

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
Shilling Construction Company, Inc.) Docket No. CWA-07-2022-0048
)
Respondent)
)
Proceedings under) COMPLAINT AND
Section 309(g) of the Clean Water Act,) CONSENT AGREEMENT/
33 U.S.C. § 1319(g)) FINAL ORDER
)
_____)

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 United States Environmental Protection Agency's (“EPA’s”) 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 (“Consolidated Rules of Practice”).

2. Complainant, the United States Environmental Protection Agency Region 7 (“EPA” or “Complainant”) and Respondent, Shilling Construction Company, Inc. (hereafter, “Shilling Construction” or “Respondent”), 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 Respondent violated its National Pollutant Discharge Elimination System (“NPDES”) permit for stormwater discharges associated with industrial activity, issued under the authority of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26.

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 of EPA Region 7, who in turn has delegated the

authority to the Director of the Enforcement and Compliance Assurance Division of EPA Region 7 (collectively referred to as the “Complainant”).

5. Respondent is and was at all times relevant a corporation under the laws of, and authorized to do business in, 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 an NPDES permit issued pursuant to that Section.

7. 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 conform with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

8. 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.

9. 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.

10. 40 C.F.R. § 122.26(b)(14) defines “stormwater discharge associated with industrial activity” as “the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw material storage areas at an industrial plant.” Included in the categories of facilities considered to be engaging in “industrial activity” are facilities under Standard Industrial Classification 295 involved in the manufacturing of asphalt and tar paving mixtures and blocks. *See* 40 C.F.R. § 122.26(b)(14)(vi).

11. 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.

12. The KDHE issued and implemented NPDES General Permit for Storm Water Runoff from Industrial Activity KSR000729 (“Permit” or “General Permit”). The most recent 5-year permit has an effective date of November 1, 2016, and an expiration date of October 31, 2021, with previous 5-year permit having been issued in 2011. Effective November 1, 2021, to date, KDHE has not reissued a new NPDES general permit to replace the 2016 permit, which expires October 31, 2026.

13. Any individual seeking coverage under the General Permit is required to submit a Notice of Intent (“NOI”) to the KDHE in accordance with the requirements of Part 1.5. of the permit. Respondent submitted an NOI to KDHE on January 10, 2012, to obtain authorization under the General Permit. KDHE does not require a new NOIs for coverage under subsequent general permits.

14. As required by Part 2.1 of the General Permit, a Stormwater Pollution Prevention Plan (“SWPPP”), which includes at least the minimum requirements set forth in the Permit, must be completed, implemented, and maintained on site within ten months of KDHE’s authorization of the permittee’s NOI.

EPA’s General Allegations

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

16. Respondent is, and was at all times relevant to this action, the owner and/or operator of a facility known as Shilling Construction Company, Inc., located at 321 McDowell Creek Road, Manhattan, Kansas 66502 (“Facility”), and the facility operates under SIC 295.

17. The Facility consists of two separate parcels of land. The north section is owned by Shilling Construction and is approximately seven acres in size. There is also a separate three acre leased section directly to the south of the main parcel that is also operated by Shilling Construction since October 31, 2019. The north section contains aggregate, chat, reclaimed asphalt pavement (“RAP”) and cold patch asphalt piles, hot mix plant, office and maintenance buildings, overhead sprayer, aggregate hopper and conveyor system, equipment storage, used oil storage, and a tank farm. The south section is used for aggregate and equipment storage and contains an additional RAP pile.

18. The north company-owned section is divided into four drainage areas. Stormwater runoff within the drainage areas is directed to five stormwater inlets which connect to five stormwater outfalls that discharge to the Kansas River. The leased south section drains three ways. Stormwater from the east half flows into a ditch along McDowell Creek Road which directs stormwater west through a culvert into the Kansas River. Stormwater from the south end flows south, joins the flow from the McDowell Creek Road ditch, and continues flowing west into the Kansas River. Stormwater from the west half flows along a berm fronting the Kansas River. A breach in the berm allows stormwater to flow through the berm and directly into the Kansas River.

