

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II
290 Broadway
New York, NY 10007-1866

IN THE MATTER OF:

Kaplan and Sons Construction Corp.
433 River Road
Highland Park, NJ 08904

La Mer – Phases 5 & 6
Ernstson Road
Sayreville, NJ 08859

NPDES Tracking No. NJG0175757
NJPDES General Permit No. NJG0088323
Ch. 251 App. No. 0019-0032 and SCD RFA
No. 12-19-05-0010
Ch. 251 App. No. 0019-0046 and SCD RFA
No. 12-09-07-001

Respondent

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)

CONSENT AGREEMENT
AND
FINAL ORDER

REGIONAL HEARING
CLERK

2013 JAN 25 P 3:32

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II

DOCKET NO. CWA-02-2012-3312

I. PRELIMINARY STATEMENT

Complainant, the United States Environmental Protection Agency ("EPA"), having filed the Complaint referenced herein on September 24, 2012, against Respondent, Kaplan and Sons Construction Corp.; and

Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order ("CAFO" or "Agreement") without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of 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:

II. PROCEDURAL AND FACTUAL FINDINGS

1. The following Procedural and Factual Findings are made and the Final Order is issued pursuant to the authority vested in the Administrator of the United States EPA by the Clean Water Act, 33 U.S.C. § 1251 *et. seq.* ("CWA" or "Act"), which authority has been duly delegated to the Regional Administrator of EPA Region 2, and since further re-delegated to the Director, Division of Enforcement and Compliance Assistance, EPA Region 2.
2. EPA is concluding this proceeding for the assessment of a civil penalty, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.18(b)(2) and (3) of 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" ("CROP"), which sets forth procedures for conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order.
3. EPA filed a Class I Administrative Complaint, CWA-02-2012-3312, ("Complaint"), pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g) on September 24, 2012.
4. The Complaint alleges that Respondent is in violation of the CWA by its failure to conform its stormwater Best Management Practices ("BMPs") to the erosion and sediment control component of Respondent's Stormwater Pollution Prevention Plan ("SPPP") and by not implementing and/or maintaining waste control practices set forth in Attachment B of the Construction General Permit ("CGP") in the operation of its construction site located off of Ernston Road in Sayreville, New Jersey, which resulted, among other things, in the discharge of stormwater pollution into waters of the United States, in violation of Sections 301 and 402 of the Act, 33 U.S.C. § 1311 and § 1342, respectively.
5. Respondent has not filed an Answer or requested a hearing pursuant to 40 C.F.R. Part 22.
6. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint.
7. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual allegations contained in the Complaint, consents to the terms of this Agreement.
8. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

III. CONSENT AGREEMENT

9. Paragraphs 1 through 8, above, are re-alleged and incorporated herein by reference.
10. EPA and Respondent agree that it is in the public interest to resolve the issues alleged in this Consent Agreement without further litigation and the expense and effort that litigation entails.
11. Based upon the foregoing and pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and the CROP, it is hereby agreed by and between EPA and Respondent, and Respondent voluntarily and knowingly agrees as follows:

A. TERMS OF SETTLEMENT

- 12. For the purpose of this proceeding, Respondent admits the jurisdictional allegations of this CAFO and neither admits nor denies the factual allegations contained herein.
- 13. Respondent further waives its right to contest the allegations, at a judicial or administrative hearing, or to appeal this CAFO.
- 14. Respondent consents to the payment of the civil penalty in the amount of *Twenty-Eight Thousand Dollars (\$28,000.00)*, as stated in Paragraph 15, below.

B. PAYMENT OF CIVIL PENALTY

- 15. Respondent shall pay a civil penalty in the amount of *Twenty-eight thousand dollars (\$28,000.00)* to the "Treasurer of the United States of America."
- 16. The civil penalty payments shall be paid in accordance with the following schedule:

	Due by:	Payment	Principal	Interest
Payment 1	File Date+180 days	7,140.00	7,000.00	140.00
Payment 2	File Date+360 days	7,105.00	7,000.00	105.00
Payment 3	File Date+540 days	7,070.00	7,000.00	70.00
Payment 4	File Date+720 days	7,035.00	7,000.00	35.00
	Totals:	28,350.00	28,000.00	350.00

- 17. Payments can be made by debit/credit card, check, or electronically. Electronic payments fall into two categories: wires and Automated Clearinghouse (ACH). Wires are same day and more costly. ACH is the next day or any future scheduled day and is less expensive. Please note that wires and ACH payments must be conducted through the sender's bank. The checks (cashier's or certified checks only) shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Payment methods are described below:

