

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
v.	)	CIVIL ACTION NO. 11-4232
	)	
THE LINKS AT COLUMBIA, LP and	)	
LINDSEY CONSTRUCTION COMPANY, INC.	)	
	)	
Defendants.	)	
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**STIPULATION OF SETTLEMENT AND JUDGMENT**

1. *WHEREAS* the United States of America, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), commenced this action by filing a Complaint for Civil Penalties ("Complaint") on August 31, 2011, alleging violations by The Links at Columbia, LP and Lindsey Construction Company, Inc. (the "Defendants") of the Clean Water Act (the "Act"), 33 U.S.C. § 1251 *et. seq.* and the Missouri general permit governing discharge of storm water arising out of construction activities at the Links of Columbia construction site in Columbia, Missouri between March 1, 2006 and September 18, 2007;

2. *WHEREAS* EPA issued the Defendants a Notice of Potential National Pollution Discharge Elimination System Permit Violations on May 9, 2007;

3. *WHEREAS* EPA issued the Defendants a Findings of Violation, Order for Compliance;

4. **WHEREAS** the Defendants hereby certify that they have ceased the alleged violations of the Clean Water Act (the "Act"), 33 U.S.C. § 1251 *et. seq.* and the Missouri general permit governing discharge of storm water its construction activities at the Links of Columbia construction site in Columbia, Missouri;

5. **WHEREAS** the United States and the Defendants (the "Parties") agree that it is in the public interest to resolve this matter without litigation and have negotiated this Stipulation of Settlement and Judgment in good faith to avoid expensive and protracted litigation;

6. **NOW THEREFORE**, without adjudication or admission of any issue of fact or law, the Parties, by and through the undersigned, agree and stipulate as follows:

A. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355 and 33 U.S.C. § 1319(b). Venue is proper in this District pursuant to 33 U.S.C. § 1319(b) and 28 U.S.C. §§ 1391 and 1395, because the Defendants conduct business in this District and because the violations occurred in this District.

B. For the purposes of this Stipulation of Settlement and Judgment, or any action to enforce it, the Defendants consent to the Court's jurisdiction over this Stipulation of Settlement and Judgment and any such action over the Defendants and consents to venue in this judicial district.

C. For purposes of this Stipulation of Settlement and Judgment, the Defendants agree that the Complaint states claims upon which relief may be granted pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342.

D. The obligations of this Stipulation of Settlement and Judgment apply to and are binding upon the United States and upon the Defendants and their successors. Any change in the Defendants' ownership or corporate status shall not alter their obligations hereunder.

E. Within thirty days of entry by the Court of this Stipulation of Settlement and Judgment, the Defendants shall pay to the United States via electronic funds transfer ("EFT") a total civil penalty of \$430,000, in accordance with instructions provided by the Financial Litigation Unit of the Office of the United States Attorney for the Western District of Missouri. The EFT documents shall refer to DOJ case number 90-5-1-1-09277. The obligations of the Defendants to pay the total amount due under this Agreement are joint and several. In the event of the insolvency of either Defendant, or the failure by any Defendant to pay its portion of the total civil penalty, the remaining Defendant shall complete all payments. Payments by EFT must be received at the Department of Justice lockbox bank by 4:00 P.M. (Eastern Time) to be credited on that day. Copies of the payment and transmittal documents shall be mailed to:

Chief, Environmental Enforcement Section  
Environmental Enforcement Section  
Environment & Natural Resources Division  
United States Department of Justice  
P.O. Box 7611 Ben Franklin Station  
Washington, D.C. 20044-7611

and

Sarah T. LaBoda  
Assistant Regional Counsel  
U.S. EPA Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, KS 66101

F. In the event that the Defendants do not comply with the payment obligations of Paragraph E above, the Defendants shall pay a stipulated penalty to the United States in the

amount of one thousand dollars (\$1,500) per day for each day that the civil penalty remains unpaid. Stipulated penalties shall be paid in the same manner as that provided for in Paragraph E above for payment of the civil penalty. Further, interest shall accrue on the unpaid balance of civil and/or stipulated penalties in accordance with 28 U.S.C. § 1961 commencing on the date that such penalties are due and continuing until paid. If payment specified in Paragraph E is not made when due, then, in addition to other remedies herein, the United States reserves the right to move this Court to vacate this Stipulation of Settlement and Judgment and reinstate this action.

G. Within ten business days of receipt of all amounts due under this Stipulation of Settlement and Judgment, the United States shall file a notice with the Court that full payment has been made.

H. The Defendants' payment of the civil penalty identified in Paragraph E above and any stipulated penalties and interest required by Paragraph F above shall constitute a complete settlement and shall be in full satisfaction of the United States' claims regarding the violations of the Clean Water Act alleged in the Complaint through the date of lodging. This Stipulation of Settlement and Judgment is limited to the civil claims under the Clean Water Act that are expressly alleged in the Complaint. This Stipulation of Settlement and Judgment is not intended to, nor shall it be construed to, operate in any way to resolve any civil claims other than those expressly alleged in the Complaint or any criminal liability of the Defendants.

I. Nothing in this Stipulation of Settlement and Judgment shall be construed to release the Defendants or their agents, successors, or assigns from their respective obligations to comply with any applicable Federal, State, or local law, regulation, or permit. Nothing contained herein shall be construed to prevent or limit the United States' rights to obtain penalties or injunctive

relief under the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, or any other law for other alleged violations.