19. Stormwater, snow melt, surface drainage and runoff water leave Respondent’s Facility and discharges via seven stormwater outfalls directly into the Kansas River.

20. The runoff and drainage from Respondent’s Facility are “stormwater” as defined by 40 C.F.R. § 122.26(b)(13).

21. Stormwater from Respondent's Facility contains "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

22. The Facility has "stormwater discharges associated with industrial activity" as defined by 40 C.F.R. § 122.26(b)(14) and Section VIII of the Permit (Definitions), which state such discharges include stormwater discharges from facilities operating under SIC code 295.

23. The Facility is a "point source" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

24. The Kansas River is a "navigable water" as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

25. Stormwater runoff from Respondent's industrial activity 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).

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

27. The Facility was authorized (G-KS38-0009) by the KDHE to discharge stormwater associated with industrial activity in accordance with the terms and conditions of the KDHE Stormwater Runoff from Industrial Activities General Permit. Initial application for authorization was submitted to KDHE by the Respondent on January 10, 2012. Coverage is provided through October 31, 2026. To date, KDHE has not reissued a new NPDES general permit to replace the 2016 permit. At all times relevant, the Respondent has operated under authorization of the Permit and the provisions of the Permit have remained substantially the same.

28. On or about May 19, 2021, the EPA performed an Industrial Stormwater Compliance Evaluation Inspection ("EPA Inspection") of Respondent's Facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent's compliance with KDHE General Permit and the CWA.

29. During the EPA Inspection, the EPA inspector reviewed Respondent's records related to the General Permit and observed the Facility and the Facility's stormwater outfalls and stormwater controls.

30. During the inspection, EPA documented the following conditions relevant to Respondent's compliance with the General Permit:

- a. The Facility did not have a complete SWPPP, only an outdated map from October 31, 2010, that did not contain all the elements required by Section 2.4.2(b) such as

all buildings, material storage areas, overhead truck sprayer, aggregate piles, and RAP piles. The SWPPP also did not address the addition of the leased property which was added October 31, 2019.

- b. Site inspections were not documented as required in the General Permit under Sections 2.4.3(d) and 2.4.4.
- c. Two stormwater inlets had no controls and three stormwater inlets had controls that were degraded and in need of maintenance. Sediment and debris were found in all stormwater inlets.
- d. Stormwater runoff was flowing from a RAP pile located in the southern leased portion of the site through a gap in the berm directly into the Kansas River without any controls prior to discharging.
- e. The Facility was not utilizing best management practices (“BMPs”) to prevent pollutants from entering stormwater runoff:
 - i. Spills and leaks were noted around a dryer/mixer unit and secondary containment structures.
 - ii. Used oil barrels were stored without any pollution prevention measures or labeling.
 - iii. A secondary containment valve was left open potentially allowing polluted stormwater to be released with no monitoring.
 - iv. Asphalt release agent runoff from the overhead sprayer has potential to combine with stormwater and enter a stormwater inlet.
- f. Discharges from the secondary containment valve and the overhead sprayer are unauthorized stormwater discharges according to 2.4.3(g) of the General Permit.

31. At the conclusion of the inspection, the EPA inspector issued the Respondent a Notice of Potential Violation (“NOPV”) identifying issues determined to be potential violations of Respondent’s authorization under the General Permit, including but not limited to:

- a. Inadequate SWPPP;
- b. Lack of maintenance to BMPs;
- c. Site inspections not available during the inspection; and
- d. Lack of stormwater controls.

32. The EPA NOPV offered the Respondent an opportunity to reply and address any of the potential violations identified by the EPA inspector. Respondent provided multiple responses to the EPA inspector by email starting May 19, 2021. A response stated that Shilling Construction had hired a consultant to draft a new SWPPP and included a completed site inspection form. Photos were provided showing BMPs installed around stormwater inlets, closure of the berm gap, removal of sediment and rock deposits from stormwater inlets, cleanup of spills, and closure of the secondary containment valve.

