

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

**Filed July 27, 2020 @ 12:14pm
USEPA – Region II
Regional Hearing Clerk**

IN THE MATTER OF:

Sayreville Seaport Associates Urban Renewal, L.P.
7 Giralda Farms
Madison, New Jersey 07940

RESPONDENT

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)

**CONSENT AGREEMENT
AND FINAL ORDER**

CWA-02-2020-3401

I. PRELIMINARY STATEMENT

Complainant, the United States Environmental Protection Agency (“EPA”), and Sayreville Seaport Associates Urban Renewal, L.P. (“SSA” or “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;

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:

II. PROCEDURAL AND FACTUAL BACKGROUND

1. This administrative proceeding for the assessment of a civil penalty is instituted pursuant to Section 309(g) of the Clean Water Act (“Act” or “CWA”), 33 U.S.C. § 1319(g).
2. The following Findings of Fact are made, and Final Order issued pursuant to the authority vested in the Administrator of the EPA by the Act, 33 U.S.C. § 1251 et seq., and in particular by Section 309(g) of the Act, 33 U.S.C. § 1319(g). This authority has been duly delegated by the Administrator to the Regional Administrator of Region 2 of EPA, which authority has been duly re-delegated to the undersigned Director of Enforcement and Compliance Assurance Division, Region 2, EPA.
3. EPA is initiating and concluding this administrative proceeding for the assessment of a civil penalty pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.13(b) of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits” (“CROP”), which sets forth procedures for simultaneous commencement and conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order pursuant to 40 C.F.R. §§ 22.13(b)(2) and (3).
4. This Consent Agreement and Final Order (collectively “CA/FO”) resolves violations of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, as specifically alleged herein.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
2. Respondent ground leases and operates an approximately 400-acre remediation and redevelopment property located at or near 1000 Chevalier Avenue in Sayreville, New Jersey (the “Site”).
3. Stormwater associated with industrial activity (consisting only of ongoing remediation activities relating to former industrial operations undertaken by a prior Site owner and operator) from Parcel C of the Site, which consists of approximately 312 acres, discharges via an outfall pipe designated by NJDEP as DSN002A to the Raritan River.
4. The Raritan River is a navigable water of the United States pursuant to Section 502(7) of the Act, 33 U.S.C. § 1362(7).
5. Respondent discharges stormwater associated with industrial activity, which includes “pollutants” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6), via the above-mentioned outfall pipe, a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to a navigable water of the United States, and as such, discharges pollutants pursuant to Section 502(12) of the CWA, 33 U.S.C. § 1362(12).
6. Stormwater discharges from outfall DSN002A to the Raritan River are authorized pursuant to and in accordance with NJPDES Individual Permit No. NJ0000931 (the “Permit”). The most recent Permit became effective on October 1, 2016 and expires on September 30, 2021. Prior to October 1, 2016, the Permit was renewed on November 1, 2011.
7. On February 15, 2017, EPA Region 2 conducted a Compliance Evaluation Inspection (“CEI”) at the Site.
8. Based on observations at the Site at the time of the CEI and a review of records, EPA identified the following Permit violations:
 - a. Stormwater Part IV.C.7.a of the Permit requires that, “All stormwater discharges to surface water shall continue to discharge via DSN002A and be monitored on a quarterly basis.” At the time of the CEI, EPA observed water flowing via a discrete channel into the North Ditch, and turbid water flowing in the ditch and out from the Site into the Raritan River. The North Ditch is located about one (1) mile north of outfall DSN002A. Discharges from the ditch are not monitored by Respondent. Therefore, Respondent violated Stormwater Part IV.C.7.a of the Permit.
 - b. Stormwater Part IV.B.1.a.i of the Permit requires that construction activity that may result in a stormwater discharge authorized by the Permit shall be executed only in accordance with a Stormwater Pollution Prevention Plan (“SPPP”) that includes a Soil Erosion and Sediment Control (“SESC”) Plan certified pursuant to N.J.S.A. 4:24-43. At the time of the CEI, EPA identified the following violations of Respondent’s SESC Plan dated March 20, 2015 (“2015 SESC Plan”), and interim soil erosion and sediment control measures document, dated November 17, 2016 (the “Interim Measures”):

