

**PROPOSED**  
**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION III**  
**1650 Arch Street**  
**Philadelphia, Pennsylvania 19103-2029**

IN THE MATTER OF:

Super Concrete Corporation  
5001 Fort Totten Drive NE  
Washington, DC 20011

Respondent

Proceeding to Assess Class I  
Administrative Penalty Under  
**Section 309(g) of the Clean Water Act**

**Docket No. CWA-03-2017-0024**

**CONSENT AGREEMENT  
AND FINAL ORDER**

**CONSENT AGREEMENT AND FINAL ORDER**

**I. PRELIMINARY STATEMENT, JURISDICTIONAL AND STATUTORY  
AUTHORITY**

1. This Consent Agreement and Final Order (“CAFO”) is entered into by the Director, Water Protection Division, United States Environmental Protection Agency (“EPA”), Region III (“Complainant”) and Super Concrete Corporation (“Super Concrete” or “Respondent”) pursuant to Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“Consolidated Rules”)*, 40 C.F.R. Part 22. The parties having agreed to settlement of violations of the Clean Water Act by Respondent, this CAFO simultaneously commences and concludes this action pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) & (3).
2. Respondent is an owner and operator of a concrete aggregate processing facility located at 5001 Fort Totten Drive NE, Washington, DC 20011 (“Facility”).
3. Respondent’s Facility subject to this Consent Agreement and Final Order (“CAFO”), is subject to CWA National Pollutant Discharge Elimination System (“NPDES”), Permit No. DC0000175 (the “Facility Permit”).
4. Complainant alleges that Respondent has failed to comply with the CWA and its NPDES permit, including a failure to comply with all monitoring and reporting obligations of the Facility Permit. The alleged violations of the Facility Permit are identified in Exhibit 1.

5. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as amended by the Debt Collection Improvement Act of 1996 (codified at 28 U.S.C. § 2461) and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, the Administrator of the EPA is authorized after March 15, 2004, to issue an order requiring compliance and/or assessing administrative penalties against any person who has violated Section 301(a) of the CWA by failing to obtain an NPDES permit or by discharging a pollutant into a water of the United States without an NPDES permit issued pursuant to Section 402 in an amount not to exceed \$ 16,000 per day for each violation that occurred before November 2, 2015 and assessed before August 1, 2016 and up to \$20,628 per day for each violations that occurred after November 2, 2015 and was assessed on or after August 1, 2016 up to a total penalty amount of \$257,848.
6. The EPA is authorized to issue NPDES permits within the District of Columbia, and issued the Facility Permit.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

7. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the NPDES program.
8. Under Section 402 of the Act, 33 U.S.C. § 1342, EPA and states with EPA-approved NPDES programs are authorized to issue permits governing the discharge of pollutants from regulated sources.
9. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from any point source by a person into a water of the United States except in compliance with a permit issued under the NPDES program pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
10. Section 502(5) of the Act, 33 U.S.C. § 1362(5) defines the term “person” as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.”
11. Section 502(12) of the Act, 33 U.S.C. § 1362(12) defines the term “discharge of a pollutant” and the term “discharge of pollutants” as “any addition of any pollutant to navigable waters from any point source,” or “any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.”
12. Section 502(6) of the Act, 33 U.S.C. § 1362(6) defines the term “pollutant” as “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.”

13. Section 502(14) of the Act, 33 U.S.C. § 1362(14) defines the term “point source” as “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.”
14. Section 502(7) of the Act, 33 U.S.C. § 1362(7) defines the term the term “navigable waters” as “the waters of the United States, including the territorial seas.” *See also* 40 C.F.R. § 122.2.
15. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA administers the NPDES program in the District of Columbia.
16. An NPDES Permit is required for industrial discharges, including discharges related to the Facility. *See* 33 U.S.C. § 1342, 40 C.F.R. § 122.21.
17. The Respondent is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
18. Pursuant to its NPDES Permits, Respondent is authorized to discharge pollutants through point sources into navigable waters.
19. On or about February 19, 2013, EPA inspected the Facility, and afterwards provided a copy of EPA’s inspection report to Respondent.
20. In response to an EPA Show Cause Letter, on or about May 26, 2015, EPA and Respondent met to discuss the alleged violations.
21. Following the May 26, 2015 meeting, EPA and Respondent had a number of follow-up discussions and Respondent provided additional information to EPA concerning its operations and CWA compliance at the Facility.
22. Over at least the past five years Respondent has violated the CWA and the Facility Permit by discharging pollutants in violation of the CWA and its NPDES permit and by failing to perform the proper monitoring and reporting requirements of the Facility Permit and the CWA. Exhibit 1 to this CAFO, incorporated by reference, identifies the violations resolved through this agreement.
23. Discharge of pollutants in violation of any effluent standard, prohibition or standard, including any standard contained in an NPDES permit issued under the CWA is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), which prohibits, among other things, the discharge of any pollutant in violation of a NPDES permit issued under Section 402 of the Act, 33 U.S.C. § 1342, and 40 C.F.R. Part 122.