33. A copy of the Inspection report was emailed by the EPA to Respondent on July 8, 2021.

EPA's Specific Allegations

**Count 1
Non-Stormwater Discharge**

34. The allegations stated above are re-alleged and incorporated herein by reference.

35. Part 1.4 of the General Permit states that the General Permit does not authorize any other wastewater treatment system or the discharge of sewage, pollutants or wastewater to waters of the State. Only non-stormwater discharges listed in Part 1.2 of the General Permit are authorized provided the facility has evaluated and implemented BMPs to minimize pollutants in stormwater discharges.

36. During the EPA Inspection, the inspector observed that the overhead truck sprayer does not completely shut off between truck applications and was actively dripping chemical asphalt release agent onto a paved area. Stormwater runoff from the sprayer area combines with releasing agent and is allowed into a pipe which directs the flow west into stormwater inlets. These inlets then discharge via an outfall into the Kansas River. The non-stormwater discharge is not listed in the General Permit and therefore unauthorized.

37. Respondent's discharge of non-stormwater from the Facility to the Kansas River, as documented by the EPA Inspection, is an unauthorized discharge and a violation of the conditions of Respondent's General Permit and Sections 301(a) and/or 402 (p) of the CWA, 33 U.S.C. §§ 1311(a) and/or 1342(p).

**Count 2
Failure to Develop an Adequate SWPPP and Failure to Amend SWPPP**

38. The allegations stated above are re-alleged and incorporated herein by reference.

39. Part 2.1 of the General Permit requires that a SWPPP be developed that is specific to the industrial activity and site characteristics occurring at the permitted location. The permittee shall fully implement and periodically review, and update as necessary, the provisions of the SWPPP. The SWPPP shall be developed and implemented within ten months of authorization by KDHE and shall submit a SWPPP Completion Certification Form to KDHE.

40. Part 2.4 of the General Permit states that the SWPPP shall contain, at a minimum, the following items:

- a. Facility description including production activities conducted at the Facility;
- b. Pollution Prevention Team listing specific individuals or positions who are responsible for developing, implementing, maintaining, and revising the SWPPP. Each member's responsibilities shall be clearly identified. The activities and responsibilities of the team shall address all aspects of the Facility's SWPPP;
- c. Description of potential pollutant sources which may be reasonably be expected

to add significant pollutants to the stormwater discharge. The description shall include at a minimum:

- i. A general location map;
 - ii. A site map identifying the scale, location of significant structures, the outlined drainage areas, direction of flow, approximate acreage of each stormwater outfall, stormwater conveyances and area inlets for each outfall, all authorized non-stormwater discharge locations, name of water body the facility discharges to, location of significant materials, storage tanks, scrap yards, general refuse areas, fuel storage and distribution areas, vehicle and equipment storage and maintenance areas, loading and unloading areas, short and long term material storage areas, stock piles, areas where spills have occurred and residues remain, and existing structural control measures;
 - iii. Inventory of exposed materials including a narrative description of significant materials handled, treated, stored, leaked, spilled, or disposed of in a manner which would allow for exposure to stormwater within the period starting three years prior to the date of the permit, structural and non-structural control measures, and any treatment the stormwater receives. A list of significant spills and leaks of hazardous materials in exposed areas shall be maintained and kept updated; and
 - iv. Risk identification and summary of potential pollutant sources including a narrative description of potential pollutant sources, their location, and pollutant parameters of concern.
- d. Measures and controls listing and description of stormwater management controls, administrative BMPs, structural control BMPs, and non-structural control BMPs appropriate for the facility that addresses the following minimum components including a schedule for implementation:
- i. Good housekeeping measures;
 - ii. Preventative maintenance schedule for inspection and maintenance of stormwater management controls;
 - iii. Spill prevention and response procedures;
 - iv. Inspection frequency at appropriate intervals as specified in the SWPPP but at a minimum of quarterly and identification of facility personnel trained to inspect. A set of tracking or follow-up procedures shall be used to ensure that all appropriate actions are taken in response to the inspections;
 - v. Employee training for implementing activities identified in the SWPPP at all levels of responsibility for both new and existing employees;
 - vi. Record keeping documenting incidents along with other information which may impact stormwater quality and quantity. Reporting procedures, inspections, and maintenance activities shall be developed and included in the SWPPP;
 - vii. Identification of all unauthorized, non-stormwater discharges directed to surface water or groundwater;
 - viii. Sediment and erosion control to minimize erosion in areas which have

