by the permit authority and submitting the relevant forms (such as the

No Exposure Certification form), to the permit authority.

Respondent agrees to pay the penalty assessed within thirty (30) calendar days of the effective date of this Agreement. Instructions for making the penalty payment are enclosed with this Agreement as Enclosure B, which is incorporated herein by reference. Failure by Respondent to pay the penalty assessed by this ESA in full by its due date may subject Respondent to a civil action to collect the assessed penalty plus interest, attorney's fees, and costs, and an additional quarterly nonpayment penalty pursuant to Clean Water Act § 309(g)(9), 33 U.S.C. § 1319(g)(9). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review. Any payment made pursuant to this ESA is a penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and, therefore, Respondent shall not claim it as a tax-deductible expenditure for purposes of federal, state, or local law.

This ESA settles only the EPA's civil penalty claims against Respondent for the alleged Clean Water Act violations specified in this Agreement and does not waive EPA's right to pursue injunctive or criminal enforcement for the violations specified in the agreement. The EPA does not waive its rights to take any enforcement action against Respondent for any other past, present, or future civil or criminal violation of the Act or of any other federal statute or regulation. The EPA does not waive its right to issue a compliance order for any uncorrected alleged violation(s) described in the Violations Form. The EPA has determined this ESA to be appropriate.

This ESA is binding on the parties signing below. Each person signing this ESA certifies that he or she has the authority to sign for the party who he or she represents and to bind that party to its terms. The ESA is effective upon filing with the Regional Hearing Clerk. If Respondent does not sign and return this ESA within thirty (30) calendar days of the date of its receipt, the proposed ESA will be withdrawn without prejudice to the EPA's ability to file another enforcement action for the noncompliance identified in the Violations Form, unless an extension has been granted by the EPA.

APPROVED BY RESPONDENT:

Palm Beach Cast Stone, Inc.

Name
(print): James S. Ford

Title
(print): President

Signature: James S. Ford Date: 7/6/2020

APPROVED BY EPA:

Date: _____
Mary Jo Bragan, Chief, Water Enforcement Branch
Enforcement and Compliance Assurance Division

FINAL ORDER

Having determined that this Agreement is authorized by law,
IT IS SO ORDERED:

Date: _____
Tanya Floyd
Regional Judicial Officer

ENLOSURE A

Industrial Stormwater Non-Filer Inspection Findings, Alleged Violations, and Proposed Penalty Form

1. Palm Beach Cast Stone, Inc. (Respondent) owns and operates a cast concrete and stone manufacturing facility located at 809 North Railroad Avenue, West Palm Beach, Florida (Facility). The Facility is identified by Standard Industrial Classification (SIC) Code 3272.
2. Pursuant to Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), a National Pollution Discharge Elimination System (NPDES) permit is required for “a [stormwater] discharge associated with industrial activity.”
3. Pursuant to 40 C.F.R § 122.26(b)(14)(ii), “[f]acilities classified within Standard Industrial Classification... 32 (except 323)...” which would include SIC Code 3272 are considered to be engaging in “industrial activity” for purposes of 40 C.F.R. 122.26(b)(14).
4. On July 8, 2019, representatives of the EPA, in conjunction with the Florida Department of Environmental Protection (FDEP), performed a Compliance Stormwater Evaluation Inspection (CSWEI) at the Facility to evaluate the Respondent’s compliance with the requirements of Sections 301 of the CWA, 33 U.S.C. § 1311; and the regulations promulgated thereunder at 40 C.F.R. § 122.26.
5. On August 12, 2019, the EPA issued an Inspection Report to the Respondent. During the CSWEI, the EPA inspectors observed the following:
 - A. The Facility had outdoor industrial activity including but not limiting to truck loading, outdoor forming and casting of concrete and stone, and an open trash bin with potential exposure and contribution to stormwater contamination.
 - B. The facility had outdoor storm drains, which are connected to the City of West Palm Beach stormwater system along North Railroad Avenue. These street drains also capture surface runoff from both sides of North Railroad Avenue and drains to waters of the United States.
 - C. The Facility is a cast concrete and stone manufacturing plant (SIC Code 3272) but has not submitted an NOI for coverage under the existing Permit.
6. Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), and its implementing regulations at 40 C.F.R. §122.26(b)(14)(vi), as referenced above, require that an industrial facility discharging stormwater into a surface water of the United States must obtain an NPDES permit. The EPA’s industrial stormwater guidance anticipates potential discharges from an industrial site to occur with rain events greater than 0.1 inch. In EPA’s industrial penalty policy, 0.5 inches during a 24-hour period is used as the benchmark for likely

