

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BLVD.  
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	Docket No. CWA-07-2020-0045
ABP Funding, LLC	)	
	)	
and	)	
	)	
KAT Excavation, Inc.	)	
	)	
	)	
	)	CONSENT AGREEMENT AND
Respondents	)	FINAL ORDER
	)	
Proceedings under Section 309(g) of the	)	
Clean Water Act, 33 U.S.C. § 1319(g)	)	
_____	)	

**COMPLAINT**

**Jurisdiction**

1. This is an administrative action for the assessment of civil penalties instituted 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), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.

2. Complainant, the U.S. Environmental Protection Agency, Region 7 (“EPA”) and Respondents, ABP Funding, LLC, and KAT Excavation, Inc. (“Respondents”) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order serves as notice that the EPA has reason to believe that the Respondents have violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311, 1342, and regulations promulgated thereunder.

### **Parties**

4. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated the authority under Section 309(g) to the Director of the Enforcement and Compliance Assurance Division of EPA, Region 7 (collectively referred to as the “Complainant”).

5. Respondent ABP Funding, LLC is and was at all relevant times a limited liability company under the laws of the state of Kansas. Respondent KAT Excavation, Inc. is and was at all relevant times a corporation under the laws of the state of Kansas.

### **Statutory and Regulatory Framework**

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA, provides that pollutants may be discharged in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.

7. The CWA prohibits the discharge of “pollutants” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

8. Section 502(7) of the CWA defines “navigable waters” as the “waters of the United States, including territorial seas.” 33 U.S.C. § 1362(7). In turn, “waters of the United States” has been defined to include, *inter alia*, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; and tributaries to such waters. 40 C.F.R. § 122.2.

9. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of stormwater. Section 402(p) of the CWA requires, in part, that a discharge of stormwater associated with an industrial activity must comply with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

10. Pursuant to Section 402(p) of the CWA, the EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

11. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

12. 40 C.F.R. § 122.26(b)(14)(x) defines “storm water discharge associated with industrial activity,” in part, as “[c]onstruction activity including clearing, grading, and

excavation, except operations that result in the disturbance of less than five acres of total land area which are part of a larger common plan of development or sale.”

13. The Kansas Department of Health and Environment (“KDHE”) is the state agency with the authority to administer the federal NPDES program in Kansas pursuant to Section 402 of the CWA. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

14. KDHE issued Kansas General Permit No. KSR10000 for Storm Water Discharge Associated with Industrial Activity for Construction Activities (“General Permit”) on July 14, 2017, effective August 1, 2017. The General Permit expires on July 31, 2022. The General Permit governs Respondents’ stormwater discharges associated with industrial activity at the Site.

15. Any individual seeking coverage under the General Permit is required to submit a Notice of Intent (“NOI”) to KDHE.

16. The principal requirement of the General Permit is for the owner to develop and implement a Stormwater Pollution Prevention Plan (“SWPPP”). The SWPPP must identify potential sources of pollution which may reasonably be expected to affect the quality of the storm water discharge from the construction activities, describe and ensure the implementation of best management practices (“BMPs”) which will be used to reduce the pollutants in storm water discharge associated with industrial activity for construction activities at the construction site and to assure compliance with the terms and conditions of the permit.

#### **EPA’s General Allegations**

17. Each Respondent is a “person,” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

18. ABP Funding, LLC is and was at all times relevant to this action the owner and operator of Fallbrook 4<sup>th</sup> Plat, a residential construction site (“site”) comprised of approximately 16 acres and part of a 250-acre development located at the intersection of 110<sup>th</sup> West Terrace and Barker Road in Olathe, Kansas. At all times relevant to this action, Respondent KAT Excavation, Inc. was a contractor of Respondent ABP Funding, LLC and an operator at the site.

19. Stormwater, snow melt, surface drainage and runoff water leave Respondents’ site and discharge through various drainage pathways to an unnamed tributary of Mill Creek and Mill Creek. Mill Creek is designated for aquatic life use, domestic water supply, food procurement, and recreation. Aquatic life, water supply, and recreation are listed as impaired on the 2016 303(d) list. Causes of impairment are listed as biology, lead, sediment, chloride, E. Coli, total phosphorous, and total suspended solids.

