

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

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In the Matter of:	:	Proceeding to Assess Class II
	:	Administrative Penalty Under
	:	Section 309(g) of the Clean Water Act
	:	
Clark Construction Group, LLC	:	
7500 Old Georgetown Road	:	
Bethesda, Maryland,	:	
	:	Docket No. CWA-03-2015-0103
	:	
	:	CONSENT AGREEMENT
	:	AND FINAL ORDER
	:	
Respondent.	:	
	:	

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director, Water Protection Division, United States Environmental Protection Agency, Region III ("Complainant") and Clark Construction Group, LLC ("Respondent") pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 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 ("Consolidated Rules"), 40 C.F.R. Part 22.
2. The Consolidated Rules, at 40 C.F.R. § 22.13(b) provide in pertinent part that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). Pursuant thereto, this Consent Agreement and Final Order ("CAFO") simultaneously commence and conclude this administrative proceeding against Respondent.
3. Section 309(g)(2)(B) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(B), authorizes the assessment of administrative penalties against any person who violates any NPDES permit condition or limitation in an amount not to exceed \$10,000 per day for each day of violation, up to a total penalty amount of \$125,000.

4. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), any person who has violated any NPDES permit condition or limitation after January 12, 2009 is liable for an administrative penalty not to exceed \$16,000 per day for each day of violation up to a total penalty amount of \$177,500.

5. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), the United States Environmental Protection Agency (“EPA”) is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1)(A), EPA has consulted with District of Columbia Department of the Environment (“DC DOE”) regarding this action, and will mail a copy of this document to the appropriate DC DOE official.

II. ALLEGATIONS OF FACT AND JURISDICTION AND CONCLUSIONS OF LAW

6. Respondent has offices at 7500 Old Georgetown Road, Bethesda, Maryland 20814-6133.

7. Respondent performed construction activities at the St. Elizabeths Campus located at 2701 Martin Luther King Boulevard in Washington, DC consisting of an area of approximately 40.25 acres to be disturbed by Respondent (“Site”). Respondent was responsible for the construction of the new United States Coast Guard Headquarters building at the Site.

8. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (“NPDES”) program under Section 402 of the Act, 33 U.S.C. § 1342.

9. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.

10. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.2 and 122.26 provide that, with some exceptions, not relevant here, storm water discharges are “point sources” subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).

11. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).

12. “Discharge of a pollutant” includes “any addition of any pollutant or combination of pollutants to waters of the United States from any point source.” 40 C.F.R. § 122.2.

13. Respondent is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.

14. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA issued an NPDES Construction General Permit (“CGP”) which became effective on June 30, 2008 (the “2008 CGP”). Under the 2008 CGP, EPA was the permitting authority for the District of Columbia. The 2008 CGP authorized discharges of storm water associated with construction activities, but only in accordance with the conditions of the 2008 CGP.

15. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA issued a revised CGP effective February 16, 2012 (the “2012 CGP”). Under the 2012 CGP, EPA is the permitting authority for the District of Columbia. The 2012 CGP authorizes discharges of storm water associated with construction activities, but only in accordance with the conditions of the 2012 CGP.

16. The 2008 CGP and 2012 CGP both require(d) that in order to obtain permit coverage, an applicant must submit to EPA a complete and accurate Notice of Intent (“NOI”) for permit coverage prior to commencing construction activities. 2008 CGP at Section 2.4; 2012 CGP at Section 1.4.

17. Respondent submitted an NOI dated February 9, 2010 for permit coverage under the 2008 CGP and submitted an NOI dated May 16, 2012 for coverage under the 2012 Permit, for construction activities at the Site.

18. EPA determined that the Site was eligible for permit coverage under the 2008 CGP and the 2012 CGP, effective February 16, 2010 and May 30, 2012, respectively. EPA assigned Permit Tracking Numbers DCR10A23F with an expiration date of February 15, 2012 for coverage under the 2008 CGP and DCR12A031 with an expiration date of February 16, 2017 for permit coverage under the 2012 CGP.

19. Pursuant to Part 7 of the 2012 CGP, Respondent prepared a Stormwater Pollution Prevention Plan (“SWPPP”) including an Erosion and Sediment Control Plan (“E & S Plan”) for the Site.

20. Water discharges from the Site flowed into the District of Columbia Municipal Separate Storm Sewer System (“DC MS4”) which discharges into the Anacostia River.

21. The Anacostia River is a “water of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. §§ 232.2 and 122.2.

22. On September 17 and 18, 2012, representatives of EPA conducted an inspection of the Site (“EPA Inspection”).

23. On March 21, 2013, EPA prepared a final Clean Water Act Compliance Inspection Report for the Site, including Appendices (“EPA Inspection Report”).

