

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

U.S. EPA-REGION 3-RHC
FILED-29NOV2018am10:26

IN THE MATTER OF:

Riverfront Investment Partners I, LLC
3050 K Street, NW, Suite 125
Washington, DC 20007

Respondent

Proceeding to Assess Class I
Administrative Penalty Under
Section 309(g) of the Clean Water Act

Docket No. CWA-03-2019-0049

**CONSENT AGREEMENT
AND FINAL ORDER**

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT, JURISDICTIONAL AND STATUTORY AUTHORITY

1. Pursuant to Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency (“EPA”), is authorized to assess administrative penalties against persons who violate Section 301(a) of the CWA, 33 U.S.C. § 1311(a). The Administrator has delegated this authority to the Regional Administrator of EPA Region III, who in turn has delegated this authority to the Director, Water Protection Division (“Complainant”).

2. This Consent Agreement and Final Order (“CAFO”) is entered into by the Complainant and Riverfront Investment Partners I, LLC. (“Respondent”) pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Permits* (“Consolidated Rules”), 40 C.F.R. Part 22. The parties having 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).

3. Section 309(g)(2)(B) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(B), authorizes the assessment of administrative penalties against any person who violates any National Pollutant Discharge Elimination System (“NPDES”) permit condition or limitation in an amount not to exceed \$10,000 per day for each day of violation, up to a total penalty amount of \$25,000.

4. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), any person who has violated any NPDES permit condition or limitation for violations that occurred after November 2, 2015 and assessed on or after January 15, 2018 will result in an administrative penalty of \$21,393 per each day of violation up to a total penalty amount of \$53,484 for Class I civil penalties.

5. 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.
6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the NPDES program.
7. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the NPDES program under Section 402 of the Act, 33 U.S.C. § 1342.
8. “Discharge of a pollutant” includes “any addition of any pollutant or combination of pollutants to waters of the United States from any point source.” 40 C.F.R. § 122.2.
9. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).
10. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.1 and 122.26 provide that facilities with storm water discharges associated with industrial activity are “point sources” subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).
11. The term “industrial activity” includes, among others, “[c]onstruction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more[.]” 40 C.F.R. § 122.26(b)(14)(x).
12. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.
13. Under Section 402 of the Act, 33 U.S.C. § 1342, EPA is authorized to issue permits governing the discharge of pollutants from regulated sources.
14. Section 502(5) of the Act, 33 U.S.C. § 1362(5) defines the term “person” as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.”
15. Section 502(12) of the Act, 33 U.S.C. § 1362(12) defines the term “discharge of a pollutant” and the term “discharge of pollutants” as “any addition of any pollutant to navigable waters from any point source,” or “any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.”

16. Section 502(6) of the Act, 33 U.S.C. §1362(6) defines the term “pollutant” as “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.”
17. Section 502(14) of the Act, 33 U.S.C. § 1362(14) defines the term “point source” as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.”
18. Section 502(7) of the Act, 33 U.S.C. §1362(7) defines the term the term “navigable waters” as “the waters of the United States, including the territorial seas.”
19. An NPDES Permit is required for construction activity, including clearing, grading and excavation related to the Facility. *See* 33 U.S.C. § 1342, 40 C.F.R. § 122.26(b)(14)(x).
20. The EPA is authorized to issue NPDES permits for construction activities in Washington, DC.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

21. The Respondent is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
22. The Permit was for an estimated disturbed area of 3 acres. Authorized discharges of pollutants from the facility go to the District of Columbia Municipal Separate Storm Sewer System (MS4) and subsequently to the Anacostia River.
23. Respondent is an owner and operator of a management construction company located at 3050 K Street, NW, Suite 125, Washington, DC 20007.
24. The location of the alleged violation is located at MRP Capitol River Front 25 Potomac Avenue, SE, Washington, DC 20003.
25. The Respondent’s facility is subject to the terms and conditions of the 2012 CWA NPDES General Construction Permit (“CGP”) number DCR12A240 (the “Facility Permit”) regarding discharges of pollutants from its facility. EPA issued the Facility Permit on July 14, 2014, with an expiration date of February 28, 2017.
26. On or about May 3, 2016, EPA inspected the Facility; EPA provided a copy of EPA’s inspection report to Respondent on or about July 28, 2016.
27. In response to an EPA Letter, on or about February 15, 2018, Respondent sent a letter via electronic mail responding to the 9 observations listed in the EPA inspection report.

28. Complainant alleges that Respondent has failed to comply with the CWA and certain terms and conditions of its NPDES permit, including a failure to comply with administrative, maintenance, and inspection obligations of the Facility Permit.

29. As described below, Respondent's violations of the NPDES Permit constitute violations of Section 301 of the CWA, 33 U.S.C. § 1311, and subject Respondent to penalties not to exceed \$21,393 per day for each violation, up to a total penalty amount of \$53,484.