20. Stormwater from the site contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

21. The site has “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14) and is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

22. Mill Creek and its tributaries identified in Paragraph 19, above, are “navigable waters” as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

23. Stormwater runoff from Respondents’ industrial activity at the above referenced site results in the addition of pollutants from a point source to navigable waters, and thus is the “discharge of a pollutant” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

24. Respondents’ discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(ii), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

25. Respondent ABP Funding, LLC, filed an NOI with KDHE seeking coverage under the General Permit on or about December 28, 2017.

26. On May 14, 2019, EPA conducted an assessment of the Site and on May 17, 2019, the EPA performed a Construction Stormwater Compliance Evaluation Inspection (“Inspection”) of Respondents’ site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondents’ compliance with its Permit and the CWA.

27. During the Inspection and shortly thereafter, the EPA inspector reviewed and obtained copies of Respondents’ documents related to the Permit, including, but not limited to, the site’s SWPPP dated July 14, 2017, and site inspection and self-monitoring records. The EPA inspector also toured the site and photographed various stormwater-related areas.

28. A Notice of Potential Violation (“NOPV”) was issued by the EPA inspector at the conclusion of the Inspection. Respondent ABP Funding, LLC, provided a written response to the NOPV dated May 24, 2019. A copy of the Inspection report was sent to ABP Funding, LLC by letter dated July 9, 2019, which identified potential violations including those described below.

29. On August 5, 2019, EPA issued a Unilateral Administrative Order to ABP Funding, LLC and KAT Excavation Inc. (Docket No. CWA-07-2019-0245), requiring Respondents to come into compliance with the terms and conditions of its NPDES permit as soon as possible. ABP Funding, LLC has complied with this Order.

**EPA's Allegations**

**Count 1**

**Failure to Ensure that Discharges do not Contribute to an Excursion of Kansas Surface Water Quality Standards**

30. Paragraphs 1 through 29 are re-alleged and incorporated herein by reference.

31. Part 3, Paragraph 4 of the Permit, What This Permit or the Rainfall Erosivity Waiver Does Not Cover, states that the Permit does not authorize construction activities that result in the discharge of stormwater runoff which violates the Kansas Surface Water Quality Standards.

32. During the Inspection referenced above, the EPA inspector observed discharges of stormwater from the Site into the unnamed tributary to Mill Creek, resulting in sediment covering much of the unnamed tributary, which demonstrates a violation of Kansas Surface Water Quality Standards. K.A.R. 28-16-28e.

33. Respondents' alleged failure to ensure that discharges from the Site do not contribute to an excursion of water quality standards is a violation of the Permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

**Count 2**

**Failure to Properly Install, Operate, and/or Maintain Best Management Practices (alternatively, Failure to Fully Implement the Provisions of the SWPPP)**

34. Paragraphs 1 through 33 are re-alleged and incorporated herein by reference.

35. Part 7 of the Permit, SWPPP Requirements and Guidelines, states the permittee shall fully implement the provisions of the SWPPP required as a condition of the Permit throughout the term of the construction project.

36. Part 7 of the Permit further states that the permittee shall select, install, utilize, operate and maintain effective BMPs.

37. Part 7.1 of the Permit, General SWPPP Requirements, states the permittee shall ensure the BMPs and/or pollution controls are properly installed and maintained at the locations and relative timeframes specified in the SWPPP.

38. Part 7.2.3(1) of the Permit, Detailed SWPPP Requirements, requires the permittee to design, install, and maintain BMPs that control stormwater volume and velocity in order to minimize pollutant discharges.

39. Part 7.2.3(3) of the Permit, Detailed SWPPP Requirements, requires the permittee to design, install, and maintain BMPs that minimize the amount of soil exposed during construction activity.

40. Part 7.2.3(5) of the Permit, Detailed SWPPP Requirements, requires the permittee to design, install, and maintain BMPs that minimize sediment discharges from the site.