24. Respondent received a copy of the EPA Inspection Report and submitted a response to EPA on April 4, 2013.

Count 1 - Discharge in Violation of the Permit

25. The allegations of paragraphs 1 through 24, above are incorporated by reference as though fully set forth herein.

26. Section 1.3(a) of the 2012 CGP prohibits the discharge of stormwater, including stormwater runoff, associated with construction activity, unless there are appropriate stormwater controls.

27. Section 2.1.3.2 of the CGP requires the use of sediment basin outlet structures that withdraw water from the surface, unless infeasible.

28. Respondent's E & S Plan describes the stormwater controls required for the Site and the operating conditions required for those controls.

29. The Respondent's E & S Plan provides that Sediment Basin #1 will collect stormwater runoff from the Site, and a basin outlet structure in Sediment Basin #1 will withdraw water from the surface of the basin and discharge the water to the DC MS4.

30. At the time of the EPA Inspection, stormwater from the Site was being directed by Respondent through a PVC pipe that bypassed Sediment Basin #1 and discharged directly to the basin outlet structure. The PVC piping ran from the basin inlet north along the western wall of the basin to the basin outlet structure at the north end of Sediment Basin #1. In addition, several other pumps and hoses collected stormwater from low-lying areas at the north end of Sediment Basin #1 and pumped the stormwater directly to the basin outlet structure. The water flowed through the basin outlet structure directly to the DC MS4.

31. Respondent's activities described in Paragraph 30, above, are violations of the erosion and sediment control requirements of Sections 1.3 and 2.1.3.2 of the 2012 CGP and Section 301 of the Act, 33 U.S.C. § 1311.

Count 2 - Failure to Maintain E & S Controls in Effective Operating Condition

32. The allegations of paragraphs 1 through 31, above are incorporated by reference as though fully set forth herein.

33. Section 2.1.1.4.a of the 2012 CGP requires that erosion and sediment controls remain in effective operating condition.

34. Respondent's E & S plan at Page C-GC-209 provides in pertinent part that temporary sediment basins may be converted to permanent stormwater management structures

only after all disturbed contributory drainage areas have been permanently stabilized to the satisfaction of the inspection authority and storm drains have been flushed.

35. At the time of the EPA Inspection, Respondent was modifying Sediment Basin #1, a temporary sediment basin, to serve as a permanent basin before the all disturbed contributory drainage areas at the Site were stabilized.

36. At the time of EPA's Inspection, a storm sewer inlet located near the construction at Gate 5 had sediment accumulation around the inlet, the inlet protection was knocked down and the inlet grate was not wrapped in filter fabric.

37. Respondent's activities described in Paragraphs 35 and 36 above are violations of the erosion and sediment control requirements of Section 2.1 of the 2012 CGP and Section 301 of the Act, 33 U.S.C. § 1311.

Count 3 - Unpermitted Discharge of Ground Water

38. The allegations of paragraphs 1 through 37, above are incorporated by reference as though fully set forth herein.

39. Sections 1.3(d) and 2.1.3.4 of the 2012 CGP prohibits the discharge of groundwater or accumulated stormwater that is removed from excavations, trenches, foundations, or other similar points of accumulation, unless the waters are first managed by appropriate controls.

40. At the time of EPA's Inspection, EPA observed ground water discharging from around the footings of buildings at the Site through a PVC pipe approximately six inches in diameter directly into a storm water inlet along the West Access Road. The water flowed through the basin outlet structure directly to the DC MS4 and was not managed by appropriate controls.

41. Respondent's activities described in Paragraph 40, above, are violations of the erosion and sediment control requirements of Sections 1.3 and 2.1 of the 2012 CGP and Section 301 of the Act, 33 U.S.C. § 1311.

Count 4 - Failure to Maintain Stockpiles

42. The allegations of paragraphs 1 through 41, above are incorporated by reference as though fully set forth herein.

43. Section 2.1.2.4 of the 2012 CGP requires stockpiles composed, in whole or in part, of sediment or soil, among other requirements, to be protected from contact with stormwater using a temporary perimeter barrier and providing appropriate temporary stabilization to avoid direct contact with precipitation or to minimize sediment discharge.

44. At the time of the EPA inspection, EPA inspectors observed an unstabilized, uncovered stockpile located along the eastern edge of the Site used to stockpile sediment throughout the Site. The stockpile was located near the top of a steep slope and was only partially surrounded by silt fence. The silt fence did not extend around the entire downslope edge of the stockpile. Erosion and rilling were present along the unprotected edge of the stockpile.

45. Respondent's activities described in Paragraph 44, above, are violations of the erosion and sediment control requirements of Sections 2.1 of the 2012 CGP and Section 301 of the Act, 33 U.S.C. § 1311.

Count 5 - Failure to Post Notice of NPDES Permit Coverage

46. The allegations of paragraphs 1 through 45, above are incorporated by reference as though fully set forth herein.

47. At the time of the EPA Inspection, Respondent had posted a copy of the NOI and SWPPP at Gate 3 which is not a publically accessible location because it was located within a security gate and not visible from a public road.

