

FILED

UNITED STATES      23 JAN 25 AM 10: 25  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6      REGIONAL HEARING CLERK  
EPA REGION VI

In the Matter of	§	DOCKET NO. CWA-06-2022-1772
	§	
Double M Properties	§	Proceeding to Assess a Class II
	§	Civil Penalty under Section 309(g)
	§	of the Clean Water Act
Respondent	§	
	§	
NPDES ID. No. NMR1002AG	§	

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (CAFO) is issued under the authority vested in the United States Environmental Protection Agency (EPA) pursuant to Section 309(g) of the Clean Water Act (herein "the Act"), 33 U.S.C. § 1319(g). This CAFO is issued in accordance with 40 C.F.R. § 22.18, as described in the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" in order to settle and resolve this matter.
2. On July 7, 2022, EPA Region 6 issued to Respondent an administrative complaint (complaint) under Section 309(g) of the Act, 33 U.S.C. § 1319(g), which proposed to assess a civil penalty against Respondent, and gave notice of Respondent's opportunity to request a hearing on the proposed administrative penalty assessment.
3. The Parties agree that settlement of the relevant matters without litigation will save time and resources, that it is in the public's interest, and that the entry of this CAFO is the most

appropriate means of resolving such matters. Compliance with all the terms and conditions of this CAFO resolves only those violations alleged in the complaint.

4. The Respondent admits the jurisdictional allegations of the complaint; however, the Respondent neither admits nor denies the specific factual allegations and conclusions of law contained in the complaint and enters this settlement to compromise disputed claims. The complaint states a claim upon which relief may be granted.

5. For purposes of resolving this proceeding only, Respondent expressly waives any right to contest the factual allegations or conclusions of law contained in the complaint and this CAFO and waives its right to appeal the Final Order set forth herein.

6. Before the taking of any testimony, and without adjudication of any issue of law or fact, the Parties agree to the terms of this CAFO and to its issuance. Respondent consents to the assessment and payment of a civil penalty in the amount and by the method stated below.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. Double M Properties (Respondent) is a “person,” as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

8. At all times relevant to the violations alleged in the Complaint (relevant time period), Respondent owned or operated the Legacy at Sierra Vista development, located 0.41 miles West of Jubilee Blvd. on NM-6, Los Lunas, Valencia County, New Mexico (facility) and was, therefore, an “owner or operator” within the meaning of 40 C.F.R. § 122.2.

9. The Complaint alleged that at the relevant times: Respondent was a “person” that “owned or operated” a facility that was a “point source” subject to “discharges” of “pollutants” to identified “waters of the United States” within the meaning of Section 502 of the Act, 33

U.S.C. § 1362, and 40 C.F.R. § 122.2; Respondent and the facility were subject to the provisions of the Act, 33 U.S.C. §§ 1251-1387 *et seq.*, and the National Pollutant Discharge Elimination System (NPDES) program.

10. With the issuance of the complaint, the State of New Mexico was notified and given an opportunity to consult with EPA regarding the proposed assessment of an administrative penalty against Respondent.

11. EPA notified the public of the complaint via the internet at [www.epa.gov/region6/publicnotice](http://www.epa.gov/region6/publicnotice), and afforded the public thirty (30) days to comment on the complaint and proposed penalty. At the expiration of the notice period, EPA received no comments from the public.

### III. TERMS OF SETTLEMENT

#### A. PENALTY PROVISIONS

12. Based on the foregoing Findings of Fact and Conclusions of Law, EPA Region 6, considering the relevant criteria pursuant to Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), and acting pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), the Parties agree that Respondent shall pay to the United States the amount of Fifteen Thousand dollars (\$15,000) to settle the violations as alleged in the Complaint, in accordance with 40 C.F.R. § 22.18(c).

13. Payment shall be made by one of the following methods within thirty (30) days of the effective date of this CAFO to the following address:

- a. By mailing a bank check, cashier's check or certified check, payable to "Treasurer of the United States," to the following address:

US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000

- b. By wire transfer to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 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"

- c. By overnight mail (Express, FedEx, DHL, etc.):

U.S. Bank  
1005 Convention Plaza  
SL-MO-C2GL  
St. Louis, MO 63101  
Phone: 314-418-4087

- d. By credit card payments to <https://www.pay.gov>  
(Insert sfo 1.1 in the search field)

In the Matter of Double M Properties, Docket No. CWA-06-2022-1772, should be clearly marked on the check to ensure credit for payment.

