



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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
ITEM NUMBER 7005 3110 0000 5932 4172

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING OFFICE
MARCH 23 AM 7:50

March 24, 2010

Michael Vitale, Sr.
President
Robinson Concrete, Inc.
3486 Franklin Street Road
Auburn, New York 13021

RE: In the Matter of Robinson Concrete, Inc.
Docket No. CWA-02-2009-3404

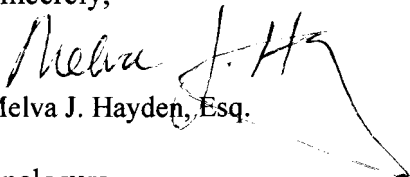
Dear Mr. Vitale, Sr.:

Enclosed is a Consent Agreement and Final Order (CA/FO) in the above-referenced matter. This CA/FO was fully executed on March 18, 2010.

Please note that the penalty of \$30,000 is required to be paid in full and received by EPA no later than ninety (90) days from the effective date of the CA/FO herein signed by the Regional Administrator. Please note further the payment instructions provided on page 3 of the CA/FO.

Also, please note the first milestone date for the SEP is to be met in accordance with the SEP Work Plan and Schedule.

Sincerely,


Melva J. Hayden, Esq.

Enclosure

cc: Karen Maples, Regional Hearing Clerk (w/enclosures)
Michael Oropallo, Esq. – Hiscock and Barclay (w/enclosures)
Susan L. Biro, Chief Administrative Law Judge – EPA Law Judges Office

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Region 2**

U.S. ENVIRONMENTAL
PROTECTION AGENCY
JULY 25 11 17:50
REGIONAL HEARING
OFFICE

IN THE MATTER OF:

Robinson Concrete, Inc., d/b/a Franklin
Street Ready Mix Facility, and Robinson
Concrete, Inc. Franklin Street Pit Sand and
Gravel Mine

3486 Franklin Street Road,
Auburn, New York 13021

Respondent.

NPDES TRACKING NOS.: NYR00E267,
NYR00D442, and NYU000213

**CONSENT AGREEMENT
AND
FINAL ORDER**

DOCKET NO. CWA-02-2009-3404

CONSENT AGREEMENT AND ORDER

Complainant, the United States Environmental Protection Agency ("EPA"), having issued the Complaint herein on July 15, 2009, against Robinson Concrete, Inc., d/b/a Franklin Street Ready Mix Facility, Robinson Concrete, Inc. Franklin Street Pit Sand and Gravel Mine, and Vitale Ready Mix Concrete, Inc., located at 3486 Franklin Street Road, Auburn, New York 13021, as the Respondent. However, since the issuance of the Complaint, Robinson Concrete, Inc.'s duly authorized representatives provided Complainant with significant new information to support its assertion that Vitale Ready Mix, Inc. is not a trade name under which Robinson Concrete, Inc. does business, but it is a separate corporate entity. Upon Complainant's review of said documentation, Complainant finds that Vitale Ready Mix, Inc. is a separate corporate entity. Complainant further finds that the subject of this action is Respondent Robinson Concrete, Inc., d/b/a Franklin Street Ready Mix Facility, and Robinson Concrete, Inc. Franklin Street Pit Sand and Gravel Mine ("Respondent").

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 without further litigation is the most appropriate means of resolving this matter; and

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 agreed, and ordered as follows:

I. PRELIMINARY STATEMENT

1. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319.
2. The Complaint alleges that Respondent failed to comply with the terms of Section 301 of the CWA, 33 U.S.C. § 1311 (a) with regard to the unlawful discharge of pollutants into navigable waters, and failure to obtain or apply for a National Discharge Pollutant Discharge Elimination System (NPDES) Individual Permit, a State Pollutant Discharge Elimination System (SPDES) Individual Permit, or the SPDES Multi Sector General Permit For Stormwater Discharges Associated With Industrial Activity (MSGP) permit in a timely manner. Respondent did ultimately obtain MSGP coverage under SPDES Permit Tracking Nos., NYR00E267 and NYR00D442, which are the duly issued NPDES permits for New York State.
3. EPA notified the New York State Department of Environmental Conservation (“NYSDEC) regarding this action and offered an opportunity for the NYSDEC to confer with EPA on the proposed penalty assessment, pursuant to 40 CFR Part 22.
4. This action was publicly noticed. No public comment was received.
5. Respondent filed an Answer and requested a hearing in this matter.
6. This Consent Agreement and Final Order shall apply to and be binding upon Respondent, its officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.
7. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondent. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual or legal allegations contained in the Complaint, consents to the terms of this Consent Agreement and Final Order.
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.