- high potential for significant soil erosion; and
- ix. Management of runoff including a description and location on a site map of existing or proposed stormwater management practices to treat, divert, infiltrate, reuse, or otherwise manage stormwater runoff in a manner that reduces pollutants in stormwater discharges from the site.
- e. Comprehensive site compliance evaluation conducted at least once a year including documentation of inspection and any actions taken as a result; and
- f. Records of visual examination of stormwater quality at each identified stormwater outfall at a frequency stated in the SWPPP but at a minimum of once per year and any stormwater sampling data used to evaluate the effectiveness of the SWPPP and/or BMPs.

41. Part 2.4.6 of the General Permit further requires that the SWPPP shall be re-evaluated and modified in a timely manner but in no case more than ninety days after a change in design, construction, operation, or maintenance that has a significant effect on the potential for the discharge of pollutants or a visual inspection of stormwater discharges or monitoring indicate that the SWPPP appears to be ineffective.

42. Respondent's SWPPP at the time of EPA's inspection was dated October 31, 2010, and only consisted of a SWPPP map. The SWPPP map had not been updated to include changes to the site including but not limited to the addition of material storage areas, overhead truck sprayer, aggregate piles, or RAP piles and did not include the leased south portion of the facility which was added on October 31, 2019.

43. As summarized above, the EPA finds that at the time of EPA's Inspection Respondent failed to have an adequate and accurate SWPPP, and/or to have updated or amended the Facility's SWPPP to describe current facility conditions, as required by Part 2.4.6 of the Permit.

44. Respondent's failures to develop an adequate and accurate SWPPP and/or to update or amend the Facility's SWPPP to reflect current facility conditions are each a violation of the terms and conditions of the General Permit, and as such, are violations of the conditions and limitations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 3

Failure to Implement and/or Maintain Appropriate Controls

- 45. The allegations stated above are re-alleged and incorporated herein by reference.
- 46. Part 2.1 of the General Permit requires the development and implementation of the Facility's SWPPP within ten months of KDHE's authorization of the permittee's NOI.
- 47. Part 2.4.2 of the General Permit requires that potential pollutant sources which may reasonably be expected to add significant pollutants to the stormwater discharge shall be identified.

48. Part 2.4.3 of the General Permit requires the Facility to develop and implement structural and non-structural stormwater management controls and BMPs that are appropriate for the facility.

49. Part 2.4.3(i) of the General Permit requires that identified potential pollutant sources shall be considered when determining reasonable and appropriate measures to implement.

50. Part 2.4.3(b) of the General Permit requires that the SWPPP provide a schedule for inspection and maintenance of stormwater management controls.

51. The EPA Inspector observed the Facility's stormwater management controls, including structural controls and best management practices (BMPs) and documented the following:

- a. Two of five stormwater inlets had no stormwater controls;
- b. Three of five stormwater inlets had controls that were degraded, not operating as designed, and in need of maintenance;
- c. Sediment, rock, aggregate material, and debris were found in stormwater inlets;
- d. Breach in the berm along the Kansas River allowing stormwater to flow through with no BMPs prior to discharging;
- e. Evidence of spills outside secondary containment structures and dryer/mixer unit,
- f. Open valve from secondary containment structure allowing stormwater to flow out without monitoring;
- g. No controls around aggregate and RAP piles near stormwater inlets, and;
- h. Leaking overhead sprayer for releasing agent.

