

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 9
75 Hawthorne Street
San Francisco, California 94105**

IN THE MATTER OF:) Docket No. CWA-09-2015-0003
)
Tutor-Saliba Corporation)
) **COMPLAINT/CONSENT AGREEMENT**
Respondent) **AND [PROPOSED] FINAL ORDER**
)
) *Class II Administrative Penalty Proceeding*
) *under Section 309(g) of the Clean Water Act,*
) *33 U.S.C. § 1319(g,) and 40 C.F.R. §§ 22.13(b)*
) *and 22.18*
)
_____)

CONSENT AGREEMENT

I. AUTHORITIES AND PARTIES

1. This is a Class II civil administrative penalty proceeding under section 309(g)(1)(A) and (2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(1)(A) and (2)(B), and 40 C.F.R. Part 22 (*Consolidated Rules of the Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits*).
2. Complainant is the Director of the Enforcement Division, U.S. Environmental Protection Agency (“EPA”), Region 9, who brings this action pursuant to the authority delegated by the EPA Administrator and EPA Region 9 Administrator.
3. Respondent is Tutor-Saliba Corporation (“TSC”), a California corporation with over thirty years of experience in major construction and engineering projects and billions in completed projects in California and Nevada. TSC operates through its headquarters office in Sylmar, California.
4. This Consent Agreement and Final Order (“CA/FO”), which contains the elements of a complaint required by 40 C.F.R. § 22.14(a), simultaneously commences and concludes this penalty proceeding, as authorized by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

NOW THEREFORE, before the taking of any testimony, without adjudication of any issue of fact or law, and upon consent by EPA and Respondent, it is hereby STIPULATED, AGREED, AND ORDERED:

II. STATUTORY AND REGULATORY FRAMEWORK

5. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into water of the United States except, *inter alia*, in compliance with a National Pollutant Discharge Elimination System (NPDES) permit issued in accordance with Section 402 of the Act, 33 U.S.C. § 1342.
6. Section 502(5) of the Act, 33 U.S.C. § 1362(5), defines “person” to mean an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.
7. Section 502(6) of the Act, 33 U.S.C. § 1362(6), defines “pollutant” to mean sewage, garbage, sewage sludge, rock, sand, chemical wastes, biological materials, dredged spoil, solid waste, incinerator residue, munitions, radioactive materials, heat, wrecked or discarded equipment, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.
8. Section 502(12), 33 U.S.C. § 1362(12), defines the term “discharge of pollutants” to mean any addition of any pollutant to navigable waters from any point source.
9. Section 502(7), 33 U.S.C. § 1362(7), defines the term “navigable waters” to mean a “water of the United States” as defined by EPA regulation at 40 C.F.R. § 122.2.
10. Section 502(14), 33 U.S.C. § 1362(14), defines “point source” to mean any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel, or other floating craft, from which pollutants are or may be discharged.
11. Section 308(a) of the Act, 33 U.S.C. § 1318(a), authorizes EPA to require the owner or operator of any point source to establish and maintain records; make reports; install, use and maintain monitoring equipment; sample effluent; and provide other reasonably required information.
12. Pursuant to CWA section 309(g), 33 U.S.C. § 1319(g), and 40 C.F.R. § Part 19, EPA may assess a Class II civil administrative penalty of up to \$16,000 per day of violation, not to exceed \$177,500 in total, against a person for CWA section 301(a) violations that occurred from January 12, 2009 through December 6, 2013.