II. TERMS OF SETTLEMENT

9. Pursuant to ' 309(g) of the Clean Water Act, 33 U.S.C. ' 1319(g), the nature of the violations, Respondent’s agreement to perform a Supplemental Environmental Project (“SEP”) and other relevant factors, EPA has determined that an appropriate

civil penalty to settle this action is in the amount of THIRTY THOUSAND (\$30,000.00) DOLLARS.

10. For purposes of settlement, Respondent consents to the issuance of this Consent Agreement, consents to the payment of the civil penalty cited in the foregoing paragraph, and consents to the performance of the Supplemental Environmental Project ("SEP").

II. A. Penalty

11. No later than ninety (90) days after the date of issuance of the executed Final Order signed by the Regional Administrator, U.S. EPA, Region 2, Respondent shall pay the penalty of THIRTY THOUSAND (\$30,000.00) DOLLARS by cashier's or certified check, payable to the "Treasurer of the United States of America", 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. This check shall be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

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

Henry Mazzucca, P.E., Chief
Compliance Section
Water Compliance Branch
U.S. EPA, Region 2
290 Broadway, 20th Floor
New York, NY 10007-1866

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Payment must be received at the above address no later than ninety (90) calendar days after the date of signature of the Final Order (at the end of this document). The date by which payment must be received shall hereafter be referred to as the "due date".

- a. failure to pay the penalty in full according to the above provisions will result in a referral of this matter to the United States Department of Justice or the United States

Department of the Treasury for collection;

- b. 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;
 - c. in addition, pursuant to Section 309(g) (9) of the Clean Water 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;
 - d. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
12. 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.

II. B. Supplemental Environmental Project ("SEP")

13. a. Respondent shall complete the following supplemental environmental project ("SEP"), which the Parties agree is intended to secure significant environmental or public health protection and improvement:

SEP Description

In the Initial Phase, Respondent will study and research the equipment and processes necessary for the neutralization of the concrete truck wash water for reuse in concrete making. Currently Robinson Concrete treats its truck washwater removing solids in a three-chambered settling basin. These solids are taken from the basin and recycled for use in the concrete production process. Wastewater is currently recycled to wash trucks, but is not used in the concrete making process. In the Second Phase or Implementation, after this treated wastewater is neutralized and the pH is lowered, Respondent will be able to use the wash water in lieu of well water for the production of its concrete. The project will enable Respondent to recycle and reuse the waste water in its concrete mixing process. The purpose of this project is to reduce water usage and to create a closed loop system where truck wash water is recycled. Note that performance of this SEP precludes the Respondent from discharging its truck washwater to any water of the State, Sewer Systems or Publicly Owned Treatment Works.

b. Within thirty (30) calendar days from the date of execution of the CA/FO, Respondent shall submit a Work Plan to accomplish the SEP stated in Paragraph 13. a. above, which includes, at a minimum:

- A description of the research and development of the truck washwater neutralization project, including the scope of work and cost information;
- A written summary of the neutralization project, and plans and specifications for the neutralization system, including a cost estimate of the project.
- Environmental benefits of the project; a schedule for the completion of the research and the implementation phase, both of which must be completed no later than Two Hundred Seventy (270) days from the effective date of the CA/FO.

Respondent may consult with EPA while developing the Work Plan, to ensure timely submission of an approvable Work Plan, including submittal of drafts of the Work Plan to EPA for EPA's review and comments. EPA shall cooperate with Respondent in this consultation process, providing input and recommendations to assist Respondent in achieving a Work Plan that is reasonably acceptable to EPA.