- i. The sequence of construction in the 2015 SESC Plan required the installation of a wet pond and sediment basins prior to removal of contaminated material. The one (1) wet pond and four (4) sediment basins identified in the 2015 SESC Plan had not been installed at the time of the CEI.
- ii. The 2015 SESC Plan required the installation of silt fencing: around the perimeter of the Site/at the limit of disturbance, around stockpiles, and within remediation areas to limit sheet flow to 150 feet across disturbed areas. At the time of the CEI, Respondent had not installed and/or maintained silt fencing around the entire perimeter of the Site/at the limit of disturbance, around all stockpiles, and within all remediation areas to limit sheet flow.
- iii. The 2015 SESC Plan required that any disturbed areas that will be left exposed for more than 60 days, and not subject to construction traffic, to immediately receive temporary seeding. If the season prevented the establishment of temporary cover, the disturbed areas were required to be mulched with straw, or equivalent material. The 2015 SESC Plan also required that immediately following initial disturbance or rough grading, all critical areas subject to erosion (i.e., soil stockpiles, steep slopes and roadway embankments) shall receive temporary seeding in combination with straw mulch or a suitable equivalent, and a mulch anchor, in accordance with NJ standards. The 2015 SESC plan provided further specifications for stockpiles, stating that all stockpiles to remain disturbed for more than 30 days shall be stabilized in accordance with soil erosion and sediment control standards. Lastly, the Interim Measures included hydroseeding for new processed dredge material (“PDM”) stockpiles, pre-load soil and the Bass Pro parking lot. At the time of the CEI, Respondent had not installed all temporary stabilization measures in accordance with the 2015 SESC Plan or Interim Measures.
- iv. The 2015 SESC Plan required the installation of a pad of clean crushed stone at points where traffic will access the Site. Furthermore, the Interim Measures specified an extension of the tracking pad to 425 linear feet. At the time of the CEI, the crushed stone construction entrance was completely covered with sediment/caked with mud, with sediment observed on the paved roadway. A truck wheel washer (not in use during the CEI) was staged 200-300 feet away from the paved roadway; in between the wheel washer and the paved roadway were muddy, disturbed soils. The tracking pad had not yet been extended to the specified length at the time of the CEI.

Therefore, Respondent violated Stormwater Part IV.B.1.a.i of the Permit.

- c. Stormwater Part IV.C.2 of the Permit, Material Management Best Management Practice (“BMP”) to Prevent or Reduce Waste, requires that any fuels, lubricants, petroleum products, anti-freeze, paints and paint thinners, cleaning solvents and acids, detergents, chemical additives, and concrete curing compounds shall be stored in containers in a dry covered area. At the time of the CEI, drums and buckets of oily water, antifreeze and hydraulic oil were observed to be located outside in areas where they could be exposed to stormwater. In addition, a 1000-gallon diesel fuel tank was onsite without cover. Therefore, Respondent violated Stormwater Part IV.C.2 of the Permit.