52. As summarized above, the EPA finds that Respondent failed to implement and/or maintain appropriate controls as required by Part 2.2 of the General Permit.

53. Respondent's failure to implement adequate stormwater management controls is a violation of the conditions and limitations of the General Permit, and as such, is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 4

Failure to Conduct and/or Document Visual Stormwater Monitoring

54. The allegations stated above are re-alleged and incorporated herein by reference.

55. Part 2.4.5 of the General Permit requires that the permittee periodically, but at a minimum of once per year) perform and document a visual examination of a stormwater discharge associated with industrial activity from each identified stormwater outfall. Visual

examination reports shall be maintained onsite and be made available for inspection upon request.

56. Part 3.1 of the General Permit requires that all records required by the general permit shall be maintained for a period of three years. All records shall be kept onsite or in a readily accessible location.

57. At the time of EPA's inspection, Respondent did not have visual stormwater monitoring records from 2017 through the date of the Inspection.

58. As summarized above, the EPA finds that Respondent failed to document visual stormwater monitoring and/or maintain records, as required by Part 2.4.5 and Part 3.1 of the General Permit.

59. Respondent's failure to conduct visual stormwater monitoring and/or to maintain records of such are violations of the conditions and limitations of the General Permit, and as such, are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

**Count 5
Failure to Conduct and/or Document Quarterly Inspections**

60. The allegations stated above are re-alleged and incorporated herein by reference.

61. Part 2.4.3(b) of the General Permit requires that the SWPPP shall describe a preventative maintenance program that provides a schedule for inspection and maintenance of stormwater management controls.

62. Part 2.4.3(d) of the General Permit requires that trained facility personnel shall inspect at appropriate intervals, but at a minimum of quarterly, designated equipment and storage areas for raw materials, finished product, chemicals, recycling, equipment, paint, fueling and maintenance, loading and unloading areas, and waste management areas. A set of tracking or follow up procedures shall be used to ensure that appropriate actions are taken in response to the inspection and shall include completion dates for correction. Records of inspections shall be maintained on-site or in a readily accessible location for at least three years after the date of the inspection.

63. At the time of EPA's inspection, Respondent did not have quarterly inspection or maintenance records from May 2018 through May 2021.

64. As summarized above, the EPA finds that Respondent failed to document quarterly inspections and maintain records as required by Part 2.4.3 of the General Permit.

65. Respondent's failure to document inspections and maintain records are violations of the conditions and limitations of the General Permit, and as such, are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 6

Failure to Conduct and/or Document Comprehensive Site Compliance Evaluations

66. The allegations stated above are re-alleged and incorporated herein by reference.

67. Part 2.4.4 of the General Permit requires a comprehensive site compliance evaluation be conducted and documented at least once a year. If the comprehensive site evaluation does not identify any noncompliance, the report shall include a statement that the facility is in compliance with the SWPPP and the conditions of the permit.

68. Part 3.1 of the General Permit requires that all records required by the permit shall be kept on-site of in a readily accessible location for a period of three years.

69. At the time of the EPA inspection, the Respondent had no comprehensive site compliance evaluation reports for 2017 through the date of the Inspection.

70. As summarized above, the EPA finds that the Respondent failed to annually evaluate and/or document annual evaluations of the Facility from 2017 through the date of the Inspection as required by Part 2.4.4. and Part 3.1 of the General Permit.

71. Respondent's failure to document annual evaluations and/or to maintain records of such evaluations are violations of the conditions and limitations of the General permit, and as such, are violations of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 7

Failure to Conduct and/or Document Employee Training

72. The allegations stated above are re-alleged and incorporated herein by reference.

73. Part 2.4.3(e) of the General Permit requires that employee training be provided for new and existing staff responsible for stormwater management of the components and goals of the SWPPP.