- c. If EPA approves the Work Plan required by Paragraph 13. b. above, EPA shall provide written notice of the Work Plan approval.
- d. If EPA approves the Work Plan required by Paragraph 13. b. above, the EPA-approved Work Plan shall be incorporated by this reference into this Compliance Agreement and Final Order and shall be binding and enforceable.
- e. Respondent shall begin implementation of the Work Plan within thirty (30) days of receipt of EPA's written approval of the Work Plan.

The SEP as described in Paragraph 13. a. above shall be achieved in accordance with the EPA-approved Work Plan.

The SEP shall be completed no later than Two Hundred Seventy (270) days from the effective date of the CA/FO and a Final SEP Completion Report submitted no later than three hundred (300) days from the effective date of the CA/FO

14. **SEP Cost:** The total expenditure for the SEP, at cost to the Respondent, shall be not less than \$45,000, which includes at least \$35,000 for the implementation phase of the SEP. Respondent shall include documentation of the expenditures made in connection with the

SEP as part of the SEP Completion Report. The SEP costs shall not be deductible from the Respondent's federal or state taxes.

15. **Certification**: Respondent hereby certifies that, as of the date of this Consent Agreement and Final Order ("CA/FO"), Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent or any Third Party (if applicable) required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP. Respondent also certifies that there will be no discharge of truck wash waters to waters of the State, waters of the U.S., or indirect discharges to a Publicly Owned Treatment Works (POTW).
16. **SEP Completion Report**: Respondent shall submit a SEP Completion Report to EPA by no later than three hundred (300) days from the effective date of the CA/FO. The SEP Completion Report shall contain the following information:
 - a) itemized costs. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made, and;
 - b) certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order, and;
 - c) description of the environmental, ecological and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).
17. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this Consent Agreement, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and complete by signing the following statement:

"I hereby certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am

aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.”

18. **Periodic Reports/Submissions:** Respondent shall submit any additional reports or information required by the Work Plan to EPA in accordance with the schedule and requirements recited therein.
19. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement for a term of five (5) years after the implementation of the SEP and shall provide the documentation of any such underlying research and data to EPA not more than ten (10) working days after a request for such information.
20. **Public Statements:** Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Clean Water Act."
21. **EPA Acceptance of SEP Completion Report:**
 - a. After receipt of the SEP Completion Report described in Paragraph 16 above, EPA will notify Respondent, in writing, regarding: (i) any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or, (ii) indicate that EPA concludes that the project has been completed satisfactorily; or, (iii) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 22 below.
 - b. If EPA elects to exercise option (i) above, i.e., if the SEP Completion Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, EPA shall give Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this Paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be reasonable and final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this Consent Agreement and Final Order. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 22 below.

22. **Stipulated Penalties:**

- a. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in Section II.B above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 13 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 - i. If Respondent timely submits a Work Plan but the Work Plan fails to satisfy EPA requirements as detailed in Paragraph 13. b. above, EPA shall provide written notice of the disapproval and the SEP shall not be performed and Respondent shall pay a stipulated penalty in the amount of \$45,000.
 - ii. If Respondent submits an EPA-approvable Work Plan but it is not submitted by DUE DATE FOR WORK PLAN, the SEP shall be deemed not performed and Respondent shall pay a stipulated penalty in the amount of \$45,000.
 - iii. If the SEP is satisfactorily completed in accordance with Paragraph 13 above but Respondent expends less than the agreed to \$45,000 for the SEP project, Respondent shall pay a stipulated penalty equal to the difference between the amount of eligible SEP costs incurred by the Respondent and \$45,000.
 - iv. If the SEP is not completed in accordance with Paragraph 13 but: (a) Respondent certifies, with supporting documentation, the amount of eligible costs expended on the SEP, and (b) EPA determines that the Respondent made good faith and timely efforts to complete the project, then, Respondent shall pay a stipulated penalty that is the difference between the eligible SEP costs incurred by Respondent and \$ 45,000. If Respondent documents that it, together with the third party (if applicable), did all that they could to ensure timely completion of the SEP but the SEP is not timely completed because of action, or inaction, on the part of the state government or a court, then it shall be deemed that the Respondent made good faith and timely efforts to complete the SEP project.
 - v. If Respondent halts or abandons work on the SEP as described in Paragraph 13, a, above and after the Work Plan has been approved by EPA, prior to its completion, Respondent shall pay a stipulated penalty of \$5,000 and shall also pay the difference of eligible costs incurred and \$45,000.
 - vi. For failure to submit the SEP Completion Report required by Paragraph

16 above, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after the report was due until the report is submitted.