- d. Stormwater Part IV.C.9 of the Permit, BMP for Maintenance of Tertiary Lagoon, requires Respondent to remove accumulated sediment and debris from the tertiary lagoon to ensure proper operation and settling capacity. Specifically, Part IV.C.9 requires that, “accumulated sediment and debris shall be removed within sixty (60) days of the effective date of the permit (“EDP”), or immediately after receiving all necessary NJDEP approvals, whichever occurs later.” Furthermore, Respondent is required to inspect and maintain the lagoon on a regular basis, and document inspection schedules and maintenance activities in the SPPP and retain such documentation on site for inspection. At the time of the CEI, Respondent did not have documentation of inspection schedules or maintenance activities for the tertiary lagoon, and the Site representative did not know when it had been cleaned. Therefore, Respondent violated Stormwater Part IV.C.9 of the Permit.
- e. Stormwater Part IV.F.5 of the Permit requires that Respondent perform routine inspections, at least once a week, to evaluate whether the SPPP is being properly implemented and maintained, and to determine whether additional measures are needed to implement the SPPP. Respondent began construction activities at the Site in 2008; however, at the time of the CEI, weekly inspection records only dated back to October 2016. In addition, at the time of CEI, the weekly inspections available all reported that the erosion and sediment controls required by the SPPP were installed correctly and being maintained; when in fact, at the time of the CEI, certain erosion and sediment controls required by the SPPP had not been installed or maintained. For example, Respondent’s weekly inspection reports stated that all disturbed areas that will lie dormant for 30 days or more were stabilized with seed/straw/mulch; in fact, at the time of the CEI, numerous areas of the Site that had been dormant for greater than 30 days were unstabilized. Therefore, Respondent violated Stormwater Part IV.F.5 of the Permit.
- f. Stormwater Part IV.F.7 of the Permit requires that all instances of noncompliance not reported under N.J.A.C. 7:14A-6.10, be reported to the NJDEP annually. Based on EPA’s review of the 2014 and 2015 annual reports, Respondent appears to rely upon its Discharge Monitoring Reports (“DMR”) to report Site compliance. However, the annual reports reviewed did not evaluate implementation of the Site SESC Plan and SPPP as required by the Permit. Moreover, while the annual reports list some of the required erosion and sediment controls, stating that they “are”, “may be”, or “will be” installed; at the time of the CEI, there was no evidence that all required controls were installed. Based on the records available at the time of the CEI, Respondent has not reported such instances of noncompliance to the NJDEP.¹ Therefore, Respondent violated Stormwater Part IV.F.7 of the Permit.
9. On April 20, 2017, EPA issued Information Request and Administrative Compliance Order, CWA-02-2017-3047 (the “Order”), which required Respondent to comply with the terms and conditions of the Permit.
10. On July 21, 2017, Respondent submitted an initial response to the Order. The response described corrective actions taken at the Site but did not fully address the Ordered Provisions. Respondent disputed some of the Ordered Provisions and indicated that other provisions had not yet been executed as of the date of the response.

¹ EPA notes that in its 2016 annual report, Respondent did report noncompliance for each noncompliance item identified by the NJDEP during its April 5, 2016 inspection.

11. On December 1, 2017, EPA accompanied the NJDEP on an inspection of the Site.
12. On January 3, 2018, EPA sent a Comment Letter to Respondent summarizing the December 2017 Site observations and the status of Respondent's compliance with the Order. EPA requested a response to its Comment Letter by January 31, 2018.
13. Shortly after receiving the Comment Letter, Respondent requested an in-person meeting with EPA, along with an extension until two weeks after the date of the meeting, to submit a written response.
14. On February 8, 2018, Respondent and EPA met in-person at EPA offices. During the meeting, Respondent discussed the need to revise the 2015 SESC Plan and implement interim erosion and sediment control measures at the Site until approval of a revised SESC Plan.
15. On February 22, 2018, Respondent submitted a written response to the January 3, 2018 Comment Letter that included timelines to implement interim measures and submit draft and final revised SESC plans.
16. Respondent submitted written and photographic updates on April 9 and 23, May 4, June 6, July 3 and 12, August 15, October 17 and 31, 2018. The October 31, 2018 submittal included a revised SESC plan.
17. On March 15, 2019, the Borough of Sayreville approved a revised SESC Plan (the "2019 SESC Plan").
18. EPA has determined that Respondent's 2018 submittals satisfactorily address the outstanding Ordered Provisions, with the exception of the installation of wet ponds and sedimentation basins at the Site.
19. Based upon the Findings of Fact and Conclusions of Law set forth above in Paragraphs 1-18, EPA hereby finds that Respondent violated the CWA, 33 U.S.C. §§ 1251-1387, and the regulations promulgated pursuant to the CWA, by its failure to comply with the requirements of NJPDES Permit NJ0000931 at the Site, which permit is authorized by the EPA pursuant to the CWA, 33 U.S.C. § 1342(p).
20. EPA, concurrently with this filing, notified the State of New Jersey regarding this action and offered an opportunity for the State of New Jersey to confer with EPA on the proposed penalty assessment, pursuant to 40 C.F.R. Part 22.38(b).