III. FINDINGS AND ALLEGED VIOLATIONS

13. The Interstate 5 Antlers Bridge Replacement project site (Site) is located within Shasta County near Lakehead, from 0.3 kilometers north of the Antlers Summit overcrossing to 0.5 kilometers north of the Antlers underpass.
14. Respondent operates the Antlers Bridge Site under a contract with Caltrans. Respondent is responsible for the day-to-day operations at the Site.
15. Respondent is a California corporation and, therefore, a “person” as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).
16. On April 19, 2013, EPA issued a CWA § 308 information request to Respondent asking for information concerning its operations at the Site. EPA received Respondent’s response on June 14, 2013, after Respondent sought and obtained an extension of time.
17. Based on information provided by Respondent in response to EPA’s April 19, 2013 CWA § 308 information request, EPA identified the following **25** unpermitted discharges in violation of Section 301(a) of the Act:
 - (1) Discharge of diesel fuel to Lake Shasta on **October 10, 2011** from pile construction activities at construction activities on Trestle #3. The spill was caused by a vehicle striking a fuel container stored over water.
 - (2) Discharge of dewatering slurry to Lake Shasta on **November 11, 2011** from Cast in Drilled Holes (CIDH) piling construction activities on Trestle #5 West. The discharge resulted in a visible sheen and foam in Lake Shasta.
 - (3) Discharge of dewatering slurry from CIDH pile construction activities to Lake Shasta on **January 9, 2012** from Trestle #3. The discharge occurred due to lack of a backflow prevention device within TSC’s Active Treatment System (ATS) resulting in a ruptured hose.
 - (4) Discharge of concrete slurry to Lake Shasta on **January 20, 2012** from Pier 5 West. The discharge occurred due to inadequate secondary containment for construction activities over water.
 - (5) Discharge of grout slurry to Lake Shasta on **January 26, 2012** from CIDH pile construction activities at Trestle #3. The discharge occurred due to inadequate secondary containment for maintenance activities over water.

- (6) Discharge of drill slurry to Lake Shasta on **February 9, 2012** from CIDH pile construction activities at Trestle #3. The discharge occurred due to inadequate secondary containment for maintenance activities over water.
- (7) Discharge of drill slurry to Lake Shasta on **February 13, 2012** from CIDH pile construction activities at Trestle #3. The discharge occurred due to inadequate secondary containment for maintenance activities over water.
- (8) Discharge of hydraulic fluid to Lake Shasta on **February 21, 2012** from CIDH pile construction activities at Trestle #3. The discharge occurred due to a subcontractor's leaking construction equipment lacking adequate secondary containment over water.
- (9) Discharge of grout slurry to Lake Shasta on **February 22, 2012** from CIDH pile construction activities at Trestle #3. The discharge occurred when the drill rig operator moved the rig prior to removing all potential pollutants within the drill rig lines/hoses.
- (10) Discharge of drill casing grease to Lake Shasta on **February 28, 2012** from CIDH pile construction activities at Trestle #3. The discharge was attributed to grease within the drill rig contacting surface waters.
- (11) Discharge of dewatering slurry to Lake Shasta on **March 2, 2012** from CIDH pile construction activities at Trestle #3. The discharge occurred due to inadequate secondary containment for construction activities over water.
- (12) Discharge of dewatering slurry to Lake Shasta on **March 14, 2012** from CIDH pile construction activities at Trestle #3. The discharge occurred due to lack of a backflow prevention device within ATS resulting in a ruptured hose.
- (13) Discharge of hydraulic fluid to Lake Shasta on **July 26, 2012** from CIDH pile construction activities at Trestle #3. The discharge occurred due to leaking construction equipment over water.
- (14) Discharge of dewatering slurry to Lake Shasta on **October 15, 2012** from CIDH pile construction activities at Trestle #3. The discharge occurred due to failure of the ATS piping system.
- (15) Discharge of dewatering slurry to Lake Shasta on **February 8, 2013** from a location approximately 100 feet south of CIDH pile construction at Trestle #3. Concentrated flow from the ATS piping system drained down slope adjacent to Trestle #3 before entering Lake Shasta. The discharge occurred due to failure of ATS piping system.
- (16) Discharge of concrete curing compound to Lake Shasta on **February 28, 2013** from Trestle #2. The discharge occurred when a laborer inadvertently spilled an unsecured sprayer over water.