48. Respondent failed to post notice of NPDES permit coverage in accordance with Section 1.5 of the 2012 CGP, which requires notice of permit coverage to be posted conspicuously at a safe, publicly accessible location.

49. Respondent's activities described in Paragraph 48, above, is a violation of the erosion and sediment control requirements of Sections 1.5 of the 2012 CGP and Section 301 of the Act, 33 U.S.C. § 1311.

III. GENERAL PROVISIONS

50. For the purpose of this proceeding, Respondent admits the jurisdictional allegations set forth in this CAFO.

51. For purposes of this proceeding only, Respondent neither admits nor denies any of the Allegations of Fact or the Conclusions of Law set forth in this CAFO, or any liability for the claims or violations alleged in this CAFO, except as provided in paragraph 50 above regarding jurisdiction.

52. Respondent waives any defenses it might have with respect to jurisdiction and venue, its right to contest the allegations through hearing or otherwise; and its right to appeal the proposed final order included with this CAFO.

53. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.

54. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter and consents to issuance of this CAFO without adjudication.

55. Respondent and EPA shall bear their own costs and attorney fees in this matter.

56. The provisions of this CAFO shall be binding upon the EPA and Respondent, its officers, principals, directors, successors and assigns.

57. 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.

IV. CIVIL PENALTY

58. In full and final settlement of the Complainant's claims for civil penalties for the alleged violations identified herein, Respondent consents to the assessment of, and agrees to pay, in accordance with the terms set forth herein, the total administrative civil penalty of fifty thousand dollars (\$50,000) within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c).

59. The civil penalty amount set forth in Paragraph 58, above, is based on a number of factors, including the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g).

60. Respondent shall pay the civil penalty amount described in Paragraph 58, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 61 through 65, below, by either cashier's check, certified check, or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action;
- b. All checks shall be made payable to "**United States Treasury**";
- c. All payments made by check and sent by regular mail shall be addressed to:

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

Primary Contact: Craig Steffen, (513) 487-2091
Secondary Contact: Molly Williams, (513) 487-2076

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Primary Contact: Craig Steffen, (513) 487-2091
Secondary Contact: Molly Williams, (513) 487-2076

- e. 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

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 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”

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

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

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: John Schmid, (202) 874-7026
Remittance Express (REX): (866) 234-5681

h. On-Line Payment Option:

WWW.PAY.GOV/paygov/

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

i. Additional payment guidance is available at:

<http://www2.epa.gov/financial/makepayment>

j. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CAFO.

A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

Judith Hykel
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC20)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. EPA, Region III (3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

61. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment as specified herein shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

62. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest

on any unpaid amount of the civil penalty after such date will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

63. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

64. A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

65. The penalty specified in Paragraph 58 shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

V. APPLICABLE LAWS

66. This CAFO shall not relieve Respondent 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. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251 *et seq.*, or any regulations promulgated thereunder.

VI. RESERVATION OF RIGHTS

67. 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 and 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 thereunder, 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.

68. Entry of this CAFO is a final settlement of all civil claims and violations set forth in this CAFO. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO, if EPA obtains evidence that the information and/or representations of the Respondent are false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, EPA may have under law or equity in such event.

VII. FULL AND FINAL SATISFACTION

69. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for the violations alleged in this CAFO. Compliance with the requirements and provisions of this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and/or regulations administered by EPA.

VIII. PARTIES BOUND

70. This CAFO shall apply to and be binding upon the EPA and Respondent. 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.

IX. EFFECTIVE DATE


71. Pursuant to 40 C.F.R. § 22.45, this CAFO shall be issued after a 40-day public notice period is concluded. This CAFO will become final and effective thirty (30) days after it is filed with the Regional Hearing Clerk, pursuant to Section 309(g)(5) of the Act, 33 U.S.C. § 1319(g)(5).

X. ENTIRE AGREEMENT

72. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

FOR RESPONDENT, CLARK CONSTRUCTION GROUP, LLC:


Date: 10 FEBRUARY 2015



Jim Kinkead
Senior Vice President

FOR COMPLAINANT, THE DIRECTOR OF THE WATER PROTECTION DIVISION, U.S.
ENVIRONMENTAL PROTECTION AGENCY, REGION III

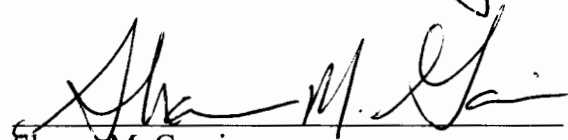
Date: 3/12/15


Jon M. Capacasa, Director
Water Protection Division

FINAL ORDER

SO ORDERED, pursuant to 33 U.S.C. 1319(g), and 40 C.F.R. Part 22,

this 21st day of May, 2015

A handwritten signature in black ink, appearing to read "Shawn M. Garvin", written over a horizontal line.

Shawn M. Garvin
Regional Administrator
U.S. EPA Region III