III. FINDINGS OF VIOLATION

Count 1: Failure to Post Notice of Permit Coverage

30. CGP Part 1.5 sets forth a requirement to post a notice of the facility's Permit Coverage. At the time of the inspection, the EPA Inspection Team did not observe a sign or posted notice of CGP coverage, in violation of CGP Part 1.5.

Count 2: Failure to Implement Maintenance Requirements

31. CGP Part 2.1.1.4(a) sets forth a requirement to ensure that all erosion and sediment controls remain in effective operating condition. At the time of the inspection, The EPA Inspection Team observed two areas along the Anacostia River where the installed super silt fence was not in effective operating condition and was broken or buried beneath dirt, and observed an area of silt fence that was not trenched in the ground, located along the Anacostia River against a constructed barrier between the site and the river, in violation of CGP Part 2.1.1.4(a).

Count 3: Failure to Provide Natural Buffers or Equivalent Sediment Controls

32. CGP Part 2.1.2.1 sets forth a requirement to provide natural buffers or equivalent sediment controls when a surface water is located within 50 feet of the project's earth disturbances. At the time of the inspection, the EPA Inspection Team observed a portion of the site located along the Anacostia River that did not have a 50-foot natural buffer, nor any installed, maintained sediment controls, in violation of CGP Part 2.1.2.1.

Count 4: Failure to Protect Drain Inlets

33. CGP Part 2.1.2.9(b) sets forth a requirement to protect and maintain storm drain inlets. At the time of the inspection, the EPA Inspection Team observed two curb inlets on Potomac Avenue SE with erosion socks that were clogged with sediment, with one of the erosion socks falling into the curb inlet, in violation of CGP Part 2.1.2.9(b).

Count 5: Failure to Store, Handle and Dispose of Construction Products, Materials and Wastes

34. CGP Part 2.3.3.3(c)(i) sets forth a requirement to store chemicals in water-tight containers, and provide cover or a similarly effective means designed to prevent discharge of pollutants. At the time of the inspection, the EPA Inspection Team observed one fuel tank located on the west side of the construction site. The secondary containment bin housing the fuel tank contained an unplugged hole at the base that opened directly to the ground, in violation of CGP Part 2.3.3.3(c)(i).

Count 6: Failure to Inspect at the Proper Frequency

35. CGP Part 4.1.2 sets forth a requirement to conduct a site inspection in accordance to a prescribed schedule. At the time of the inspection, no stormwater self-inspections were made available for the EPA Inspection Team to review, in violation of CGP Part 4.1.2. No self-inspection reports were made available subsequent to the inspection or EPA's inspection report.

Count 7: Failure to Complete Corrective Action Reports

36. CGP 5.4 sets forth a requirement to complete a corrective action report for each corrective action taken. At the time of the inspection, no corrective action reports were available for the EPA Inspection Team to review, in violation of CGP 5.4.

Count 8: Failure to Have the SWPPP Available On-Site

37. CGP Part 7.3 sets forth a requirement to keep a current copy of the SWPPP at the site or at an easily accessible location so that it can be made available at the time of an on-site inspection or upon request by EPA. At the time of the inspection, a SWPPP was not available on site, nor was one at an easily accessible location so that it could be made available at the time on an onsite inspection or upon request by EPA, in violation of CGP Part 7.3.

IV. CONSENT AGREEMENT AND FINAL ORDER

38. In order to resolve the violations described above, and as provided under EPA regulations cited above providing a legal framework for the payment of a civil penalty, EPA and Respondent enter into this CAFO. Respondent consents to issuance of this CAFO and agrees to undertake all actions required by its terms and conditions. Respondent consents to the assessment of the civil penalty herein.

39. Respondent neither admits nor denies the factual allegations contained in Section II, Findings of Fact and Conclusions of Law. Respondent admits the jurisdictional allegations contained in Section I, Preliminary Statement, Jurisdictional and Statutory Authority, and elsewhere in this CAFO, and waives any defenses it might have as to jurisdiction and venue. Respondent agrees not to contest EPA's jurisdiction to issue this CAFO and not to contest EPA's jurisdiction to enforce the terms of this CAFO.

40. Respondent hereby expressly waives its right to a hearing, pursuant to Section 309(g)(2)(A), 33 U.S.C. § 1319(g)(2)(A), on any issue of law or fact in this matter and consents to issuance of this CAFO without adjudication, and waives its right to appeal this final order pursuant to Section 309(g)(8)(A), 33 U.S.C. § 1319(g)(8)(A).

41. This CAFO addresses and settles all civil and administrative claims for CWA violations identified in this CAFO.

42. Each party to this action shall pay its own costs and attorney fees.

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

44. 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.