41. Part 7.2.3(12) of the Permit, Detailed SWPPP Requirements, requires the permittee to design, install, and maintain BMPs that minimize off-site tracking of soils by utilizing wheel washing facilities or an appropriately designed construction entrance and exit.

42. Part 7.2.5 of the Permit, Temporary and Permanent Non-Structural BMPs, requires the permittee to stabilize areas immediately whenever any clearing, grading, excavating, or other soil disturbing activities have permanently ceased on any portion of the site and will not resume for a period exceeding 14 calendar days.

43. During the EPA Assessment and Inspection referenced above, the inspector observed that:

- a. The Site lacked a construction entrance/exit on May 14, 2019. The facility had trackout that was present on the roadway;
- b. A portable toilet was placed on top of a stormwater inlet;
- c. The sediment rock socks on the north and south side of West 110<sup>th</sup> Terrace were full of sediment and needed to be maintained;
- d. Velocity control devices were not present within the stormwater conveyance ditch;
- e. There were no sediment controls on slopes, and no attempt to temporarily or permanently stabilize the site had been made, despite the fact that the site was fully disturbed and no activities had occurred for more than 14 days;
- f. A construction entrance/exit was installed by May 17, 2019, but was not built per installation engineering details in the SWPPP;
- g. The perimeter mulch/silt fence had been washed out or needed to be refreshed;
- h. The stormwater inlet silt fence was not installed correctly;
- i. The sanitary sewer hillside on the northeast corner of the site lacked erosion controls; and
- j. Rip-rap at storm sewer outlets needed maintenance.

44. The failures to comply with the terms and conditions of the Permit resulted in observed impacts to the unnamed tributary to Mill Creek.

45. Respondents' alleged failure to properly install, operate, and/or maintain BMPs at the Site or, in the alternative, failure to fully implement the SWPPP, is a violation of the Permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

**Count 3**

**Failure to Develop an Adequate SWPPP and Update the SWPPP**

46. Paragraphs 1 through 45 are re-alleged and incorporated herein by reference.
47. Part 7 of the Permit, SWPPP Requirements and Guidelines, states that before initiating construction activities the permittee shall develop a SWPPP which is specific to the construction activities which are employed at the site authorized by the NPDES Permit.
48. Part 7.2.3(11) of the Permit, Detailed SWPPP Plan Requirements, states that the SWPPP shall include BMPs that are designed, installed, and maintained to minimize the generation of dust through the application of water or other dust suppression techniques.
49. During the EPA Inspection referenced above, in addition to the deficiencies listed in Paragraph 43, the inspector noted that the SWPPP did not provide information specific to the site and was not complete. The inspector noted that the SWPPP did not specify what would be done to control dust at the Site.
50. The failure to comply with the terms and conditions of the Permit resulted in sediment deposition within the unnamed tributary to Mill Creek.
51. Part 7.3.2 of the Permit requires that the permittee shall modify or amend the SWPPP whenever there is a change in design, operation, or maintenance of BMPs, pollution controls, or pollution prevention measures, and whenever the SWPPP is determined to be ineffective in significantly minimizing or controlling erosion and sedimentation, such as excessive site erosion, excessive sediment leaving the site, or excessive sediment deposits in drainage channels, streams, or lakes.
52. During the EPA Inspection referenced above, in addition to the deficiencies set forth in Paragraphs 43 and 49, the inspector observed:
  - a. Regular silt fences used as perimeter control along the southern border instead of the wire-backed silt fences called for in Appendix B of the SWPPP, Erosion Control Plan & Details;
  - b. Mulch sediment control upgradient of exterior silt fence was not included in the SWPPP;
  - c. Rock socks were utilized as inlet protection instead of the “Gutterbuddys” called for in Section 2.6 of the SWPPP;
  - d. Two check dams installed upgradient of the southern section of the construction site rip rap check dam were not identified in the SWPPP;
  - e. Conveyance ditch near the construction entrance/exit is not identified in the SWPPP; and
  - f. The erosion control blanket installed on the northeast corner of the site was not identified in the SWPPP.