14. Respondent shall send simultaneous notice of payment, including a copy of the check, to each of the following:

- a. Regional Hearing Clerk (6RC-D)  
i. U.S. EPA, Region 6  
ii. 1201 Elm Street, Suite 500  
~~iii.~~ Dallas, TX 75270-2102

- b. Chief, Water Resource Section (ECD-WR)
  - i. U.S. EPA, Region 6
  - ii. 1201 Elm Street, Suite 500
  - iii. Dallas, TX 75270-2102
  
- c. Chief, Water Legal Branch (6RC-EW)
  - i. U.S. EPA, Region 6
  - ii. 1201 Elm Street, Suite 500
  - iii. Dallas, TX 75270-2102

Respondent's adherence to these procedures will ensure proper credit when payment is received by EPA.

15. Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

16. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim.

Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

17. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt

which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

18. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States' enforcement expenses including, but not limited to, attorneys fees' and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 20 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

19. Failure by Respondent to pay the penalty assessed according to the terms of this CAFO, in full, by its due date, may subject Respondent to a civil action to collect the assessed penalty and any accrued interest and penalties.

20. In the event a collection action is necessary, Respondent shall pay - in addition to any applicable penalty, fees, and interest described herein - all reasonable costs and expenses, including legal expenses and court costs, incurred by the United States for enforcement and collection proceedings for nonpayment of the amounts agreed hereunder, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9). In any such collection action, the validity, amount, and appropriateness of the penalty, and the terms of this CAFO shall not be subject to review.

B. GENERAL PROVISIONS

21. To execute this Agreement, Respondent shall sign and forward this copy of the CAFO, with original signature, to:

Efren Ordóñez  
Office of Regional Counsel (6RC-EW)  
U.S. EPA Region 6  
1201 Elm Street, Suite 500  
Dallas, TX 7527002102  
Ordonez.efren@epa.gov

22. Issuance of this CAFO does not relieve Respondent from responsibility to comply with all requirements of the Act and the requirements of any permits issued thereunder, as described in Section 309(g)(7) of the Act, 33 U.S.C. § 1319(g)(7), nor does it constitute a waiver by EPA of its right to enforce compliance with the requirements of Respondent's permits or other requirements of the Act by actions pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

23. The provisions of this CAFO shall be binding upon Respondent.

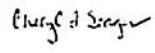
24. Each party agrees to bear its own costs and attorneys' fees in this matter, except to the extent that Respondent may be responsible for reasonable costs and expenses of enforcement and collection proceedings for failure to comply with the payment terms of this CAFO.

25. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement and to execute and legally bind that party to it.

26. In recognition and acceptance of the foregoing:

  
\_\_\_\_\_  
For Double M Properties

1/6/23  
Date:

  
\_\_\_\_\_  
Cheryl T. Seager, Director  
Enforcement and  
Compliance Assurance Division

Digitally signed by Seager,  
Cheryl  
Date: 2023.01.19 13:48:15  
-06'00'

January 19, 2023  
Date:



FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish, or otherwise affect Respondent's (or its officers', agents', servants', employees', successors', or assigns') obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. This CAFO shall become effective thirty (30) days after the issuance date specified below pursuant to Section 309(g)(5) of the Clean Water Act, 33 U.S.C. § 1319(g)(5).

Issuance Date: \_\_\_\_\_

**THOMAS  
RUCKI**

Digitally signed by THOMAS RUCKI  
DN: c=US, o=U.S. Government,  
ou=Environmental Protection Agency,  
cn=THOMAS RUCKI,  
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Date: 2023.01.25 09:36:07 -05'00'

\_\_\_\_\_  
Thomas Rucki  
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify that the foregoing CONSENT AGREEMENT FINAL ORDER was sent to following persons, in the manner specified, on the date below:

Via Electronic Transmission:      Honorable Judge Christine Donelian Coughlin  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
1200 Pennsylvania Ave., NW  
Washington, D.C.  
Facsimile: 916/550-9639

Via Electronic Transmission  
and U.S. Mail:                      Pete Domenici  
Respondent's Attorney  
320 Gold Ave. SW Suite 1000  
Albuquerque, New Mexico 87102  
[pdomenici@domicilaw.com](mailto:pdomenici@domicilaw.com)

Date: \_\_\_\_\_