stormwater runoff. According to the rain data available from West Palm Beach airport station, fifty-two (52) months during the period of May 2015 to May 2020 have had one or more daily rain events greater than 0.5 inches. Due to the hydrology of the Facility, which consists entirely of impervious surfaces, the EPA has determined that from May 2015 to May 2020, stormwater associated with industrial activities flowed into the facility's two yard drains, which are connected to the City of West Palm Beach stormwater drainage system along North Railroad Avenue. Storm drains along North Railroad Avenue drain eastward traveling approximately 2,000 feet and discharge directly into Lake Worth Lagoon, an intercoastal waterway to the Atlantic Ocean.

7. Lake Worth Lagoon is a traditionally navigable water of the United States as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and its implementing regulation 40 C.F.R. § 122.2.
8. Respondent has violated Sections 301 of the CWA, 33 U.S.C. §§ 1311, by discharging stormwater from the Facility without proper authorization to waters of the United States.
9. Pursuant to Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. § 22.13(b), and in accordance with the EPA's September 8, 2016 Supplemental Guidance to the 1995 Interim Clean Water Act Settlement Penalty Policy for Violations of the Industrial Stormwater Requirements, the EPA is assessing a penalty of \$7,500 for the above-mentioned violations.

Enclosure B

Expedited Settlement Agreement and Final Order Payment Instructions

Payment shall be in a single payment, due no later than 30 calendar days from the effective date of the Final Order. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.

The payment shall be made by remitting a check or making a wire transfer or on-line payment. The check or other payment shall:

- designate the name and docket number of this case, and
- be payable to "Treasurer, United States of America."

The payment shall be remitted as follows:

If remitted by regular U.S. mail:

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

If remitted by any overnight commercial carrier:

U.S. Bank
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"



If remitted through the Automated Clearing House (ACH) for receiving US currency:

U.S. 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, Maryland 20737

If remitted on-line with a debit card or credit card: No user name, password, or account number is necessary for this option. On-line payment can be accessed via www.pay.gov, entering 1.1 in the form search box on the left side of the screen, opening the form, and following the directions on the screen.

At the time of payment, a copy of the check (or notification of other type of payment) shall also be sent by email and/or mail to:

Regional Hearing Clerk U.S. EPA
Region 4
Office of Regional Counsel
61 Forsyth Street, SW
Atlanta, GA 30303-8960
R4_Regional_Hearing_Clerk@epa.gov

and

Dan O'Lone
U.S. EPA Region 4
61 Forsyth Street, SW
Atlanta, GA 30303-8960
Olone.Dan@epa.gov

CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Expedited Settlement Agreement" and "Final Order," in the Matter of **Palm Beach Cast Stone, Inc., Docket No. CWA-04-2020-0403(b)**, were filed and copies of the same were emailed to the parties as indicated below.

Via email to all parties at the following email addresses:

To Respondent: James S. Ford, President
Palm Beach Cast Stone, Inc.
809 North Railroad Avenue
West Palm Beach, Florida 33401
Steve@pbcaststone.com
Jeannie@pbcaststone.com
Ford.ashley@gmail.com

To EPA: Mr. Kenneth Kwan, Water Enforcement Branch
United States Environmental Protection Agency, Region 4
61 Forsyth Street, S.W., Atlanta, Georgia 30303-8960
(404) 562-9752
Kwan.Ken@epa.gov

AND

Bianca N. Jaikaran, Associate Regional Counsel
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(404) 562-9680
Jaikaran.Bianca@epa.gov

Saundi Wilson
Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960