53. The significance of sediment migration and impacts on the receiving streams require an amendment of the SWPPP and the installation of more robust BMPs to meet the requirements of the Permit.

54. Respondents' alleged failure to develop an adequate SWPPP and update the SWPPP is a violation of the Permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

#### **Count 4**

#### **Failure to Conduct and Document Adequate Inspections and Take Appropriate Corrective Action**

55. Paragraphs 1 through 54 are re-alleged and incorporated herein by reference.

56. Part 7.2.10 of the Permit requires that the permittee shall ensure the entire Site is inspected on a regular schedule (not to exceed every 14 days), and by the end of the next day following a rain event which results in a rainfall total of 0.5 inches or greater. Section 5 of the SWPPP, Inspections, states that routine inspections shall be conducted once every 14 days, more frequently if required in the Plan, and within twenty-four hours following each rainfall event of half an inch or more within any twenty-four-hour period. The Permit further requires that a report of each regularly scheduled inspection and required rain event inspection shall be documented and any deficiencies in the operation and maintenance, effectiveness, adequacy or coverage extent of all installed BMPs shall be noted in the inspection report and corrected within seven days unless infeasible.

57. The EPA inspector reviewed several months of inspection reports generated by the permittee and noted that time frame between inspections in January and February 2019 exceeded the 14 days required by the permit. Specifically, 23 days elapsed between inspections conducted on January 3, 2019, and January 27, 2019. Twenty-two days elapsed between inspections conducted on January 27, 2019, and February 19, 2019.

58. The EPA inspector noted that inspections were not conducted either during a rain event or within 24 hours following a rain event on eleven occasions: August 31, 2018, September 8, 2018, October 7, 2018, October 8, 2018, October 9, 2018, October 10, 2018, March 29, 2019, March 30, 2019, April 7, 2019, May 3, 2019, and May 7, 2019.

59. The inspector determined that the inspections conducted by the Respondents were inadequate. The inspection checklist utilized by the Respondents failed to include an assessment of the receiving stream, or all points of discharge including the box culvert outlets, or evaluation of construction related waste material, other wastes, borrow, or equipment.

60. The inspector noted that some of the deficiencies noted during the EPA inspection including a box culvert that outlets south of the residential development and flows south to the



unnamed tributary to Mill Creek was nearly completely filled with sediment and was not noted in any of the Site inspection reports. The inspector also noted that Site inspection reports from June 12, 2018 through May 13, 2019 did not identify any actions taken to address BMP deficiencies.

61. Respondents' alleged failure to conduct and document adequate inspections and take appropriate corrective action is a violation of the terms and conditions of the Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. §1342(p).

### **CONSENT AGREEMENT**

62. Respondents and the EPA agree to the terms of this Consent Agreement/Final Order.

63. Respondents admit the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agree not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement/Final Order.

64. Respondents neither admit nor deny the factual allegations and legal conclusions asserted by the EPA in this Complaint and Consent Agreement/Final Order.

65. Respondents waive their right to contest any issue of fact or law set forth above, and their right to appeal this Consent Agreement/Final Order.

66. Respondents and Complainant agree to conciliate the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

67. The undersigned representative(s) of Respondents certify that he or she is fully authorized to enter the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondents to it.

68. Respondents understand and agree that this Consent Agreement/Final Order shall apply to and be binding upon Respondents and Respondents' agents, successors and/or assigns. Respondents shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondents with respect to matters included herein comply with the terms of this Consent Agreement/Final Order.

69. Respondents certify by the signing of this Consent Agreement/Final Order that Respondents' site is in compliance with Kansas General NPDES Permit No. 100000, and Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and applicable regulations.

### **Penalty Payment**

70. Respondents agree that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondents shall pay a civil penalty of **Fifty Five Thousand Dollars (\$55,000)** pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to be paid in full no later than 30 days after the effective date of this Consent Agreement/Final Order as set forth below. Respondents shall pay the penalty by certified or cashier's check (or as identified in Appendix A) payable to "Treasurer, United States of America" and shall deliver it, with a transmittal that identifies the case name and docket number to:

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

The check must also be annotated with the docket number and name of the case. Copies of the transmittal letter and the check shall be simultaneously sent to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

and  
Liz Huston  
U.S. Environmental Protection Agency Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219.

