

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219
BEFORE THE ADMINISTRATOR

Received by
EPA Region 7
Hearing Clerk

IN THE MATTER OF)	
)	
Evergreen Development, Inc.)	Docket No. CWA-07-2022-0134
)	
and)	CONSENT AGREEMENT AND
)	FINAL ORDER
Mark Schmidt,)	
)	
Respondents)	
)	
Proceedings under Section 309(g) of the)	
Clean Water Act, 33 U.S.C. § 1319(g))	
_____)	

CONSENT AGREEMENT AND FINAL ORDER

PRELIMINARY STATEMENT

1. This proceeding for the assessment of a civil penalty pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g), was initiated on September 28, 2022, when the United States Environmental Protection Agency (“Complainant” or “EPA”) filed with the Regional hearing Clerk a Complaint against Evergreen Development, Inc., and Mark Schmidt (“Respondents”) and Respondents were served with the Complaint on October 13, 2022.

2. The Complaint alleged that Respondents violated Sections 301, 402, and 404 of the CWA, 33 U.S.C. §§ 1311, 1342, and 1344, and the regulations promulgated thereunder. The parties entered into negotiations in an attempt to settle the allegations contained in the Complaint. This Consent Agreement and Final Order (“CA/FO”) is the result of those negotiations.

CONSENT AGREEMENT

3. Respondents admit the jurisdictional allegations of this CA/FO and agree not to contest EPA’s jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

4. Respondents neither admit nor deny the factual allegations contained in the Complaint referenced above.

5. Respondents consent to electronic service, to the conditions specified in this Consent Agreement, and to the issuance of the Final Order.

6. Respondents waive any right to contest the allegations and any right to appeal the proposed Final Order accompanying this Consent Agreement.

Penalty Payment

7. EPA has considered the appropriateness of a penalty pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and proposed in the Complaint a penalty of \$138,458. However, pursuant to the statutory requirement that EPA consider Respondents' ability to pay, Respondents have demonstrated that they are unable to pay a penalty in this matter. Because of Respondents' inability to pay the penalty, therefore, Complainant agrees to resolve the claims alleged in the Complaint for \$0.

Effect of Settlement and Reservation of Rights

8. Respondents certify by the signing of this Consent Agreement that they are in compliance with EPA's Findings of Violation and Order for Compliance, Docket No. CWA-07-2022-0042, and pending completion of the restoration work described in the Work Plan approved by EPA pursuant to the Order, the Site will be in compliance with Sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311, 1344. Respondents also certify they are in compliance with their construction stormwater NPDES Permit, NER210000, with permit tracking number CSW-202207390. The effect of the settlement described above is conditioned upon the accuracy of these certifications.

9. Nothing contained in the Final Order shall alter or otherwise affect Respondents' obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

10. EPA reserves the right to enforce the terms of this CA/FO by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

11. With respect to matters not addressed in this CA/FO, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties, and punitive damages.

General Provisions

12. Respondents and Complainant each agree to bear their own costs and attorneys' fees.

13. The undersigned representative of Respondents certifies that they are fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondents to it.

14. This CA/FO shall apply to and be binding upon Respondents, their agents, successors, and assigns. Respondents shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for them with respect to matters included herein comply with the terms of this CA/FO.

15. This CA/FO shall become effective upon filing pursuant to 40 C.F.R. § 22.31(b). All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

16. In accordance with Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, on October 20, 2022, EPA provided notice on a proposed administrative penalty assessment in this matter. The public comment period ended on December 6, 2022. No comments were received.

For the Complainant, United States Environmental Protection Agency Region 7:

David Cozad
Director
Enforcement and Compliance Assurance Division

Shane McCain
Assistant Regional Counsel
Office of Regional Counsel

For the Respondent, Evergreen Development, Inc.:

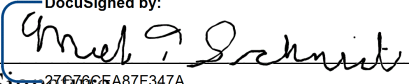
DocuSigned by:

Signature 220769FA87F347A... 6/6/2023
Date

Mark Schmidt
Name

President
Title

For the Respondent, Mark Schmidt:

DocuSigned by:

Signature 2767865EA87F347A...

6/6/2023
Date

Mark Schmidt
Name

President
Title

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondents are ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date

Karina Borromeo
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify a true and correct copy of the fully-executed Consent Agreement and Final Order was filed with the Regional Hearing Clerk at R7_Hearing_Clerk_Filings@epa.gov.

I further certify that a courtesy copy of the fully-executed Consent Agreement and Final Order was filed with the Headquarters Hearing Clerk via the OALJ E-filing system.

I further certify that a copy was served on each party by electronic mail to:

For Respondents:

Jovan W. Lausterer
Attorney for Respondents
Bromm, Lindahl, Freeman-Caddy & Lausterer
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For Complainant:

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