



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

April 13, 2022 @ 2:19 pm  
USEPA – Region II  
Regional Hearing Clerk

**April 13, 2022**

**VIA ELECTRONIC MAIL TO:** [Sunny.Brisco@oldcastle.com](mailto:Sunny.Brisco@oldcastle.com)

Sunny Brisco, Area Manager  
Oldcastle APG Northeast Inc.  
336 Newman Springs Road  
Red Bank, New Jersey 07701

Re: Consent Agreement and Final Order (CA/FO)  
Anchor an Oldcastle Co, 735 Wangum Road, Fishers, NY 14453  
Docket No. CWA-02-2022-3307  
SPDES ID No. NYR00A692

Dear Mr. Brisco:

Enclosed is the signed and effective Consent Agreement and Final Order (“CAFO”).

Please note that the Oldcastle APG Northeast Inc. (Respondent) must submit the payment within 30 days of receipt of this Final CA/FO.

Any questions regarding this CAFO, please contact Ms. Justine Modigliani, P.E., Chief, Compliance Section at (212) 637-4268 ([Modigliani.justine@epa.gov](mailto:Modigliani.justine@epa.gov)); or Murray Lantner, P.E., Environmental Engineer at (212) 637-3976 ([lantner.murray@epa.gov](mailto:lantner.murray@epa.gov)).

Sincerely,

**For** Dore LaPosta, Director  
Enforcement and Compliance Assurance Division

Enclosure - Consent Agreement and Final Order

cc: Patrick Smith, Oldcastle, [Patrick.Smith@oldcastle.com](mailto:Patrick.Smith@oldcastle.com)  
Edward Hampston, Director, Bureau of Water Compliance Programs, NYSDEC w/enclosure  
Holly Shear, NYSDEC Albany, [holly.shear@dec.ny.gov](mailto:holly.shear@dec.ny.gov) Erik Schmidt, NYSDEC Albany,  
[erik.schmitt@dec.ny.gov](mailto:erik.schmitt@dec.ny.gov).

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

April 13, 2022 @ 2:19 pm

USEPA – Region II

Regional Hearing Clerk

CONSENT AGREEMENT  
AND FINAL ORDER

DOCKET No. CWA-02-2022-3307

**IN THE MATTER OF:**

Oldcastle APG Northeast Inc.  
336 Newman Springs Road, Red Bank, NJ 07701

Facility – Anchor an Oldcastle Co  
735 Wangum Road, Fishers, NY 14453

**SPDES Permit No. NYR00A692**

**Respondent**

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

**I. PRELIMINARY STATEMENT**

1. This is a civil administrative proceeding for the assessment of a civil penalty instituted pursuant to Section 309(g) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. §1319(g).
2. The following Findings of Fact are made and Order issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by the Act, 33 U.S.C. §1251 *et. seq.*, which authority has been duly delegated to the Regional Administrator of Region 2, EPA and since further re-delegated to the Director, Enforcement and Compliance Assurance Division, Region 2, EPA.
3. EPA is initiating and concluding this proceeding for the assessment of a civil penalty, pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g), and 40 C.F.R. §22.13(b) 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 simultaneous commencement and conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order pursuant to 40 C.F.R. §§22.18(b)(2) and (3).

**II. FINDINGS OF FACT**

4. Oldcastle APG Northeast, Inc. (Anchor an Oldcastle Company - Fishers) (“Respondent”) is a corporation chartered under the laws of the State of Maryland, and as such, the Respondent is a person, as defined in Section 502(5) of the Act, 33 U.S.C. §1362(5), and 40 C.F.R. §122.2.
5. The Respondent owns and operates the Anchor an Old Castle Company – Fishers Plant located at 735 Wangum Road, Fishers, New York 14453 (“Facility”) and is an “owner or operator” within the meaning of 40 C.F.R. §122.2.