Type of Payment	Payment Information	
Debit and Credit Card Payments	https://www.pay.gov/paygov/	
Checks from U.S. Banks	U.S. Postal Service	U.S. Postal Service or Government Mail
Finance Center Contacts:		
Craig Steffen (513-487-2091)	US Environmental Protection Agency Fines and Penalties Cincinnati Finance Center PO Box 979077 St. Louis, MO 63197-9000	U.S. Bank Government Lockbox 979077 US EPA Fines & Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, MO 63101 314-418-1028

Checks drawn on foreign banks with no USA branches (any currency)	Cincinnati Finance US EPA, MS-NWD 26 W ML King Drive Cincinnati, OH 45268-0001
Wire Transfers (any currency) Details on format and content of wire transfer – www.epa.gov/ocfo/finservices/required_info.htm	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"
ACH - Automated Clearinghouse for receiving US currency Finance Center Contacts: John Schmid (202-874-7026) REX (Remittance Express), 1-866-234-5681	US Treasury REX / Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking Physical location of US Treasury facility: 5700 Rivertech Court Riverdale, MD 20737

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Department of Treasury. This payment option can be accessed from the information below: WWW.PAY.GOV. Enter sfo 1.1 in the search field. Open form and complete required fields.

Respondent shall also send copies of this payment to each of the following:

Katherine Mann
Division of Enforcement and Compliance Assistance
U.S. EPA, Region 2
290 Broadway, 20th Floor
New York, New York 10007

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007

The payment must be received at the above addresses on or before the specified due dates. The "File Date" is the day on which this Agreement is filed with the Regional Hearing Clerk (the date by which payment must be received shall hereafter be referred to as the "due date").

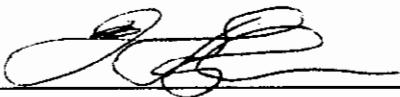
18. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for Collection.
19. Further, if the payment is not received on or before the due dates, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due dates through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30-day period (or any portion thereof) following the due dates in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.
20. In addition, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), if payment is not received by the due dates, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter. You also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
21. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondent's federal or State of New Jersey taxes.

C. GENERAL PROVISIONS

22. The provisions of this CAFO shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns, including, but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve Respondent of its obligation to comply with this CAFO.
23. The Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with, or to be served with and to reply to, any memorandum or communication addressed to the Director or the Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
24. Except for the specific violations alleged herein, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.
25. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

26. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations by the Respondent alleged herein. Nothing in this CAFO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of the Respondent. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.
27. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
28. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CAFO.

For Respondent: Kaplan and Sons Construction Corp. hereby consents to the issuance of the ORDER and agrees to be bound thereby.

BY: 

DATE: 11/7/13

Mr. Michael Kaplan, Owner
Kaplan and Sons Construction Corp.
433 River Road
Highland Park, NJ 08904

For the Complainant, the United States Environmental Protection Agency:

BY: _____ 1

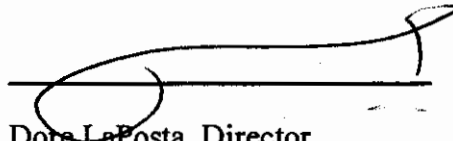
Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York, 10007

DATE: JUNE 22, 2013

IV. FINAL ORDER

The Regional Administrator of the United States Environmental Protection Agency, Region 2, vested by authority delegated by the Administrator of the United States Environmental Protection Agency and having further re-delegated such authority to the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2, New York, New York.

DATED: JANUARY 22, 2013



Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. Environmental Protection Agency, Region 2
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New York, NY 10007-1866

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CERTIFICATE OF SERVICE

I certify that I have on this day caused to be sent the foregoing Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and one copy by hand to:

Office of the Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007

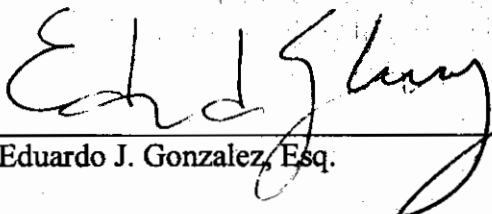
Copy by Intra Office Mail to:

Helen Ferrara
Regional Judicial Officer
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007

Copy by Certified Mail Return Receipt Requested:

Mr. Michael Kaplan, Owner
Kaplan & Sons Construction Corp.
433 River Road
Highland Park, NJ 08904

Dated: 1/25/13
New York, New York



Eduardo J. Gonzalez, Esq.