24. Respondent's violation of the NPDES Permits constitute violations of Section 301 of the CWA, 33 U.S.C. § 1311, and subject Respondent to penalties not to exceed \$20,628 per day for each violation, up to a total penalty amount of \$257,848

### **III. CONSENT AGREEMENT AND FINAL ORDER**

25. In order to resolve the violations described above, and to provide a legal framework for the payment of a penalty, EPA and Respondent enter into this CAFO. Respondent consents to issuance of this CAFO and agrees to undertake all actions required by its terms and conditions. Respondent consents to the assessment of the civil penalty herein and consents to issuance of the compliance order described herein.
26. Respondent neither admits nor denies the factual allegations or conclusions of law contained in Section II, Findings of Fact and Conclusions of Law. Respondent admits the jurisdictional allegations contained in Section I, Preliminary Statement, Jurisdictional and Statutory Authority, and elsewhere in this CAFO, and waives any defenses it might have as to jurisdiction and venue. Respondent agrees not to contest EPA's jurisdiction to issue this CAFO and not to contest EPA's jurisdiction to enforce the terms of this CAFO.
27. Respondent hereby expressly waives its right to a hearing, pursuant to Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), on any issue of law or fact in this matter and consents to issuance of this CAFO without adjudication, and waives its right to appeal this final order pursuant to Section 309(g)(8)(B), 33 U.S.C. § 1319(g)(8)(B).
28. This CAFO addresses and settles all civil and administrative claims for CWA violations identified in this CAFO.
29. Each party to this action shall pay its own costs and attorney fees.
30. The provisions of this CAFO shall be binding upon the Respondent, and its officers, principals, directors, successors and assigns.
31. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.
32. Pursuant to Section 309(g)(4) of the Act, 33 U.S.C. § 1319 (g)(4), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the CAFO before issuing the Final Order. In addition, EPA has consulted with the District of Columbia regarding this action, and will mail a copy of this document to the appropriate DC official.
33. Based on the foregoing FINDINGS, and having taken into account the factors listed in Section 309(d) of the CWA, 33 U.S.C. § 1319(d), including but not limited to, the nature, circumstances, extent and gravity of the violation, the Respondent's knowledge, culpability

and history of violations, the economic benefit to Respondent, the ability of Respondent to pay the penalty, and other such matters as justice may require, the administrative record; and under the authority of Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), EPA HEREBY ORDERS AND RESPONDENT HEREBY CONSENTS:

34. Within thirty (30) days of the effective date of this ORDER, Respondent shall pay a civil penalty of twenty seven thousand two hundred and fifty dollars (\$27,250.00) for the violations cited herein. This does not constitute a demand as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. Penalty payment shall be made according to the following specifications:

a. The payment shall reference Respondent's name, address and docket number, be made in U.S. dollars by money order, cashier's or certified check made payable to the "Treasurer, United States of America", wire transfer, ACH, or on line, and delivered as follows:

i. If by money order, cashier's or certified check sent by U.S. postal service mail:

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

Contact: Bryson Lehman 513-487-2123

ii. If by money order, cashier's or certified check sent by private commercial overnight delivery service:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA, Fines & Penalties  
1005 Convention Plaza  
Mail Station SL MO C2 GL  
St. Louis, MO 63101