6. The Respondent's Facility is permitted to discharge pollutants associated with industrial activity, including stormwater, from one outfall that discharges to a tributary of Irondequoit Creek, which flows into Irondequoit Bay and then into Lake Ontario.
7. The Respondent's outfall pipe is a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. §1362(14), that discharges stormwater, which is a "pollutant" within the meaning of Section 502(6) of the Act, 33 U.S.C. §1362(6), to the tributary of Irondequoit Creek which flows into Irondequoit Bay and then into Lake Ontario, all waters of the United States within the meaning of 40 C.F.R. §122.2. As such, pollutants have been discharged to navigable waters from a point source within the meaning of Section 502(12) of the Act, 33 U.S.C. §1362(12).
8. Respondent submitted a Notice of Intent ("NOI") to gain coverage under the New York State Department of Environmental Conservation ("NYSDEC") State Pollutant Discharge Elimination System ("SPDES") Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity ("MSGP"), GP-0-12-001, which became effective on October 1, 2012, and expired on September 30, 2017. In May 2018 Respondent submitted an NOI to gain coverage under the current MSGP, GP-0-17-004, which became effective on March 1, 2018, and expires on February 28, 2023.
9. On April 1, 2021, the EPA conducted a Compliance Evaluation Inspection ("CEI") of the Respondent's Facility and determined that the Respondent had failed to comply with conditions of the MSGP, in violation of Sections 301 and 402 of the Act, 33 U.S.C. §§1311 and 1342, as detailed in EPA's CEI Report and summarized below:
  - a. Failed to maintain records of an Annual Site Compliance Inspection in 2020 as required by Part IV.A of the MSGP;
  - b. Failed to maintain records of Quarterly Visual Monitoring (for five quarters) for the First Quarter of 2020 through the First Quarter of 2021 as required by Part IV.E. of the MSGP;
  - c. Failed to maintain records of Quarterly Routine Inspections for the First Quarter of 2021 as required by Part IV.B. of the MSGP;
  - d. Failed to maintain records of Annual Dry Weather Monitoring as required by Part IV.C of the MSGP in 2017, 2018, 2019, and 2020;
  - e. Failed to maintain Storm Event Data Forms for the first quarter 2020 to the first quarter 2021 as required by Part IV.D.3 of the MSGP.
  - f. Failed to properly Operate and Maintain a stormwater best management practice ("BMP"), the berm, as required by Part II.A.3 and Appendix H.5 of the MSGP.
10. Based on the Findings cited in the Paragraphs above, the Respondent violated Section 301 of the Act, 33 U.S.C. §1311.

### **III. CONCLUSIONS OF LAW AND JURISDICTION**

11. Section 301(a) of the Act, 33 U.S.C. §1311(a), provides, in part, that the discharge of any pollutants by any person from a point source to a navigable water of the United States shall be unlawful except, inter alia, in accordance with the terms and conditions of a duly issued permit pursuant to Section 402 of the Act, 33 U.S.C. §1342.
12. Section 402 of the Act, 33 U.S.C. §1342, authorizes the Administrator of EPA to issue a National Pollutant Discharge Elimination System (“NPDES”) permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the Act and conditions which the Administrator determines are necessary.
13. The NYSDEC is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402(b) of the Act, 33 U.S.C. §1342(b). The EPA maintains concurrent enforcement authority with authorized States for addressing violations of the Act. Additionally, under this authority granted to the NYSDEC by the EPA under Section 402(b) of the Act, 33 U.S.C. §1342(b), facilities are required to obtain a SPDES permit from the NYSDEC for the discharge of pollutants from said facilities’ point source(s) to a navigable water of the United States.
14. Section 402(p) of the Act, 33 U.S.C. §1342(p), sets forth the requirements for discharges of stormwater.
15. NYSDEC issued a SPDES MSGP, as defined by general permit number, GP-0-12-001, on October 1, 2012, and it expired on September 30, 2017. NYSDEC then issued the current MSGP, as defined by general permit number, GP-0-17-004, on March 1, 2018, and it expires on February 28, 2023.
16. The Administrator of EPA has promulgated regulations, 40 C.F.R. §122.26(a)(1)(ii) and §122.26(b)(14), which require operators to obtain a NPDES permit for stormwater discharges associated with industrial activity. The regulations at 40 C.F.R. §122.26(b)(14) establish requirements for stormwater discharges associated with industrial activity.
17. The Respondent’s Facility is subject to the NPDES requirements pursuant to Section 402 of the Act, 33 U.S.C. §1342, and Section 301(a) of the Act, 33 U.S.C. §1311(a).
18. Based upon the Findings of Fact set forth above, the Respondent operated the Facility in violation of Sections 301 and 402 of the Act.
19. EPA has jurisdiction over the subject matter of this action, pursuant to Section 309 of the Act, 33 U.S.C. §1319, and over the Respondent.

### **IV. CONSENT AGREEMENT**

20. Paragraphs 1 through 19, above, are re-alleged and incorporated herein by reference.
21. The EPA and the 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.

22. 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 the Respondent, and the Respondent voluntarily and knowingly agrees as follows:

**V. TERMS OF SETTLEMENT**

23. For the purpose of this proceeding, the Respondent:
- a. Admits the jurisdictional allegations of this Consent Agreement and Final Order (“CA/FO”);
  - b. Neither admits nor denies the factual allegations contained herein;
  - c. Waives its right to contest the allegations, at a judicial or administrative hearing, or to appeal this CA/FO; and
  - d. Consents to the payment of the civil penalty in the amount of **Three Thousand Five Hundred (\$3,500)**, as stated in Section VI, below.

