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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 7

11201 Renner Boulevard, Lenexa, Kansas 66219

EXPEDITED SETTLEMENT AGREEMENT

Docket Number: CWA-07-2021-0081, NPDES Permit No. KS-R113296

Received by
EPA Region 7
Hearing Clerk

The undersigned representative of the United States Environmental Protection Agency (EPA) and R.D. Johnson Excavating Company, LLC, an individual (Respondent), enter into this Expedited Settlement Agreement (Agreement) to resolve Respondent's civil penalty liability for alleged violations of the National Pollutant Discharge Elimination System storm water permit cited above (Permit). On February 22, 2021 representatives of EPA inspected the Respondent's Cedar Grove construction site at Research Park and Legends Drive in Lawrence, KS (Site).

Based on information obtained during the EPA inspection, the EPA finds that: (1) Respondent failed to comply with the Permit issued pursuant to Section 402 of the Clean Water Act (Act), 33 U.S.C. § 1342; (2) Respondent is a "person" as defined in Section 502(5) of the Act, 33 U.S.C. § 1362(5); and (3) Respondent is responsible for the alleged violations specified in the attached Expedited Settlement Offer Worksheet – Findings and Alleged Violations (Worksheet). The Worksheet is incorporated into this Agreement by reference.

The EPA also finds, and Respondent admits, that the EPA has jurisdiction over this matter pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g). Respondent neither admits nor denies the violations alleged in the Worksheet.

The EPA is authorized to enter into this Agreement under the authority vested in the Administrator by Section 309(g) of the Act, 33 U.S.C. § 1319(g), and by 40 C.F.R. § 22.13(b) and § 22.18(b)((2)-(3)).

Respondent consents to the assessment of a civil penalty and agrees to pay \$34,520. Respondent waives the right to: (1) contest the allegations in the Worksheet; (2) a hearing pursuant to Section 309(g)(2) of the Act, 33 U.S.C. § 1319(g)(2); (3) appeal pursuant to Section 309(g)(8), 33 U.S.C. § 1319(g)(8); and (4) judicial review pursuant to CWA § 309 (g)(8), 33 U.S.C. § 1319(g)(8). The civil penalty will be due no later than thirty (30) days after the issuance of the Final Order and shall be made in accordance with the attached Expedited Settlement Agreement Payment Instructions.

By signing this Agreement, Respondent certifies that: (1) the alleged violations listed in the Worksheet have been corrected, and Respondent has submitted true and accurate documentation to the EPA of such correction; and (2) consistent with Section 162(f)(1) of the Internal Revenue Code, 26 U.S.C. § 162(f)(1), Respondent will not deduct penalties paid under this Agreement for federal tax purposes.

This Agreement, upon incorporation into the Final Order and full satisfaction by the parties, shall be a complete and full resolution of Respondent's liability for federal civil penalties for the violations of the Permit and/or Section 301(a) of the Clean Water Act alleged in the Worksheet. This Agreement does not affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law or to issue an administrative compliance order, e.g., for any uncorrected violations listed in the Worksheet. Nothing in this Agreement shall relieve Respondent of the duty to comply with the Act and any regulation, order, or permit issued pursuant to the Act.

Prior to requesting that an EPA Regional Judicial Officer issue the Final Order, the EPA will provide public notice of this Agreement and a reasonable opportunity for the public to comment on it. The EPA will address any comments on this Agreement in accordance with Section 309(g)(4) of the Act, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

This Agreement is binding on the parties signing below. Each person signing this Agreement 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 Agreement is effective the date it is filed with the Regional Hearing Clerk. Respondent agrees to service of this ESA at the email address provided herein.

APPROVED BY RESPONDENT:

Name (print): KELLY THOMAS

Title (print): DIRECTOR OF OPERATIONS

Email: KELLY.THOMAS@RDJC.COM

Signature:  Date: 9/21/2021

FINAL ORDER: More than 40 days have elapsed since the issuance of public notice pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and the EPA has received no comments concerning this matter.

APPROVED BY THE EPA:

_____ Date: _____

Diane Huffman
Acting Director
Enforcement and Compliance Assurance Division

FINAL ORDER
IT IS SO ORDERED:

_____ Date: _____

Karina Borromeo
Regional Judicial Officer

Effective Date: See Notice of Filing for Effective Date

Attachments:

1. Expedited Settlement Offer Worksheet – Findings and Alleged Violations
2. Payment Instructions