

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9
75 HAWTHORNE STREET
San Francisco, California 94105**



IN THE MATTER OF:)	DOCKET NO. CWA-09-2025-0049
)	
International Industrial Park, Inc. and SD Commercial, LLC)	CONSENT AGREEMENT AND FINAL ORDER
)	
San Diego, California)	<i>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</i>
Respondents.)	
_____)	

COMPLAINT/CONSENT AGREEMENT

I. AUTHORITY AND PARTIES

1. This is a Class II civil administrative penalty proceeding under Section 309(g)(1)(A) and 2(B) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(1)(A) and 2(B), and 40 C.F.R. Part 22 (*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*).
2. Pursuant to Section 309(g) of the 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 the EPA Region 9, who in turn has delegated this authority to the Director of the Enforcement and Compliance Assurance Division, hereinafter, "Complainant."
3. Respondents are International Industrial Park, Inc., and SD Commercial, LLC, both located at 5440 Morehouse Drive, Suite 4000, San Diego, CA.
4. This Consent Agreement and Final Order (CA/FO), which contains the elements of a complaint required by 40 C.F.R. § 22.14(a), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
5. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), the EPA has consulted with the State of California regarding this penalty action.

6. Complainant and Respondent agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their respective interest and in the public interest.

NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon consent by Complainant and Respondents, it is hereby STIPULATED, AGREED, AND ORDERED:

II. STATUTORY AND REGULATORY FRAMEWORK

7. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for a person to discharge pollutants, including dredged or fill material, from a point source into waters of the United States, except as authorized by a CWA permit. Under section 404 of the CWA, 33 U.S.C. § 1344, the U.S. Army Corps of Engineers (“Corps”) issues permits for the discharge of dredged or fill material into waters of the United States.
8. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” to mean “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.”
9. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, “dredged spoil,” “biological materials,” “rock,” and “sand.”
10. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.”
11. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”
12. Regulations codified at 33 C.F.R. § 323.2(c) define “dredged material” as “material that is excavated or dredged from waters of the United States.” The term “discharge of dredged material” means “any addition of dredged material into, including any redeposit of dredged material other than incidental fallback within, the waters of the United States.” 33 C.F.R. § 323.2(d)(1).
13. Regulations codified at 33 C.F.R. § 323.2(e)(1) define “fill material” as “material placed in waters of the United States where the material has the effect of: (i) Replacing any portion of a water of the United States with dry land; or (ii) Changing the bottom elevation of any portion of a water of the United States.”
14. Regulations codified at 33 C.F.R. § 323.2(f) define “discharge of fill material” as “the addition of fill material into waters of the United States,” and includes, *inter alia*,

placement of fill that is necessary for the construction of any structure or infrastructure in a water of the United States; the building of any structure, infrastructure, or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, or other uses; causeways or road fills; dams and dikes; and levees.

15. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “waters of the United States, including the territorial seas.” See also implementing regulations at 33 C.F.R. § 328.3 and 40 C.F.R. § 120.2.
16. Pursuant to CWA section 309(g), 33 U.S.C. § 1319(g), and 40 C.F.R. Part 19, EPA may assess a Class II civil administrative penalty of up to \$27,378 per day of violation, not to exceed \$342,218 in total, against a person for CWA section 301(a) violations that occurred after November 2, 2015, where penalties are assessed on or after January 8, 2025.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

