



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

JUL 03 2018

**CERTIFIED MAIL- RETURN RECEIPT REQUESTED**

**Article Number: 7017 1450 0000 0133 6280**

Jonathan E. Rinde, Esq.  
Manko Gold Katcher Fox LLP  
401 City Avenue, Suite 901  
Bala Cynwyd, PA 19004

Re: In the Matter of Kaplan Companies, Kaplan & Sons Construction Corp., Kaplan Associates, K-Land  
Consent Agreement and Final Order, CWA-02-2018-3401

Dear Mr. Rinde:

Enclosed is a fully executed Consent Agreement and Final Order ("CA/FO") that resolves the above-referenced matter. Please note that payment of the civil penalty assessed shall be made in accordance with Section V of the CA/FO.

Thank you for your cooperation and assistance to bring this matter to a mutually satisfactory resolution.

Sincerely yours,

Lauren Fisher  
Office of Regional Counsel

Enclosure

U.S. Environmental  
Protection Agency Reg 2  
2018 JUL -3 PM 12:01  
REGIONAL HEAR  
CLERK

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

REGIONAL HEAR  
CLERK

2010 JUL -3 PM 12:01

U.S. Environmental  
Protection Agency-Reg 2

**IN THE MATTER OF:**

Kaplan Companies, Kaplan & Sons  
Construction Corp., Kaplan Associates, K-Land  
433 River Road  
Highland Park, NJ 08904

**Respondents**

Proceeding Pursuant to Section 309(g) of the  
Clean Water Act, 33 U.S.C. § 1319(g)

**CONSENT AGREEMENT  
AND FINAL ORDER**

**CWA-02-2018-3401**

**I. PRELIMINARY STATEMENT**

Complainant, the United States Environmental Protection Agency ("EPA"), and Kaplan Companies, Kaplan & Sons Construction Corp., Kaplan Associates, and K-Land ("Respondents"), having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby agreed, and ordered as follows:

**II. PROCEDURAL AND FACTUAL BACKGROUND**

1. This administrative proceeding for the assessment of a civil penalty is instituted pursuant to Section 309(g) of the Clean Water Act ("Act" or "CWA"), 33 U.S.C. § 1319(g).
2. The following Findings of Fact are made and Final Order issued pursuant to the authority vested in the Administrator of the EPA by the Act, 33 U.S.C. § 1251 et seq., and in particular by Section 309(g) of the Act, 33 U.S.C. § 1319(g). This authority has been duly delegated by the Administrator to the Regional Administrator of Region 2 of EPA, which authority has been duly re-delegated to the undersigned Director of Division of Enforcement and Compliance Assistance, Region 2, EPA.
3. EPA is initiating and concluding this administrative proceeding for the assessment of a civil penalty pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.13(b) of 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” (“CROP”), which sets forth procedures for simultaneous commencement and conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order pursuant to 40 C.F.R. §§ 22.13(b)(2) and (3).

4. This Consent Agreement and Final Order (collectively “CA/FO”) resolves violations of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, as specifically alleged herein.

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

1. Respondents are persons within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
2. Respondents have conducted construction activities that resulted in the disturbance of at least one (1) acre at numerous construction sites in New Jersey.
3. The storm sewers, ditches, or other conveyances at Respondents’ sites constitute “point source[s]” within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).
4. Stormwater runoff from sites owned and operated by Respondents have discharged to waters of the United States, including: Cheesequake Creek, which flows to the Raritan River; Heathcote Brook, which flows to the Millstone River; Mine Brook, which flows to the Musconetcong River and Delaware River; the Arthur Kill; and the Delaware River.
5. Respondents have discharged stormwater associated with construction activity, a pollutant within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6), via point source[s] within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to navigable waters of the United States, and as such, have discharged pollutants pursuant to Section 502(12) of the CWA, 33 U.S.C. § 1362(12).
6. Respondents have obtained permit coverage through the New Jersey Pollutant Discharge Elimination System (“NJPDES”) 5G3 - Construction Activity Storm Water General Permit No. NJG0088323, for stormwater discharges from its construction sites to waters of the United States. The current Construction General Permit (“CGP”) was renewed on March 1, 2017. Previous versions of the CGP include, but are not limited to those renewed on March 1, 2012 (the “2012 CGP”) and August 17, 2009 (the “2009 CGP”).
7. Based upon Title 7 of the New Jersey Administrative Code (“N.J.A.C.”), construction activities include clearing, grading, and excavating that result in land disturbance of equal to or greater than one (1) acre.
8. The term “SPPP” means Stormwater Pollution Prevention Plan as defined in the NJPDES Construction General Permit.