71. Respondents agree that no portion of the civil penalty or interest paid by Respondents pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondents as a deduction for federal, state, or local income tax purposes.

72. Respondents understand that, pursuant to 40 C.F.R. § 13.18, interest on any late payment will be assessed at the annual interest rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs or interest.

73. Respondents consent to receiving the filed Consent Agreement/Final Order electronically at the following address:

ABP Funding, LLC, c/o Deron Anliker, Attorney for ABP Funding, LLC  
[danliker@dsklaw.com](mailto:danliker@dsklaw.com)

KAT Excavation, Inc., c/o Bart Fisher  
bfisher@katexcavation.com

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

74. Respondents' payment of the entire civil penalty pursuant to this Consent Agreement/Final Order resolves all civil and administrative claims pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for alleged violations identified in this Complaint and Consent Agreement/Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

75. The effect of settlement described above is conditional upon the accuracy of the Respondents' representations to the EPA, as memorialized in Paragraph 69 of this Consent Agreement/Final Order.

76. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondents' obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

77. Notwithstanding any other provision of this Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondents or to seek any other remedy allowed by law.

78. With respect to matters not addressed in this Consent Agreement/Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

### **General Provisions**

79. The Parties acknowledge that this Consent Agreement/Final Order is subject to the public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

80. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after signature by the authorized regional official and upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

81. The state of Kansas has been provided an opportunity to consult with Complainant regarding this matter in accordance with the requirements of 40 C.F.R. § 22.38(b) and Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

82. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

83. Respondents and Complainant agree that this Consent Agreement/Final Order may be signed in part and counterpart.

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
David Cozad  
Director  
Enforcement and Compliance Assurance Division

\_\_\_\_\_  
Elizabeth Huston  
Office of Regional Counsel

**For the Respondent ABP Funding, LLC:**


  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**For the Respondent KAT Excavation, Inc:**

  
\_\_\_\_\_  
Signature

07/16/2020  
\_\_\_\_\_  
Date

Bart Fisher  
\_\_\_\_\_  
Name

Senior Project Manager  
\_\_\_\_\_  
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

**APPENDIX A  
PENALTY PAYMENT INFORMATION**

**CHECK PAYMENTS:**

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

**WIRE TRANSFERS:**

Wire transfers should be directed to the Federal Reserve Bank of New York

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"

**OVERNIGHT MAIL:**

U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
ATTN Box 979077  
St. Louis, MO 63101  
Contact: Natalie Pearson 314-418-4087

**ACH (also known as REX or remittance express):**

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank  
808 17<sup>th</sup> Street, NW  
Washington, DC 20074  
Contact: Jesse White 301-887-6548  
ABA = 051036706  
Transaction Code 22 - checking  
Environmental Protection Agency  
Account 310006  
CTX Format



**ONLINE PAYMENT:**

There is now an On Line Payment Option, available through the Dept. of Treasury.  
This payment option can be accessed from the information below:

WWW.PAY.GOV

Enter "SFO 1.1" in the search field

Open form and complete required fields.

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:

Copy via email to Respondent:

ABP Funding, LLC, c/o Deron Anliker, Attorney for ABP Funding, LLC  
[danliker@dsklaw.com](mailto:danliker@dsklaw.com)

KAT Excavation, Inc., c/o Bart Fisher  
[bfisher@katexcavation.com](mailto:bfisher@katexcavation.com)

Copy via email to representatives for the Complainant:

Elizabeth Huston, EPA Region 7 Office of Regional Counsel, at [huston.liz@epa.gov](mailto:huston.liz@epa.gov)

Delia Garcia, EPA Region 7 Enforcement and Compliance Assurance Division, at [garcia.delia@epa.gov](mailto:garcia.delia@epa.gov)

Dated: \_\_\_\_\_

\_\_\_\_\_  
Lisa Haugen  
Hearing Clerk, Region 7