17. Respondent International Industrial Park, Inc., the owner of the subject property, is a corporation organized under California law and a “person” within the meaning of section 502(5) of the CWA, 33 U.S.C. § 1362(5).
18. Respondent SD Commercial, LLC, the developer of the subject property, is a limited liability company organized under California law and a “person” within the meaning of section 502(5) of the CWA, 33 U.S.C. § 1362(5).
19. On or around December 2022, into at least March 2023, Respondent International Industrial Park, Inc. directed Respondent SD Commercial, LLC to undertake the first phase of construction of the International Industrial Park TM 5549 project (the Project) on approximately 135 acres of real property located in East Otay Mesa, bordered by Donovan Prison Road to the north, Alta Road to the east, and Lone Star Road to the south, in San Diego County, California.
20. According to the December 20, 2024, revised Jurisdictional Delineation Report prepared by Respondents’ environmental consultant, the Project area contained an estimated 1.474 acres of waters and 3.01 acres of adjacent wetlands, identified in the documents as “Drainage A” and “Drainage B,” of Johnson Canyon Creek.
21. From Drainage A and Drainage B, Johnson Canyon Creek flows approximately 2.5 miles to the Otay River, which, in turn, flows to San Diego Bay, an embayment of the Pacific Ocean. Drainages A and B, their adjacent wetlands, and the downstream waters are “waters of the United States” within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7), and implementing regulations.

22. Respondents' Project consists of grading and construction of facilities for industrial purposes, including five industrial pads, access roads, and associated infrastructure.
23. On June 29, 2023, San Diego Regional Water Quality Control Board (RWQCB) staff notified the U.S. Army Corps of Engineers (Corps) that Respondents had begun grading within the Project area, and that discharges of dredged and/or fill material into Drainage A and Drainage B appeared to have occurred without authorization.
24. On July 26, 2023, inspectors from EPA Region 9 and the Corps inspected the Project area and observed that Respondents had conducted earthmoving activities within the Project area that resulted in the discharge of dredged and/or fill material into Drainage A and Drainage B, without authorization. EPA and Corps staff subsequently determined that the discharges filled approximately 0.529 acre of non-wetland waters and 0.253 acre of wetlands.
25. During July 2023, EPA learned that an employee of Respondent SD Commercial, LLC had submitted a falsified CWA section 404 permit and a falsified CWA section 401 water quality certification to the County of San Diego to obtain a grading permit for the Project. The employee entered into a plea agreement with the United States Attorney and, on May 15, 2024, was convicted of "knowingly causing the discharge of a pollutant, that is, fill dirt, from a point source into a water of the United States without a permit under 33 U.S.C § 1344, on or about between November of 2022 and February of 2023, within the Southern District of California, in violation of 33 U.S.C. §§ 1311(a) and 1319(c)(2)(a), and 18 U.S.C. § 2(b)."
26. As a result of its earthmoving activity in the Project area, Respondents discharged earthen materials that constituted "pollutants" under section 502(6) of the CWA, 33 U.S.C. § 1362(6).
27. Respondents' discharge of dredged and/or fill material into waters of the United States constitutes a "discharge of pollutants" within the meaning of CWA section 502(12), 33 U.S.C. § 1362(12).
28. The earthmoving equipment used by Respondents to discharge fill material to waters of the United States within the Project area were "point source[s]" within the meaning of section 502(14) of the CWA, 33 U.S.C. § 1362(14).
29. By discharging dredged and fill material into waters of the United States within the Project area without CWA permit authorization, Respondents violated section 301(a) of the CWA, 33 U.S.C. § 1311(a).

30. On May 15, 2025, the RWQCB issued Order No. R9-2025-0021 for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements Order No. 2003-0017-DWQ, which includes conditions requiring Respondents to implement the mitigation work described in the January 20, 2025, *IIP TM 5549 Offsite Habitat Mitigation and Monitoring Plan* (HMMP) prepared by Alden Environmental, Inc. (including any subsequent modifications), to rehabilitate and enhance native wetland and riparian habitat in Johnson Canyon, including the removal of invasive tamarisk and trash from a 5.59 acre parcel of land, and the restoration and enhancement of native riparian and wetland vegetation with 1.28 acres of waters and wetlands, five years of monitoring, and attainment of performance standards. The requirements of the CWA section 401 water quality certification set forth in the RWQCB order are expected to be incorporated into one or more section 404 authorization(s) by the Corps that will allow Respondents to resume work on their Project and implement the required mitigation work.