J. Civil penalties and any stipulated penalties paid pursuant to this Stipulation of Settlement and Judgment are not deductible by the Defendants or any other person for federal, state, or local tax purposes.

K. This Stipulation of Settlement and Judgment shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment pursuant to 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Stipulation of Settlement and Judgment disclose facts or considerations indicating that the Stipulation of Settlement and Judgment is inappropriate, improper, or inadequate. The Defendants consent to the entry of this Stipulation of Settlement and Judgment without further notice and agrees not to withdraw from or oppose its entry by the Court or to challenge any provision herein, unless the United States has notified the Defendants in writing that it no longer supports entry of this Stipulation of Settlement and Judgment.

L. The Court shall retain jurisdiction for the purposes of interpreting and enforcing this Stipulation of Settlement and Judgment through the date that payment is made in accordance with the provisions herein.

M. This Stipulation of Settlement and Judgment shall be considered an enforceable judgment solely for purposes of post-judgment collection of any unpaid civil and/or stipulated penalties and interest referred to in Paragraphs E and F above, in accordance with Rule 69 of the Federal Rules of Civil Procedure; the Federal Debt Collection Procedures Act, 28 U.S.C. §§ 3001-3008; and any other applicable statutory authority without further order of this Court. In the event all or any portion of the civil penalty amount referred to in Paragraph E above is not

paid in accordance with the provisions of this Stipulation of Settlement and Judgment, the Defendants shall be liable for attorneys' fees and costs incurred by the United States in collecting any amounts due thereunder.

N. Nothing in this Stipulation of Settlement and Judgment creates, nor shall it be construed as creating, any rights or claims in favor of any person not a Party to this Stipulation of Settlement and Judgment of Settlement.

O. Except as to those civil claims expressly alleged in the Complaint and resolved in this Stipulation of Settlement and Judgment, in any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties or other appropriate relief relating to the Links of Columbia Site in Columbia, Missouri, the Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case.

P. The undersigned representatives of the Defendants, the Deputy Chief of the Environmental Enforcement Section for the Environment and Natural Resources Division, the Director, Office of Civil Enforcement for EPA and the Regional Counsel of EPA certify that each is fully authorized to enter into the terms and conditions of this Stipulation of Settlement and Judgment and to bind legally the party he or she represents to this document.

Q. The Defendants hereby agree to accept service of the complaint in this matter from the United States by first class mail directed to Mr. Hugh Jarratt, Corporate Attorney, 1200 E. Joyce Boulevard Fayetteville, Arkansas 72703 (or by hand delivery of the Complaint to his/her office) and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of

Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons with the Complaint.

R. The Defendants consent to the entry of this Stipulation of Settlement and Judgment without further notice.

S. Except as set forth in Paragraph M of this Stipulation of Settlement and Judgment, each party shall bear its own costs and attorneys' fees in this action.

T. There are no separate agreements or understandings with respect to this matter that have not been set forth in this Stipulation of Settlement and Judgment.

U. This Stipulation of Settlement and Judgment may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

**AS STIPULATED AND AGREED TO BY THE PARTIES, IT IS SO ORDERED AND ADJUGED THIS \_\_\_ DAY OF \_\_\_\_\_, 2011.**

**FOR THE UNITED STATES:**

DATED: 8/29/11

s/ [REDACTED]  
W. BENJAMIN FISHEROW  
Acting Chief  
Environmental Enforcement Section  
Environment & Natural Resources Division  
United States Department of Justice  
Washington, D.C. 20044-7611

DATED: 8/29/11

s/ [REDACTED]  
SARA COLANGELO WYCHE  
Trial Attorney  
Environmental Enforcement Section  
Environment & Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 514-3394  
[sara.wyche@usdoj.gov](mailto:sara.wyche@usdoj.gov)  
Member of the Maryland Bar

DATED: 8/29/11

s/ [REDACTED]  
CHARLES M. THOMAS, Mo. Bar No. 28522  
Assistant United States Attorney  
Charles Evans Whittaker Courthouse  
400 East 9<sup>th</sup> Street, Room 5510  
Kansas City, MO 64106  
(816) 426-3130  
(816) 426-3165 (Fax)  
[Charles.thomas@usdoj.gov](mailto:Charles.thomas@usdoj.gov)  
Attorneys for Plaintiff



**FOR THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY**

DATED: 8/26/11

/s/ [REDACTED]  
ADAM M. KUSHNER, Director  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

DATED: 8/26/11

/s/ [REDACTED]  
MARK POLLINS, Director  
Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, D.C. 20460

DATED: 8/20/11

s/ [REDACTED]  
KARL BROOKS  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

DATED: 8/25/11

s/ [REDACTED]  
DAVID COZAD  
Regional Counsel  
U.S. Environmental Protection Agency  
Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

***FOR THE LINKS AT COLUMBIA, LP***

**The Links at Columbia Management Company, LLC  
General Partner of The Links at Columbia, LP**

**DATED: 8/23/11**

**s/**

**JAMES E. LINDSEY  
Manager**

**FOR LINDSEY CONSTRUCTION COMPANY, INC.**

DATED: 8/23/11

s/ 

**JAMES E. LINDSEY**  
Chairman