IV. TERMS OF SETTLEMENT

1. For the purpose of this proceeding, Respondent:
 - a. Admits the jurisdictional allegations of this CA/FO;
 - b. Except for the jurisdictional allegations of this CA/FO, neither admits nor denies the factual allegations and legal conclusions contained herein;

- c. Waives its right to contest the allegations, a judicial or administrative hearing, or to appeal this CA/FO; and
- d. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the nature of the violations and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of two-hundred thousand dollars (\$200,000.00).

Civil Penalty

- 2. Commencing no later than thirty (30) days after the date of issuance of the executed Final Order signed by the Regional Judicial Officer, U.S. EPA Region 2, Respondent shall pay the penalty of two-hundred thousand dollars (\$200,000), satisfied through a payment of forty thousand dollars (\$40,000) per month for a five (5) month period, by wire transfer as described below.

Federal Reserve Bank of New York
ABA = 021030004
Account = 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.”

Respondent shall also send electronic notification of this payment to each of the following:

Douglas McKenna, Chief
Water Compliance Branch
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency - Region 2
McKenna.Douglas@epa.gov

Phyllis Feinmark, Chief
Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
Feinmark.Phyllis@epa.gov

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
Maples.Karen@epa.gov

The first payment of forty thousand dollars (\$40,000) must be received at the above address no later than thirty (30) calendar days after the date of signature of the Final Order (at the end of this document). Subsequent payments of \$40,000 must be received no later than sixty (60), ninety (90), one-hundred-and-twenty (120) and one-hundred-and-fifty (150) calendar days after the date of signature of the Final Order. The dates by which payment must be received shall hereafter be referred to as the “due dates.”

- 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 dates, 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 dates 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 dates 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 dates.
 - c. In addition, pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if payment is not received by the due dates, 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.
3. 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.

V. OTHER TERMS AND CONDITIONS

1. Respondent knowingly and explicitly waives its right under Section 309(g) of the Act, 33 U.S.C. § 33 U.S.C. § 1319(g), to request or to seek any Hearing on or Judicial Review of the Complaints consolidated herein or on any of the allegations therein asserted, on this Consent Agreement or the Findings of Fact and Conclusions of Law set forth herein, or on the accompanying Final Order.
2. This CA/FO shall apply to and be binding upon Respondent, as well as applying to and binding upon the Respondent's officers, directors, and employees, in their capacities as representatives of Respondent as well as on the Respondent's successors and assigns, including, but not limited to, Respondent's subsequent purchasers.
3. 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, excluding any violations resolved by this CA/FO, or for Respondent's violation of any applicable provision of law, excluding any violations resolved by this CA/FO, nor waiver of any defense, objection or response the Respondent may assert in response to any claim that the agreement is violated.
4. This CA/FO 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.
5. This CA/FO constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the violations alleged in this CA/FO. Nothing in this CA/FO is intended to nor shall be

construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA for matters not resolved by this CA/FO, and it is the responsibility of Respondent to comply with such laws and regulations.

6. 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.
7. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.
8. Respondent consents to service upon Respondent by a copy of this CA/FO by an EPA employee other than the Regional Hearing Clerk.

FOR: SAYREVILLE SEAPORT ASSOCIATES URBAN RENEWAL, L.P., Sayreville PRII GP LLC, PRISA II LHC, LLC,

Dated: 6/23/20

Signed: 

Matthew Karpa, Vice President of Sayreville PRII GP, LLP
Sayreville Seaport Associates Urban Renewal, L.P.

FOR: UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Dated: _____

Signed: _____

For Dore LaPosta, Director
Enforcement and Compliance Assurance Division

VI. FINAL ORDER

The Regional Judicial Officer 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.

Date

Helen S. Ferrara
Regional Judicial Officer
United States Environmental Protection Agency-Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Sayreville Seaport Associates Urban Renewal, L.P.
7 Giralda Farms
Madison, New Jersey 07940

RESPONDENT

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)

**CONSENT AGREEMENT
AND FINAL ORDER**

CWA-02-2020-3401

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.

Via Email: Jonathan Spergel, Esq.
Manko Gold Katcher Fox LLP
401 City Avenue, Suite 901
Bala Cynwyd, PA 19004

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

Date: _____