IV. ALLEGED VIOLATIONS

31. As a result of the alleged earthmoving activities in and around the Project area that occurred from approximately December 2022 through March 2023, on dates best known to Respondents, Respondents discharged, or caused to be discharged, dredged and/or fill material into waters of the United States without authorization under section 404 of the CWA, 33 U.S.C. § 1344, in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

V. ADMINISTRATIVE PENALTY

32. In consideration of the penalty factors of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), Respondent agrees to pay a civil penalty in the amount of Eighty-Five Thousand (**\$85,000**) (“Assessed Penalty”) within thirty (30) calendar days after the date the Final Order ratifying this Consent Agreement is filed with the Regional Hearing Clerk, as set forth in Section X of this Order (“Effective Date”).
33. Respondents shall pay the Assessed Penalty and, if applicable, any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>.
34. When making a payment, Respondents shall:
- a. Identify every payment with Respondents’ name(s) and the docket number of this Consent Agreement: **CWA-09-2025-0049**;

- b. Concurrently with any payment or within 24 hours of any payment, Respondents shall serve via electronic mail proof of such payment to the following persons:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 9
R9HearingClerk@epa.gov

and

Juliana Gomez
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 9
Gomez.Juliana@epa.gov

and

U.S. Environmental Protection Agency
Cincinnati Finance Center
CINWD_AcctsReceivable@epa.gov

“Proof of payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to EPA requirements, in the amount due, and identified with the appropriate docket number and Respondents’ name.

35. Interest, Charges, and Penalties on Late Payments. Pursuant to 33 U.S.C. § 1319(g)(9), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondents fail to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Consent Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

- a. Interest. Interest begins to accrue from the Effective Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. § 1319(g)(9). The rate of interest is the IRS large corporate underpayment rate.
- b. Handling Charges. The United States’ enforcement expenses including, but not limited to, attorneys’ fees and costs of collection proceedings.

c. Late Payment Penalty. A twenty percent (20%) quarterly non-payment penalty.

36. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondents fail to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Consent Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14.
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.
- c. Suspend or revoke a Respondent's licenses or other privileges, or suspend or disqualify a Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 33 U.S.C. § 1319(g)(9). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

37. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.

38. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.

VI. APPLICABILITY

39. This CA/FO shall apply to and be binding on Respondents, Respondents' officers, directors, partners, agents, employees, contractors, successors and assigns. Action or inaction of any persons, firms, contractors, employees, agents or corporations acting under, through, or for either Respondent shall not excuse any failure of each Respondent to fully perform its obligations under this CA/FO. Changes in ownership, real property interest, or transfer of personal assets shall not alter Respondents' obligations under this CA/FO.

VII. RESPONDENTS' ADMISSIONS AND WAIVERS

40. In accordance with 40 C.F.R. § 22.18(b)(2), for the purpose of this proceeding, each Respondent:

- a. admits the jurisdictional allegations of this Consent Agreement;
- b. neither admits nor denies the specific factual allegations contained in this Consent Agreement;
- c. consents to all conditions specified in this Consent Agreement and to the assessment of the civil administrative penalty set forth in Section V above;
- d. waives any right to contest the allegations set forth in this Consent Agreement and waives its right to appeal the Final Order.

41. Each Respondent waives the right to a hearing under CWA section 309(g)(2)(B) and to any appeal of the Final Order under CWA section 309(g)(8)(B), 33 U.S.C. §§ 1319(g)(2)(B) and 1319(g)(8)(B).

42. By signing this Consent Agreement, each Respondent waives any rights or defenses that Respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the final order accompanying this Consent Agreement.

VIII. RESERVATION OF RIGHTS

43. In accordance with 40 C.F.R. § 22.18(c), full payment of the penalty set forth in this CA/FO only resolves Respondents' CWA civil penalty liabilities for the violations specifically alleged herein and does not in any case affect the right of the EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. Compliance with this CA/FO also does not affect the right of the EPA to issue orders or bring suit for any imminent and substantial endangerment to the health, welfare or livelihood of persons, or to the environment, as provided for by law.