- (17) Discharge of hydraulic fluid to Lake Shasta on **February 28, 2013** (*2nd unauthorized discharge of the day*) from Trestle #4. The discharge occurred due to leaking construction equipment over water.
- (18) Discharge of grout slurry to Lake Shasta on **March 4, 2013** from Trestle #2. The discharge occurred when the operator moved an effluent storage tank prior to removing all pollutants from the tank pipes/hoses.
- (19) Discharge of grout slurry to Lake Shasta on **March 20, 2013** from the Pier 2 Cantilever. The source of the discharge was not definitely identified but was reported as likely attributed to a release of form oil and/or curing compound that leaked through the pier cantilever structure into the Lake.
- (20) Discharge of hydraulic fluid (vegetable based) to Lake Shasta on **March 25, 2013** from CIDH pile construction activities at Trestle #4. The discharge occurred due to leaking construction equipment over water.
- (21) Discharge of concrete to Lake Shasta on **March 25, 2013** (*2nd unauthorized discharge of the day*) from Trestle #3. The discharge occurred when an operator spilled concrete while operating a crane on the Trestle structure.
- (22) Discharge of grout slurry to Lake Shasta on **March 27, 2013** from Trestle #4. The discharge occurred during CIDH pile construction operations and was due to overflow of effluent out of an improperly sealed effluent tank drain.
- (23) Discharge of grout slurry to Lake Shasta on **March 28, 2013** from CIDH pile construction activities at Trestle #4. The discharge occurred due to leaking joints within the ATS piping system.
- (24) Discharge of diesel fuel to Lake Shasta on **April 3, 2013** from CIDH pile construction activities at Trestle #4. The discharge occurred when a subcontractor's employee left equipment (crane) unattended during fueling and the fuel nozzle got stuck open in an area lacking adequate secondary containment.
- (25) Discharge of grout slurry to Lake Shasta **April 8, 2013** from CIDH pile construction activities at Trestle #4. The discharge occurred when an ATS hose ruptured over water.

IV. ADMINISTRATIVE PENALTY

18. In consideration of the penalty factors of CWA section 309(g), 33 U.S.C. § 1319(g), Respondent shall pay to the United States the amount of **Eighty Thousand Dollars (\$80,000.00)** within thirty (30) calendar days of the Effective Date, as defined in Section IX

below, of this CA/FO in settlement for EPA's claim for civil administrative penalties. Respondent neither admits nor denies the specific factual allegations contained in Section III above.

19. Respondent shall make the penalty payment by one of the options listed below.

a. Check Payment. Payment by a cashier's or certified check shall be made payable to "Treasurer, United States of America" and be mailed as follows:

i. *If by regular U.S. Postal Service mail:*

U.S. Environmental Protection Agency
Fines and Penalties
PO Box 979077
St. Louis, MO 63197-9000

ii. *If by overnight mail:*

U.S. Environmental Protection Agency
Government Lockbox 979077
USEPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

b. Automated Clearinghouse Payment: Payment by Automated Clearinghouse (ACH) via Vendor Express shall be made through the U.S. Treasury as follows:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

c. Fedwire: Payment by wire transfer to EPA shall be made through the Federal Reserve Bank of New York as follows:

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)

20. To ensure proper credit, Respondent shall include the following transmittal information with the penalty payment:

- a. Respondent's name (as appeared on the CA/FO), complete address, contact person, and phone number;
- b. the EPA case docket number;
- c. the EPA contact person; and
- d. the reason for payment.

21. Concurrent with the payment, Respondent shall send a true and correct copy of the payment and accompanying transmittal information to the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, California 94105

Marcela von Vacano
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 9
75 Hawthorne Street
San Francisco, California 94105

22. Respondent shall not, and shall not allow any other person to, deduct any penalties and interest paid under this CA/FO from federal, state or local taxes.

