



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2014 FEB 24 PM 2:30

1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917

<http://www.epa.gov/region08>

FILED
EPA REGION VIII
HEARING ROOM

DOCKET NO.: CWA-08-2014-0008

IN THE MATTER OF:

JP EXCAVATING, INC.


RESPONDENT

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)
)

FINAL ORDER

Pursuant to 40 C.F.R. §22.13(b) and 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 24th DAY OF February, 2014.


Elyana R. Sutin
Regional Judicial Officer

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2014 FEB 24 PM 2:30

EPA REGION VIII
HEARING CLERK

In the Matter of:)
)
JP Excavating, Inc.,) CONSENT AGREEMENT
)
)
Respondent.) Docket No. CWA-08-2014-0008
)

Region 8 of the United States Environmental Protection Agency (EPA) and JP Excavating, Inc. (Respondent), by their undersigned representatives, agree as follows:

1. On December 10, 2013, the EPA issued a Complaint and Notice of Opportunity for Hearing (Complaint) alleging that the Respondent violated a permit issued pursuant to section 402 of the Clean Water Act (Act), 33 U.S.C. § 1342. The Complaint proposed that the Respondent pay an administrative penalty for its violations, pursuant to section 309(g) of the Act, 33 U.S.C. § 1319(g).
2. The Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the specific factual allegations of the Complaint.
3. The Respondent waives its rights to contest the allegations in the Complaint and to appeal any final order (Final Order) that an EPA Regional Judicial Officer may issue to approve this consent agreement (Agreement).
4. This Agreement, upon incorporation into a Final Order, is binding upon the EPA, the Respondent, and the Respondent's successors and assigns. Any change in ownership or corporate status of the Respondent, including, but not limited to, any transfer of assets or real or personal property, shall not alter the Respondent's responsibilities under this Agreement.

5. The Respondent agrees to pay a civil penalty in the amount of twenty-five thousand dollars (\$25,000) in the manner described below:

- a. Payment shall be in a single payment of \$25,000, due no later than 30 calendar days from the date of the Final Order. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
- b. The payment shall be made by remitting a check or making a wire transfer or on-line payment. The check or other payment shall designate the name and docket number of this case, be in the amount stated in part "a," above, and be payable to "Treasurer, United States of America." The payment shall be sent as follows:

If sent by regular U.S. mail:

U.S. Environmental Protection Agency / Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If sent by any overnight commercial carrier:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If sent by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City with the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"

Automated Clearinghouse (ACH) for receiving US currency:

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 -- checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737

Contacts: John Schmid (202-874-7026) and REX (Remittance Express)
800-234-5681

On-line Debit and Credit Card payment: There is now an On-Line Payment Option available through the Dept. 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.

At the time of payment, a copy of the check (or notification of other type of payment) shall also be sent to:

Natasha Davis, Enforcement Officer
Water Enforcement Program (8ENF-W)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

and

Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

- c. If the payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (e.g., on the 1st late day, 30 days of interest will have accrued).

- d. A handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the Final Order, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to outstanding handling charges, second to penalty assessments, third to accrued interest, and then to the outstanding principal amount.
- e. The Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
6. Nothing in this Agreement shall relieve the Respondent of the duty to comply with the Act and any regulation, order, or permit issued pursuant to the Act.
7. Any failure by the Respondent to comply with this Agreement shall constitute a breach of this Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Agreement and such other relief as may be appropriate.
8. Nothing in this Agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as any failure by the Respondent to comply with this Agreement.
9. The undersigned representative of the Respondent certifies that she is fully authorized to enter into and bind the Respondent to this Agreement.
10. The parties agree to submit this Agreement to the appropriate EPA regional judicial officer, with a request that it be incorporated into a Final Order.
11. Each party shall bear its own costs and attorney's fees in connection with this matter.
12. This Agreement, upon incorporation into a Final Order and full satisfaction by the parties, shall be a complete and full resolution of the Respondent's liability for federal civil penalties for the violations and facts alleged in the Complaint.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY REGION 8,
Complainant.

Date: 2/20/14

for By: Kelley Land, acting ARA
Andrew M. Gaydosch
Assistant Regional Administrator
Office of Enforcement,
Compliance and Environmental Justice
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

JP EXCAVATING, INC.,
Respondent.

Date: 2-0-14

By: [Signature]
Melissa Scott, Controller

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/ FINAL ORDER** in the matter **JP EXCAVATING, INC.; DOCKET NO.: CWA-08-2014-0008** was filed with the Regional Hearing Clerk on February 24, 2014.

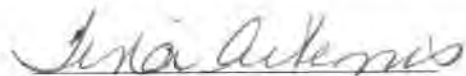
Further, the undersigned certifies that a true and correct copy of the documents were delivered to, Margaret "Peggy" Livingston, Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were sent and placed in the United States mail certified/return receipt and emailed on February 24, 2014 to:

H. Michael Keller
David P. Mooers-Putzer
VanCott, Bagley, Cornwall & McCarthy
36 S. State Street, Suite 1900
Salt Lake City, UT 84111

And emailed to:

Kim White
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

February 24, 2014



Tina Artemis
Paralegal/Regional Hearing Clerk

