

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	)	
	)	
Michael Zahner	)	Docket No. CWA-07-2022-0141
	)	
and	)	CONSENT AGREEMENT AND
	)	FINAL ORDER
Zahner Management Company, LLC,	)	
	)	
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 or about September 28, 2022 when the United States Environmental Protection Agency (“Complainant” or “EPA”) issued to Michael Zahner and Zahner Management Company, LLC (“Respondents”), a Complaint and Notice of Opportunity for Hearing and it was received by Respondents on or about October 7, 2022.

2. The Complaint alleged that Respondents violated Sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344, and the regulations promulgated thereunder. The Complaint proposed a civil penalty of \$171,481. 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 assessment of a civil penalty as stated below, 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**

IT IS HEREBY AGREED BY THE PARTIES, pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), that:

7. Respondents consent to the payment of a civil penalty of \$105,000. Payment is due within thirty (30) days of the effective date of this CA/FO.

8. Respondents shall pay the penalty identified above by certified or cashier's check made payable to "Treasurer, United States of America," with a transmittal that identifies the case name and docket number CWA-07-2022-0141 to:

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

or by alternate payment method described at  
<http://www.epa.gov/financial/makepayment>.

9. Respondents shall simultaneously send copies of the transmittal letter and the check, or proof of other form of payment, as directed above, to the following:

Regional Hearing Clerk at: [R7\\_Hearing\\_Clerk\\_Filings@epa.gov](mailto:R7_Hearing_Clerk_Filings@epa.gov)

Shane McCoin at: [mccoin.shane@epa.gov](mailto:mccoin.shane@epa.gov)

10. No portion of the civil penalty or interest paid by Respondents pursuant to the requirements of this CA/FO shall be claimed by Respondents as a deduction for federal, state, or local income tax purposes.

11. Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

12. Respondents' failure to pay the civil penalty assessed herein in accordance with the provisions of this CA/FO may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest thereon at the applicable statutory rate.

13. Respondents agree that a failure to submit the penalty payment by the due date will result in the entire remaining balance becoming immediately due and payable, along with any costs, handling charges, penalties, and accumulated interest.

### **Effect of Settlement and Reservation of Rights**

14. Payment of the entire civil penalty shall resolve all civil and administrative claims of the United States alleged in the Complaint.

15. Respondents certify by the signing of this Consent Agreement that they are in compliance with EPA's September 27, 2022, Findings of Violation and Order for Compliance, Docket No. CWA-07-2022-0060, through the submittal of plans to EPA which, pending finalization and EPA approval of those plans and implementation by Respondents, will bring the Site into compliance with Sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311, 1344. The effect of the settlement described above is conditioned upon the accuracy of this certification.

16. 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.

17. 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.

18. 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**

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

20. 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.

21. 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.

22. 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.

23. 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 24, 2022, EPA provided notice on a proposed administrative penalty assessment in this matter. The public comment period ended on December 5, 2022. No comments were received.

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

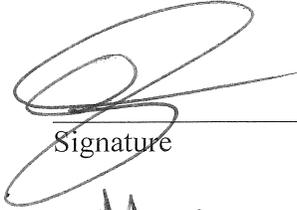
---

David Cozad  
Director  
Enforcement and Compliance Assurance Division

---

Shane McCoin  
Assistant Regional Counsel  
Office of Regional Counsel

**For the Respondent, Michael Zahner:**



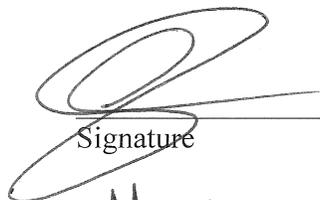
Signature

3-13-23  
Date

MICHAEL ZAHNER  
Name

\_\_\_\_\_  
Title

**For the Respondent, Zahner Management Company, LLC:**



Signature

3-13-23  
Date

MICHAEL ZAHNER  
Name

MANAGING MEMBER  
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 and a copy was served on each party by electronic mail to:

William Ford  
Attorney for Respondents  
Lathrop GPM LLP  
bill.ford@lathropgpm.com

and

Shanna McCormack  
Attorney for Respondents  
Lathrop GPM LLP  
shanna.mccormack@lathropgpm.com

---