23. Pursuant to CWA section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay the assessed penalty on time, EPA may request the U.S. Department of Justice to bring a civil action to recover the overdue amount, plus interest at currently prevailing rates from the effective date of this CA/FO. In such an action, the validity, amount or appropriateness of the assessed penalty shall not be subject to review. In addition to any assessed penalty and interest, Respondent shall pay attorney fees, costs for collection proceedings, and a quarterly nonpayment penalty, which shall equal 20% of the aggregate amount of Respondent's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter, for each quarter during which such failure to pay persists. EPA may also take other debt collection actions as authorized by law, including but not limited to the Debt Collection Act, 33 U.S.C. § 3711, and 33 C.F.R. Part 13.

V. APPLICABILITY

24. This CA/FO shall apply to and be binding on Respondent, Respondent's officers, directors, partners, agents, employees, contractors, successors and assigns. Changes in ownership, real property interest, or transfer of personal assets shall not alter Respondent's obligations under this CA/FO.

VI. RESPONDENT'S ADMISSIONS AND WAIVERS

25. In accordance with 40 C.F.R. § 22.18(b), for the purpose of this proceeding, Respondent:

- a. admits that EPA has jurisdiction over the subject matter of this CA/FO;
- b. neither admits nor denies the specific factual allegations contained in Section III above;
- c. consents to any and all conditions specified in this CA/FO and to the assessment of the civil administrative penalty under Section IV above;
- d. waives any right to contest the allegations contained in this CA/FO; and
- e. waives any right to appeal the CA/FO.

VII. RESERVATION OF RIGHTS

26. In accordance with 40 C.F.R. § 22.18(c), this CA/FO only resolves Respondent's CWA civil penalty liabilities for the violations specifically alleged herein. EPA reserves the right to take enforcement action against Respondent for any past, current or future violations not resolved in this proceeding.
27. This CA/FO is not a permit or modification of any existing permit issued pursuant to any federal, state, or local laws or regulations, and shall in no way relieve or affect Respondent's obligations under any applicable federal, state or local laws, regulations, or permits.

VIII. ATTORNEY'S FEES AND COSTS

28. Each party shall bear its own attorney fees and costs.

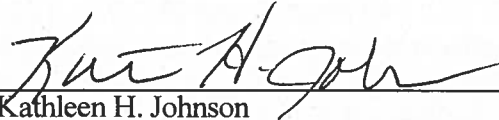
IX. EFFECTIVE DATE AND TERMINATION

29. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), this CA/FO shall take effect on the date that the Final Order, having been signed by the Regional Judicial Officer, is filed with the Regional Hearing Clerk (the "Effective Date"), and shall terminate when Respondent has complied with this CA/FO in full.

X. PUBLIC NOTICE

30. Pursuant to CWA section 309(g)(4), 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), this Consent Agreement is subject to public notice and comment prior to issuance of the proposed Final Order. Complainant reserves the right to withhold or withdraw consent to this Consent Agreement if public comments disclose relevant and material information that was not considered by Complainant in entering into this Consent Agreement. Respondent may withdraw from this Consent Agreement only upon receipt of written notice from EPA that it no longer supports entry of this Consent Agreement.
31. Pursuant to CWA section 309(g)(1), 33 U.S.C. § 1319(g)(1), EPA has provided notice to the State of California regarding this penalty action.

For Complainant the U.S. Environmental Protection Agency, Region 9

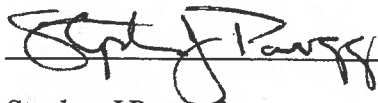


Kathleen H. Johnson
Director
Enforcement Division

7/31/15

Date

For Respondent Tutor-Saliba Corporation

A handwritten signature in black ink, appearing to read "Stephen J Pavoggi", written over a horizontal line.

Stephen J Pavoggi
Vice President of Operation
Tutor Saliba Corporation

7-21-15

Date