- vii. For failure to submit any other report required by Paragraph 18 above, Respondent shall pay a stipulated penalty in the amount of \$100 for each day after the report was originally due until the report is submitted.
- b. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
- c. Respondent shall pay stipulated penalties within thirty (30) days after receipt of written demand by EPA for such penalties. Payment of stipulated penalties shall be made payable to the "Treasurer of the United States of America." Such check shall be mailed to:

Regional Hearing Clerk
U.S. EPA, Region 2
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The checks 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.

A copy of the check and any transmittal letter shall be sent to each of the following:

Henry Mazzucca, P.E., Chief
Compliance Section
Water Compliance Branch
U.S. EPA, Region 2
290 Broadway, 20th Floor
New York, NY 10007

and

Regional Hearing Clerk
U.S. EPA, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Interest and late charges on stipulated penalties shall be paid as stated in Paragraph 11 above.

II. C. General Provisions

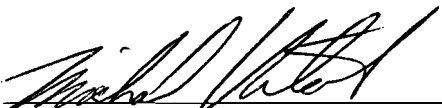
23. Respondent shall submit all notices and reports required by this Consent Agreement and Final Order by first class mail to:

Henry Mazzucca, P.E., Chief
Compliance Section
Water Compliance Branch
U.S. EPA, Region 2
290 Broadway, 20th Floor
New York, NY 10007-1866

24. 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.
25. 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.
26. This Consent Agreement and Order 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, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent, if any, in connection with the SEP undertaken pursuant to this Agreement.
27. This Consent Agreement and Final Order constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the violations alleged in the Complaint. Nothing in this Consent Agreement and Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this Consent Agreement and Final Order 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.
28. 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.

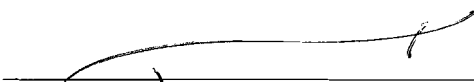
29. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this Consent Agreement and Order.

RESPONDENT:

BY: 
Michael Vitale, Sr., President
Robinson Concrete, Inc.

DATE: 3/16/2010

COMPLAINANT:

BY: 
Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U.S. EPA, Region 2
290 Broadway, 21st Floor
New York, New York 10007-1866

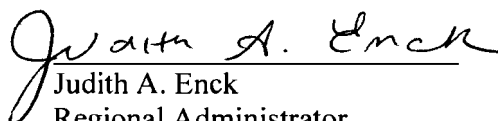
DATE: MARCH 18, 2010

III. FINAL ORDER

The Regional Administrator of the U.S. 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, U.S. EPA Region 2, New York, NY.

3-18-10

Date



Judith A. Enck
Regional Administrator
United States Environmental
Protection Agency-Region 2
290 Broadway
New York, NY 10007-1866

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In The Matter of
Robinson Concrete, Inc.
d/b/a Franklin Street Ready Mix Facility,
and Robinson Concrete, Inc. Franklin
Street Pit Sand and Gravel Mine
356 Franklin Street Rd.
Auburn, New York 13021

Respondent.

NPDES TRACKING NOS.:
NYR00E267,
NYR00D442, and NYU000213

DOCKET NO. CWA-02-2009-3404

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I served the foregoing fully executed Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner.

Copy by Certified Mail

Return Receipt Requested:

Michael Oropallo, Esquire
Hiscock & Barclay, LLP
2000 HSBC Plaza
100 Chestnut Street
Rochester, New York 14604

Original and One Copy

By Internal Mail (pouch):

Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th floor
New York, New York 10007-1866


Copy By Facsimile and

Internal Mail (pouch) _____:

Hon. Susan L. Biro
Chief Administrative Law Judge
U.S. EPA
Office of Administrative Law Judges
Mail Code 1900L
1200 Pennsylvania Avenue
Washington, DC 20460-2001

MAR 24 2010

Date: _____


Secretary