



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

March 25, 2009

**FOR SETTLEMENT PURPOSES ONLY**

Stuart D. Kaplow, P.A.  
Attorney At Law  
15 East Chesapeake Avenue  
Towson, MD 21286-5306

Re: James Gosnell d/b/a American Auto and Truck Parts

Dear Mr. Kaplow:

Enclosed please find the executed Consent Agreement and Final Order (CAFO), the original of which has been filed with the Regional Hearing Clerk. Please note that payment of the penalty is due within thirty days of the effective date of the CAFO which will occur after a forty-day public notice period.

I appreciate your cooperation in the settlement of this matter. Should you have any questions, please feel free to call me at (215) 814-2658.

Very truly yours,

A handwritten signature in black ink, appearing to read "P. Lazos", written over a circular stamp or seal.

Pamela J. Lazos  
Sr. Asst. Regional Counsel



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

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In the Matter of:	:	Proceeding Under Class I and
	:	Section 309(g)(2)(A) of the
James Gosnell	:	Clean Water Act
d/b/a American Auto and Truck Parts	:	
4725 Erdman Ave.	:	
Baltimore, MD 20160	:	EPA Docket No. CWA-03-2009-0122
	:	
Respondent	:	<b>CONSENT AGREEMENT</b>
	:	<b>and FINAL ORDER</b>
Property located at:	:	
7930 Solley Road	:	
Glen Burnie, MD 20160	:	

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**I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY**

1. This Consent Agreement and Final Order ("CAFO") is entered into by the Director, Environmental Assessment and Innovation Division, United States Environmental Protection Agency, Region III ("Complainant"), and Respondent, James Gosnell, d/b/a American Auto and Truck Parts ("American Auto" 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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules")*, 40 C.F.R. Part 22. The authority to settle this matter has been delegated to the Regional Administrator pursuant to delegation no. 2-52-A (9/1/05). The parties have agreed to settlement of violations of the Clean Water Act by Respondent. This CAFO simultaneously commences and concludes this action pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) & (3).

2. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, any person violating the CWA is liable for an administrative penalty under Section 309(g) of the Act, in an amount not to exceed \$11,000 per day for each day of violation, up to a total penalty amount of \$157,500.

## II. FINDINGS OF FACT and CONCLUSIONS OF LAW

3. Respondent, James Gosnell, d/b/a American Auto and Truck Parts is an individual with a place of business at 4725 Erdman Avenue, Baltimore, MD 20160. The 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.

4. Respondent, Gosnell owns, and has at all times relevant to this CAFO, controlled the property located at 7930 Solley Road, Glen Burnie, Anne Arundel County, Maryland, as further identified on the map attached hereto as Exhibit "A" (hereinafter, "the Site").

5. The Site contains a wetland which drains to an unnamed tributary of Marley Creek. Marley Creek is a tributary to Curtis Creek, which is a tributary to Patapasco River, which is a tributary of the Chesapeake Bay, a navigable-in-fact body of water. Therefore, the area is a "water of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2, and 40 C.F.R. § 122.2.

6. Commencing at various times between 2005 and 2006, Respondent, or persons acting on behalf of Respondent, operated equipment which discharged dredged and/or fill material to waters of the United States located on the Site described in Paragraph 4, above, and further depicted on Exhibits "A" and "B", attached hereto. Respondent's activities include placing fill material into at least 0.8 acres of jurisdictional wetlands to create uplands.

7. The term "fill material" within the meaning of 40 C.F.R. § 232.2, includes any pollutant which replaces portions of the "waters of the United States" with dry land or which changes the bottom elevation of a water body for any purpose.

8. The equipment referenced in Paragraph 6, above, which discharged fill material to "waters of the United States" constitutes a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

9. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of dredged or fill material from point sources to waters of the United States except in compliance with, among others, a permit issued by the Secretary of the Army under Section 404 of the Act, 33 U.S.C. § 1344.

10. At no time during the discharge of dredged and/or fill material to the waters of the United States located on the Site did the Respondent have a permit from the Secretary of the Army as required by Section 404 of the Act, 33 U.S.C. § 1344.