44. To the extent that Respondents do not successfully complete the mitigation project required by RWQCB Order No. R9-2025-0021 for Clean Water Act Section 401 Water Quality Certification and Waste Discharge Requirements Order No. 2003-0017-DWQ, and any requirements contained in a Corps section 404 authorization that relate to the mitigation project, EPA reserves the right to pursue further relief to compensate for the unrealized environmental benefits of the mitigation project.
45. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations, and shall in no way relieve or affect Respondents' obligations under any applicable federal, state or local laws, regulations, or permits.

IX. ADDITIONAL TERMS

46. Each party shall bear its own attorneys' fees and costs.
47. This Consent Agreement can be signed in counterparts.
48. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.
49. The undersigned representative of each Respondent certifies that they have authority to bind Respondent to this Consent Agreement.
50. By signing this Consent Agreement, Respondents acknowledge that this Consent Agreement does not contain any confidential business information (CBI) or waives any claim of CBI.
51. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order and settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondents to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondents herein agrees, that:

- a. Respondents shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondents shall therein certify that its completed IRS Form W-9 includes each Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondents shall email their completed Form W-9 to EPA’s Cincinnati Finance Center at sherrer.dana@epa.gov, within 30 days after the Effective Date, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that a Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the Effective Date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:
 - i. notify EPA’s Cincinnati Finance Center of this fact, via email, within 30 days after the Effective Date of this CA/FO; and
 - ii. provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via email, within five (5) days of Respondent’s issuance and receipt of the TIN.

X. EFFECTIVE DATE AND TERMINATION

52. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the Effective Date of this CA/FO is the date that the Final Order, having been signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk. This CA/FO shall terminate when Respondents have complied with the requirements of this CA/FO in full.

XI. PUBLIC NOTICE

53. As required by Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), prior to submitting this Consent Agreement to the Regional Judicial Officer or Regional Administrator for approval, the EPA will provide public notice of this Consent Agreement and a reasonable opportunity to comment on the matter. The EPA may modify or withdraw its consent to this Consent Agreement if comments received disclose facts or considerations indicating this Consent Agreement is inappropriate, improper, or inadequate, or if a hearing is requested under section 309(g)(4)(C), 33 U.S.C. § 1319(g)(4)(C).

IT IS SO AGREED.

For Complainant the U.S. Environmental Protection Agency, Region 9:

AMY MILLER- Digitally signed by AMY
BOWEN MILLER-BOWEN
Date: 2025.05.30
14:21:51 -07'00'

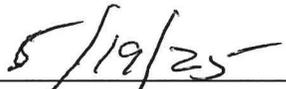
Amy C. Miller-Bowen, Director
Enforcement and Compliance Assurance Division

Of counsel:
Brett Moffatt
Attorney-Advisor
Office of Regional Counsel

For Respondent International Industrial Park, Inc.:



David Wick
Vice President



Date

For Respondent SD Commercial, LLC:



David Wick
President



Date

FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order (U.S. EPA Docket No. CWA-09-2025-0049) be entered, and that Respondent shall pay a civil penalty in the amount of Eighty-Five Thousand Dollars (\$85,000) in accordance with the terms of this Consent Agreement and Final Order.

Beatrice Wong
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 9

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of International Industrial Park, Inc. and SF Commercial, LLC (Docket No. CWA-09-2025-0049) was filed with Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was served on the parties, via electronic mail, as indicated below:

RESPONDENT: Cynthia L. Eldred, Esq.
1013 White Oak Avenue
Maryville, TN 37803
Cindy@eldredlaw.com

COMPLAINANT: Brett Moffatt
Assistant Regional Counsel
U.S. EPA – Region IX
Water Section IV (ORC-2-4)
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San Francisco, CA 94105
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Regional Hearing Clerk
U.S. EPA – Region IX