45. Pursuant to Section 309(g)(4) of the Act, 33 U.S.C. § 1319 (g)(4), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the CAFO before issuing the Final Order.

46. Based on the foregoing FINDINGS, and having taken into account the factors listed in Section 309(d) of the CWA, 33 U.S.C. § 1319(d), including but not limited to, the nature, circumstances, extent and gravity of the violation, the Respondent's knowledge, culpability and history of violations, the economic benefit to Respondent, the ability of Respondent to pay the penalty, and other such matters as justice may require, the administrative record; and under the authority of Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A):

EPA HEREBY ORDERS AND RESPONDENT HEREBY CONSENTS:

47. Within thirty (30) days of the effective date of this ORDER, Respondent shall pay a civil penalty of forty-five thousand dollars (\$45,000.00) for the violations cited herein. This does not constitute a demand as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. Penalty payment shall be made according to the following specifications:

a. The payment shall reference Respondent's name, address and docket number, be made in U.S. dollars by money order, cashier's or certified check made payable to the "Treasurer, United States of America", wire transfer, ACH, or on line, and delivered as follows:

- i. If by money order, cashier's or certified check sent by U.S. postal service mail:

U.S Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197 9000
Contact: Bryson Lehman 513-487-2123

- ii. If by money order, cashier's or certified check sent by private commercial overnight delivery service:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL MO C2 GL
St. Louis, MO 63101
Contact: 314-418-1028

- iii. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS NWD
26 W. M.L. King Drive
Cincinnati, OH 45268 0001

- iv. If by electronic wire transfer:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 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"

- v. If by ACH (also known as REX or remittance express):

US Treasury REX/Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency

CTX Formart Transaction Code 22 Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX,
1-866-234-5681

vi. On Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

vii. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

b. A copy of the check or money order or other proof of payment submitted in fulfillment of the penalty payment requirements of this order shall be sent to the following:

U.S. Environmental Protection Agency
Regional Hearing Clerk (3RC00)
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

and

Ms. Bonnie A. Pugh (3RC20)
Senior Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

c. A transmittal message identifying the case name and docket number identified about shall accompany the remittance and copies of the check or transfer instrument.

48. Failure to pay the penalty assessed by this ORDER after its effective date subjects the Respondent to a collection action under Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). The validity, amount and appropriateness of the penalty are not subject to review in a collection proceeding. *See* 15 U.S.C. § 2615(a)(4)(A). Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest on unpaid penalties, and a charge to cover the cost of processing and handling a delinquent claim. Interest will begin to accrue on this civil penalty if it is not paid within fifteen days of the date due. Interest will be assessed at the rate of the United States Treasury tax and loan rate. 40 C.F.R. § 13.11. In addition, a quarterly nonpayment penalty charge may be assessed on any delinquent debt pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). In addition, EPA will assess a \$15.00 administrative handling charge for the administrative handling charge for administrative costs for the first 30-day period after the payment is due and an additional \$15.00 for each subsequent 30 days the penalty remains due.

V. GENERAL PROVISIONS

49. This CAFO shall not relieve Respondents 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. This CAFO does not constitute a waiver, suspension or modification of the requirements of the CWA.

50. This CAFO resolves 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 there under, 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.

51. 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.

52. The penalty described above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

53. This CAFO is conditioned upon the accuracy of the Respondent's representations to EPA. EPA reserves the right to seek and obtain appropriate relief if EPA obtains evidence that the information and/or representations made by the Respondent in this matter are false, or, in any material respect, inaccurate. That 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.

54. 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 Respondent to it.

55. 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.

Riverfront Investment Partners I, LLC
EPA Docket No. ~~CWA-03-2018-0108~~

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VI. EFFECTIVE DATE

56. This CAFO will be issued after a forty (40) day comment period, execution by an authorized representative of the EPA and filing with the regional hearing clerk. It will become final and effective 30 days after issuance.

FOR RESPONDENT Riverfront Investment Partners I, LLC:

By: John Begert

Name: John Begert

Title: Authorized Member

U.S. EPA-REGION 3-RHC
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SO ORDERED

this 20th day of November, 2018.

Catherine Libertz, Director
Water Protection Division

CERTIFICATE OF SERVICE

I certify that on NOV 29 2018, the original and one (1) copy of foregoing *Consent Agreement and Final Order*, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the same to each of the following persons, in the manner specified below, at the following addresses:

Copy served via Certified Mail, Return Receipt Requested, to:

Riverfront Investment Partners I, LLC
3050 K Street, NW, Suite 125
Washington, DC 20007

Copy served via Hand Delivery to:

Bonnie Pugh
Office of Regional Counsel (3RC20)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(Attorney for Complainant)

Dated: NOV 29 2018

Beverly Esposito
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III

TRACKING NUMBER(S): 7002 2410 0005 1405 0328