**VI. PAYMENT OF CIVIL PENALTY**

24. The Respondent shall pay a civil penalty in the amount of **Three Thousand Five Hundred Dollars (\$3,500)**, to the “Treasurer of the United States of America.”
25. 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		
<b>Debit and Credit Card Payments</b>	<a href="https://www.pay.gov/paygov/">https://www.pay.gov/paygov/</a>		
<b>Checks from U.S. Banks</b>		<b>U.S. Postal Service</b>	<b>UPS, Federal Express, or Overnight Mail</b>
<b>Finance Center Contacts: Craig Steffen (513-487-2091)</b>	<b>Check Payments – Fines and Penalties</b>	<b>US Environmental Protection Agency Fines and Penalties Cincinnati Finance Center PO Box 979077 St. Louis, MO 63197-9000</b>	<b>U.S. Bank Government Lockbox 979077 US EPA Fines &amp; Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, MO 63101 314-418-1028 Contact: Natalie Pearson 314-418-4087</b>
<b>Checks drawn on foreign banks with</b>	<b>Cincinnati Finance US EPA, MS-NWD</b>		

<b>no USA branches (any currency)</b>	<b>26 W ML King Drive Cincinnati, OH 45268-0001</b>
<b>Wire Transfers (any currency)</b>	<b>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"</b>
<b>ACH - Automated Clearinghouse for receiving US currency Finance Center Contacts:</b>	<b>US Treasury REX / Cashlink ACH Receiver ABA: 051036706 Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking</b>
<b>John Schmid (202-874-7026)</b>	<b>Physical location of US Treasury facility: 5700 Rivertech Court Riverdale, MD 20737</b>
<b>REX (Remittance Express) 1-866-234-5681</b>	

**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.

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

Doughlas McKenna, Branch Chief  
Water Compliance Branch  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 2  
290 Broadway, 21st Floor  
New York, New York 10007-1866  
Email: [McKenna.Douglas@epa.gov](mailto:McKenna.Douglas@epa.gov)

and

Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th Floor  
New York, New York 10007  
Email: [Maples.Karen@epa.gov](mailto:Maples.Karen@epa.gov)

The payment must be received at the above address on or before thirty (30) calendar days after the date of receipt of the Final Order (the date by which payment must be received shall hereafter be referred to as the “due date”).

26. 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.
27. Further, if the payment is not received on or before the due date, 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 date 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 date 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.
28. 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 date, 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 attorney’s fees and costs for collection proceedings in connection with nonpayment.
29. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondent’s federal or State taxes.

## **VII. GENERAL PROVISIONS**

30. Upon execution by the parties, this Agreement shall be subject to a public comment period of not less than thirty (30) days, 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. The EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations indicating that the Agreement is inappropriate, improper, or inadequate.
31. If comments during the public comment period do not require modification or withdrawal by the EPA from this Agreement, the parties agree to submit this Agreement to the Director of Enforcement and Compliance Assurance Division ten (10) days after closure of the public comment period, with a request that it be incorporated into a final order.
32. The provisions of this CA/FO shall be binding upon the 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 the Respondent of its obligation to comply with this CA/FO.
33. 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.

34. 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 the EPA to seek any other remedies or sanctions available by virtue of the Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for the Respondent's violation of any applicable provision of law.
35. This CA/FO shall not relieve the 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.
36. This CA/FO constitutes a settlement by the EPA of all claims for civil penalties pursuant to the Act for the violations by the Respondent alleged herein. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by the EPA, and it is the responsibility of the Respondent to comply with such laws and regulations.
37. 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.
38. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.

***For the Respondent: Oldcastle APG Northeast, Inc. hereby consents to the issuance of the ORDER and agrees to be bound thereby.***

BY: Sunny Brisco      DATE: 2/7/2022

**Sunny Brisco, Area Manager  
Oldcastle APG Northeast Inc.**



*For the Complainant, the United States Environmental Protection Agency*

BY: \_\_\_\_\_

DATE: 4/13/2022

**For Dore LaPosta, Director**  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 21st Floor  
New York, New York 10007

**VIII. 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 (“EPA”) and having further re-delegated such authority to the Enforcement and Compliance Assurance Division, Region 2, EPA, 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: 4/13/2022

*For* \_\_\_\_\_  
Dore LaPosta, Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 21<sup>st</sup> Floor  
New York, New York 10007-1866