9. EPA conducted compliance evaluation inspections (“CEIs”) to determine Respondents’ compliance with the NJPDES CGP at the following four construction sites owned and/or operated by Respondents between 2015 and 2016: Gateway at Carteret construction site in Carteret, New Jersey (“Carteret Site”); La Mer – Phase VI construction site in Sayreville, New Jersey (“La Mer Site”); Point of Woods construction site in South Brunswick, New Jersey (“Point of Woods Site”); and Woodfield at Mt. Olive – Section III construction site in Mt. Olive, New Jersey (“Mt. Olive Site”) (collectively referred to as “Kaplan Construction Sites”).
10. Based on information obtained at the CEIs and response to information requests issued pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, Complainant alleges that Respondents are liable for numerous violations of the CWA, in particular Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and applicable implementing regulations, by failing to implement a Stormwater Pollution Prevention Plan (“SPPP”), including an Erosion and Sediment Control (“ESC”) component and a Construction Site Waste Control component, and Best Management Practices (“BMPs”) at Kaplan Construction Sites.
11. At the Carteret Site, stormwater discharges from the site to a tributary of the Rahway Watershed and the Arthur Kill, a navigable water of the United States. On June 11, 2015, EPA Region 2 conducted a CEI at the Carteret Site and identified the following violations of the CGP:
  - a. Respondents failed to properly install or operate ESC measures, in violation of Parts I.E.1.a and I.E.1.b of the 2012 CGP. For instance, Respondents: failed to maintain stormwater catch basin inlet protection in areas where there were still unstabilized soils; inlet protection fabric in several catch basins was torn and/or missing; and large portions of the site perimeter where there were unstabilized soils either had no silt fencing or had unmaintained or destroyed silt fencing.
  - b. Respondents failed to implement waste handling requirements, in violation of Part I.J.3 of the 2012 CGP. For instance, dumpsters were not covered, waste material with a white color (apparently from a small cement mixer) was on the ground, and pieces of wood and construction debris were identified in and around catch basins.
12. At the La Mer Site, stormwater discharges from two (2) outfall pipes, which drain to Cheesequake Creek, a navigable water of the United States. On February 2, 2016, EPA Region 2 conducted a CEI at the La Mer Site and identified the following violations of the CGP:
  - a. Respondents failed to implement and maintain ESC practices described in the soil erosion and sediment control plan (“SESCP”), as required by Part I.E.1.a of the 2012 CGP. For instance:

- i. Perimeter silt fencing had fallen down between disturbed soil on-site and the undisturbed wetland area on the east perimeter of the site, allowing sediment transport off-site;
    - ii. Silt fencing had fallen down between the site and retention pond, allowing sediment transport via an eroded channel to the pond;
    - iii. Silt fencing was not providing an effective barrier between the southwest portion of the site, and an eroded flow path was observed underneath the silt fencing;
    - iv. Steep slopes on the eastern perimeter and the southern portion of the site were unstabilized, causing significant erosion. Erosion was also identified unstabilized soil stockpiling on the eastern portion of the site; and
    - v. EPA inspectors identified multiple areas of erosion on cleared land and sediment transport onto undisturbed land, into the retention pond, wetland areas, and roadways throughout the site.
  - b. Respondents failed to implement waste handling requirements, in violation of Part I.J.3 of the 2012 CGP. Inspectors identified a variety of waste, including asphalt piles, debris and garbage located on the ground, which were exposed to stormwater and uphill from stormwater drainage.
  - c. Respondents failed to perform site inspections in accordance with Part E.3 of the 2012 CGP, as they failed to adequately evaluate whether the SPPP was being properly implemented and maintained, or whether additional measures were necessary to do so.
13. At the Point of Woods Site, stormwater discharges from three (3) outfall pipes to Heathcote Brook, which flows to the Millstone River, a navigable water of the United States. On February 3, 2016, EPA Region 2 conducted a CEI at the Point of Woods Site and identified the following violations:
  - a. Respondents failed to implement and maintain ESC practices described in the SESCP, in violation of Part I.E.1.a of the 2012 CGP. For instance:
    - i. One (1) stormwater catch basin on-site did not contain a grate, silt fencing, filter fabric or any erosion and sediment controls, as specified in the SESCP, and was adjacent to disturbed soil;
    - ii. One (1) stormwater catch basin was in need of maintenance, as sediment was observed around and inside the catch basin;