11. Respondent, by discharging dredged and/or fill material to the waters of the United States without authorization, has violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).

**III. CONSENT AGREEMENT AND FINAL ORDER**

12. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law set forth in Section II, above, and waives any defenses it might have as to jurisdiction and venue.

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

14. 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 consent to issuance of this CAFO without adjudication.

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

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

17. 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.

18. 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 State of Maryland, Department of the Environment ("MDE") regarding this action, and will mail a copy of this document to the appropriate Maryland official.

19. 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 to pay a civil penalty in the amount of twenty-six thousand dollars (\$26,000) in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.

20. Respondent shall pay an administrative civil penalty of twenty-six thousand dollars (\$26,000) for the violations alleged in this CAFO within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c), by mailing a cashier's check or certified check for the penalty to "Treasurer, United States of America":

U.S. EPA Region III  
Post Office Box 371099M  
Pittsburgh, PA 15251-6515

21. Respondent shall send notice of such payment, including a copy of the 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-

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

22. 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.

23. 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 payment 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 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).

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).

24. This Consent Agreement and the accompanying Final 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 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. 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. 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.

26. The penalty specified above, represents civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

27. 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 the EPA obtains evidence that the information and/or representations of the Respondent is false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.

28. 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.

29. 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.

**V. EFFECTIVE DATE**

30. Pursuant to 40 C.F.R. § 22.45, this CAFO shall be issued after a 40-day public notice period has concluded. This CAFO will become final thirty (30) days after issuance, 33 U.S.C. § 1319(g)(4), and will become effective on that same date, 40 C.F.R. § 22.31(b).

FOR RESPONDENT JAMES GOSNELL, D/B/A AMERICAN AUTO AND TRUCK PARTS:

By: James W Gosnell Jr  
Name: JAMES W GOSNELL JR  
Title: V. P



In the Matter of:

Mr. James Gosnell  
d/b/a American Auto and Truck Parts  
4725 Erdman Ave.  
Baltimore, MD 20160

Respondent

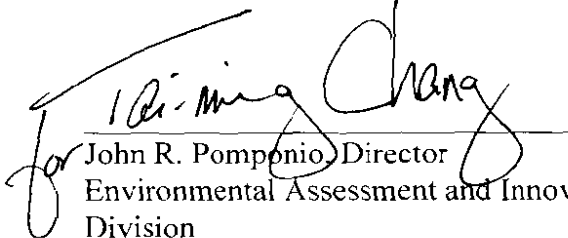
Property located at:  
7930 Solley Road  
Glen Burnie, MD 20160

Proceeding Under Class I and  
Section 309(g)(2)(A) of the  
Clean Water Act

EPA Docket No. CWA-03-2009-0122

NOW THEREFORE, 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 (Consolidated Rules), 40 C.F.R. Part 22, and based upon the  
representations made in the Consent Agreement, having determined that the penalty agreed to in  
the Consent Agreement is based upon a consideration of the factors set forth in Section  
309(g)(2)(B)(3) of the CWA, including Respondents ability to pay, IT IS HEREBY ORDERED  
that Respondent pays a penalty of twenty-six thousand dollars (\$26,000) in accordance with  
Section V. of this document.

Dated: 3/25/09

  
For John R. Pomponio, Director  
Environmental Assessment and Innovation  
Division

**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 Consent Agreement and Final Order, and that copies of this document were sent to the following individuals in the manner described below:

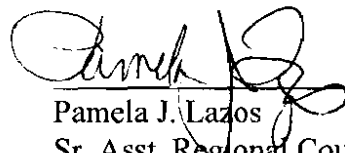
By hand delivery:

Regional Judicial Officer  
Renee Sarajian  
EPA Region III  
1650 Arch St.  
Philadelphia, PA 19103

By first class, certified mail, return receipt requested:

James Gosnell  
d/b/a American Auto and Truck Parts  
4725 Erdman Ave.  
Baltimore, MD 20160

Date: 3/25/09

  
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Pamela J. Lazos  
Sr. Asst. Regional Counsel  
US EPA Region III