74. Part 3.1 of the General Permit requires that all records required by the permit shall be kept on-site of in a readily accessible location for a period of three years.

75. At the time of the EPA inspection, the Respondent had no records of employee training available for 2017 through the date of the Inspection.

76. As summarized above, the EPA find that the Respondent failed to conduct and/or document employee trainings for the Facility from 2017 to 2020 as required by Part 2.4.3(e) and Part 3.1 of the General Permit.

77. Respondent's failure to conduct and/or document employee trainings are violations of the conditions and limitations of the General Permit, and as such, are violations of

Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

CONSENT AGREEMENT

78. Respondent and the EPA agree to the terms of this Consent Agreement/Final Order.

79. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Consent Agreement/Final Order.

80. Respondent neither admits nor denies the factual allegations and legal conclusions contained in this Complaint and Consent Agreement/Final Order.

81. Respondent waives its right to contest any issue of fact or law set forth above, and its right to appeal this Consent Agreement/Final Order.

82. Respondent and Complainant each agree to resolve 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.

83. As required by Section 309(g)(3) of the CWA, 33 U.S.C § 1319(g)(3), the EPA has taken into account the nature, circumstances, extent and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors in determining the appropriate penalty settlement amount to resolve this action.

84. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

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

86. Respondent certifies by signing this Consent Agreement/Final Order that Respondent is currently in compliance with all requirements of NPDES Permit KSR000729 and Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and its applicable regulations.

87. This Consent Agreement/Final Order addresses all civil administrative claims for CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to other violations of the CWA or any other applicable law.

Penalty Payment

88. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of Sixty-Five Thousand, Nine Hundred and Eighty- Dollars (\$65,980) pursuant to the authority of Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), to be paid in full no later than thirty (30) days of the effective date of this Consent Agreement/Final Order as set forth below.

89. Respondent 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, facility address, and docket number CWA-07-2022-0048 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>.

Respondent shall simultaneously send copies of the transmittal letter and the check, as directed above, to Amy Gonzales, EPA Region 7, Regional Hearing Clerk, at gonzales.amy@epa.gov and Chris Muehlberger, EPA Region 7, Attorney, at muehlberger.christopher@epa.gov

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

91. Respondent understands, 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.

Effect of Settlement and Reservation of Rights

92. Respondent's payment of the entire civil penalty resolves all civil and administrative claims pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for violations alleged 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.

93. The effect of settlement described above is conditional upon the accuracy of the

Respondent's representations to the EPA, as memorialized in this Consent Agreement/Final Order.

94. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

95. 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 collection action pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), and to seek penalties against Respondent or to seek any other remedy allowed by law.

96. 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

97. 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.

98. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after entry of the Final Order and upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency Region 7, 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.

99. 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).

100. 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.

101. Respondent and Complainant agree that this Consent Agreement/Final Order may be signed in part and counterpart. Respondent agrees to electronic service of this Complaint and Consent Agreement/Final Order at the following address: *steve@shilconst.com*.

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

Date

David Cozad
Director
Enforcement and Compliance Assurance Division

Chris Muehlberger
Office of Regional Counsel

For the Respondent, Shilling Construction Company, Inc.:

8-18-22
Date


Signature

Steven Altobello
Name

Treasurer
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 Respondent is 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 Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:

Copy by email to Respondent:

Shilling Construction Company, Inc.
Attention: Steven Altobello
9620 US Highway 24
Manhattan, Kansas 66502
steve@shilconst.com

Copy by email to Attorney for Complainant:

Chris Muehlberger
U.S. Environmental Protection Agency - Region 7
muehlberger.christopher@epa.gov

Copy by email to the Kansas Department of Health and Environment:

Tom Stiles
Kansas Department of Health and Environment
Tom.stiles@ks.gov

Date

Amy Gonzales
Hearing Clerk, Region 7