Contact: 314-418-1028

iii. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance  
US EPA, MS NWD

26 W. M.L. King Drive  
Cincinnati, OH 45268 0001

iv. If by electronic wire transfer:

Federal Reserve Bank of New York  
ABA = 021030004  
Account No. = 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”

v. If by ACH (also known as REX or remittance express):

US Treasury REX / Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 Checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737  
Contact: Jesse White 301 887 6548 or REX, 1 866 234 5681

vi. On Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

vii. Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

- b. A copy of the check or money order or other proof of payment submitted in fulfillment of the penalty payment requirements of this order shall be sent to the following:

U.S. Environmental Protection Agency  
Regional Hearing Clerk (3RC00)  
1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

and

Mr. Douglas Frankenthaler (3RC20)  
Assistant Regional Counsel  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

- c. A transmittal message identifying the case name and docket number identified above shall accompany the remittance and copies of the check or transfer instrument.
35. Within thirty (30) days of the effective date of this ORDER, Respondent agrees to certify, in writing to EPA that it is operating in full compliance with its NPDES Permit, and that it is complying with all relevant provisions of the CWA at the Facility. Such certification will be submitted to EPA pursuant to the notification provisions of this CAFO.
36. Upon the effective date of this ORDER, Respondent has implemented and has agreed to continue to implement the “Standard Operating Procedure for NPDES Permit Compliance” or SOP, a compendium of documents which was prepared by Respondent, agreed upon by EPA and Respondent, and which is identified in Exhibit 2 hereto and incorporated by reference into this CAFO.
37. To the extent that the SOP is modified within three hundred and sixty five (365) days of the effective date of this CAFO, Respondent agrees that a copy of such modified SOP will be provided to EPA along with a document noting the modifications made pursuant to the notification provisions of this CAFO.
38. Failure to pay the penalty assessed by this ORDER after its effective date subjects the Respondent to a collection action under Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). The validity, amount and appropriateness of the penalty are not subject to review in a collection proceeding. *See* 15 U.S.C. § 2615(a)(4)(A). Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest on unpaid penalties, and a charge to cover the cost of processing and handling a delinquent claim. Interest will begin to accrue on this civil penalty if it is not paid within fifteen days of the date due. Interest will be assessed at the rate of the United States Treasury tax and loan rate. 40 C.F.R. § 13.11. In addition, a quarterly nonpayment penalty charge may be assessed on any delinquent debt pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). In addition, EPA will assess a \$15.00 administrative handling charge for the administrative handling charge for administrative costs for the first 30 day period after the payment is due and an additional \$15.00 for each subsequent 30 days the penalty remains due.
39. All notifications and approvals required by this CAFO, shall be made to:

Mr. Douglas Frankenthaler (3RC20)  
Assistant Regional Counsel  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
Telephone: (215) 814-2472

40. All submissions provided pursuant to this Order shall be signed by Respondents and shall include the following certification:

"I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

## **V. GENERAL PROVISIONS**

41. This CAFO shall not relieve Respondents of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. This CAFO does not constitute a waiver, suspension or modification of the requirements of the CWA.
42. Violations of the terms of this ORDER may subject Respondents to an administrative penalty of not more than \$20,628 for each day of violation up to a maximum penalty of \$257,848, and/or civil action in a United States district court with penalties up to \$51,570 per day of violation as authorized in and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19.
43. This CAFO resolves only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. §§ 301 *et seq.*, the regulations promulgated there under, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.
44. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondent's violation of any applicable provision of law.



45. The penalty described above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
46. This CAFO is conditioned upon the accuracy of the Respondent's representations to EPA. EPA reserves the right to institute a new and/or separate action should Respondents fail to comply with the terms of this CAFO. That right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.
47. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.
48. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

**V. EFFECTIVE DATE**

49. This CAFO will be issued after a forty (40) day comment period, execution by an authorized representative of the EPA and filing with the regional hearing clerk. It will become final and effective 30 days after issuance.

FOR RESPONDENT Super Concrete Corporation:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

SO ORDERED in *Super Concrete Corporation*, Dkt. No. CWA-03-2017-0024, pursuant to 33 U.S.C. § 1319(g) and 40 C.F.R. Part 22,  
this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

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Jon Capacasa, Director  
Water Protection Division