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9 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
REGION 9

10 IN THE MATTER OF:

) Docket No. CWA-09-2015-0003

11
12
13 Tutor-Saliba Corporation

)
)
) **MOTION TO APPROVE FINAL ORDER**
) **AND PROOF OF COMPLIANCE WITH**
) **PUBLIC NOTICE REQUIREMENTS OF**
) **40 C.F.R. § 22.45(b)**

14 Respondent

)
) Class II Administrative Penalty Proceeding
) under Section 309(g) of the Clean Water Act,
) 33 U.S.C. § 1319(g), and 40 C.F.R. §§
) 22.13(b) and 22.18.

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18 Complainant hereby moves the Presiding Officer in this matter to issue the proposed
19 Final Order to make effective the attached Consent Agreement (“proposed CA/FO”). The
20 Consent Agreement was executed on July 31, 2015 by Complainant, United States
21 Environmental Protection Agency Region 9, and on July 21, 2015 by Respondent, Tutor-Saliba
22 Corporation. As set forth in the Consent Agreement, the parties are seeking approval of their
23 agreement to settle this proceeding pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3) of
24 the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties*
25 *and the Revocation or Suspension of Permits* at 40 C.F.R Part 22.

1 **A. Compliance with Public Notice and Comment Requirements.**

2 Administrative proceedings for the assessment of a civil penalty under Section 309(g) of
3 the CWA, 33 U.S.C. § 1319(g), are subject to the supplemental rule at 40 C.F.R. § 22.45(b)(1),
4 which requires Complainant to notify the public before assessing a civil penalty, and provides, in
5 relevant part, that: “Such notice shall be provided ... in the case of a proceeding proposed to be
6 commenced pursuant to § 22.13(b), no less than 40 days before the issuance of an order
7 assessing a civil penalty.” Further, such notice must be made to the public “by a method
8 reasonably calculated to provide notice” and must include:

- 9 (i) The docket number of the proceeding;
10 (ii) The name and address of the complainant and respondent, and the person
11 from whom information on the proceeding may be obtained, and the
12 address of the Regional Hearing Clerk to whom appropriate comments
13 shall be directed;
14 (iii) The location of the site or facility from which the violations are alleged,
15 and any applicable permit number;
16 (iv) A description of the violation alleged and the relief sought; and
17 (v) A notice that persons shall submit comments to the Regional Hearing
18 Clerk, and the deadline for such submissions.

19 *See* 40 C.F.R. § 22.45(b)(2).

20 Public notices required under 40 C.F.R. § 22.45(b) may be provided via the internet. *See*
21 71 Fed. Reg. 51193 (Aug. 29, 2006) (*Notice of Intent To Provide Internet Publication of*
22 *Proposed Penalties under the Clean Water Act and Safe Drinking Water Act*). On July 31, 2015,
23 EPA posted the public notice of the proposed CA/FO on EPA’s Region 9 website. The public
24 notice included a link to a copy of the proposed CA/FO. A true and correct copy of the public
25 notice is attached as **Exhibit A** to the Declaration of Marcela von Vacano (**Attachment 1**). The
public notice included the information required by 40 C.F.R. § 22.45(b)(i) through (v), described
above.

 On September 9, 2015, the 30-day public notice comment period closed. No public
comments were received by EPA Region 9’s Regional Hearing Clerk, as shown by the emails

1 from Steve Armsey, Regional Hearing Clerk for EPA Region 9, dated September 1 and 9, 2015,
2 attached as **Exhibit B** to the von Vacano Decl.

3 40 C.F.R. § 22.45(c) applies to comments made by a person not a party to the proceeding,
4 and 40 C.F.R. § 22.45(c)(1) provides that any person wishing to participate in the proceedings
5 must notify the Regional Hearing Clerk in writing within the public notice period under 40
6 C.F.R. § 22.45(b) and provide his name, complete mailing address, and state that he wishes to
7 participate in the proceeding. No commenters stated a wish to participate in these proceedings
8 under 40 C.F.R. § 22.45(c)(1).

9 40 C.F.R. § 22.45(c)(4)(i) further provides that complainant shall provide to each
10 commenter, by certified mail, return receipt requested, a copy of any consent agreement between
11 the parties and the proposed final order. Within 30 days of receipt of the CA/FO a commenter
12 may, under 40 C.F.R. § 22.45(c)(4)(ii), petition the Regional Administrator to set aside the
13 CA/FO on the basis that material evidence was not considered. As there were no comments on
14 the CA/FO at issue here, this regulatory provision is not applicable in this case.

15 **B. Conclusion**

16 Upon this showing of sufficient proof that Complainant complied with the public notice
17 requirements of 40 C.F.R. § 22.45(b), that there were no comments, and that no commenters
18 filed a petition to set aside the CA/FO, Complainant hereby respectfully moves the Presiding
19 Officer to approve the Final Order in this matter.

20 Respectfully submitted this 10th day of September, 2015.

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22 By: Marcela von Vacano
23 Marcela von Vacano
24 Attorney-Advisor
25 Office of Regional Counsel

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2 **CERTIFICATE OF SERVICE**

3 I certify that, on the date noted below, I caused to be mailed a copy of the foregoing
4 Motion to Approve Final Order and accompanying Declaration of Marcela von Vacano
5 (including all attached exhibits) to the following address:
6

7 David Romyn, Esq.
8 Attorney for Tutor-Saliba Corporation
9 Castle & Associates, a Professional Law Corporation
10 8383 Wilshire Blvd., Suite 810
11 Beverly Hills, CA 90211

12
13 September 10th, 2015

14 *G. Gholson*
15 Gregory Gholson
16 Name

17 *Physical Scientist*
18 Position
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