- iii. Silt fencing had either fallen down or had not been installed between disturbed soil on-site, and various wooded areas along the perimeter;
- iv. Erosion was identified down an unstabilized soil stockpile situated immediately adjacent to an undisturbed wooded area;
- v. Stone construction entrances along blue Jay Court, Point of Woods Drive, and Eagle Court were either inundated with sediment or had not been installed. Sediment tracking was observed on the east and west sides of Point of Woods Drive; and
- vi. At the time of the CEI, EPA inspectors identified approximately 56 acres of disturbance with no temporary stabilization measures installed. EPA inspectors observed multiple areas of erosion on cleared land and sediment transport onto undisturbed land, wooded wetland areas, and into the ponds and roadways through the site.

- b. Respondents failed to conduct weekly site inspections for the period beginning on October 9, 2013, and ending on October 8, 2014, in violation of Part I.E.3 of the 2012 CGP. There was no documentation from the Freehold Soil Conservation District authorizing a suspension of inspections or reduction in frequency.

14. At the Mt. Olive Site, stormwater discharges from the site to Mine Brook, a tributary of the Musconetcong River, which eventually flows to the Delaware River. The Musconetcong River and the Delaware River are navigable waters of the United States. On February 18, 2016, EPA Region 2 conducted a CEI at the Mt. Olive Site and identified the following violations:

- a. Respondents failed to implement and maintain required ESCs, in violation of Parts I.E.1.a and I.E.1.b of the 2012 CGP. For instance:
  - i. Silt fencing was not located on the downward slope of topsoil stock piles in several locations, and was damaged in several locations; and
  - ii. Several of the individual lot ingress/egress points were not the required six (6) inches of depth, nor the required ten (10) feet of length. Sediment buildup was observed on Sowers Drive.
- b. Respondents failed to implement material management requirements, including storing petroleum products in containers in a dry covered area, in violation of Part I.J.2 of the 2012 CGP. At the time of the CEI, EPA inspectors identified petroleum waste products stored in the open, uncovered and exposed to stormwater.

- c. At the time of the CEI, there were no weekly inspection records for large portions of the site owned by Respondents, in violation of Part I.E.3.
15. EPA, concurrently with this filing, notified the State of New Jersey regarding this action and offered an opportunity for the State of New Jersey to confer with EPA on the proposed penalty assessment, pursuant to 40 C.F.R. Part 22.38(b).

#### **IV. TERMS OF SETTLEMENT**

For the purpose of this proceeding, Respondents:

- a. Admit the jurisdictional allegations of this CA/FO;
- b. Neither admits nor denies the factual allegations contained herein;
- c. Waives their right to contest the allegations, a judicial or administrative hearing, or to appeal this CA/FO; and
- d. Consents to the payment of a civil penalty in the amount of one-hundred thousand dollars (\$100,000.00), in accordance with the terms described in Section V below.

#### **V. CIVIL PENALTY**

1. Respondents shall pay, by cashier's or certified check, a civil penalty in the amount of one-hundred thousand dollars (\$100,000.00) plus interest, pursuant to the payment plan described below, payable to the "Treasurer, United States of America."
2. All checks shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Checks shall be mailed to:

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

Respondents shall also send copies of each payment to each of the following:

Douglas McKenna, Chief  
Water Compliance Branch  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 20<sup>th</sup> Floor  
New York, New York 10007-1866,

and to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th Floor  
New York, New York 10007

and to:

Lauren Fischer  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
290 Broadway, 16th Floor  
New York, New York 10007.

3. The effective date of this Consent Agreement and Final Order shall be the date the Final Order is filed with the Regional Hearing Clerk.
4. The dates by which payments must be received shall hereafter be referred to as the "due dates."
5. Payments must be received at the above address on or before the due dates described in Paragraph V.6, below, which dates are calculated from the date of signature of the Final Order at the end of this document. The amount owed at each installment payment will bear interest over the unpaid principal from the effective date of this Consent Agreement.
6. Respondents agree to pay the above stated amount in four (4) payments, plus interest, pursuant to the following plan:

PAYMENT #	DUE DATES SCHEDULE	PAYMENT AMOUNT
Payment 1	90 days from effective date of CA/FO	\$25,169.52
Payment 2	180 days from effective date of CA/FO	\$25,169.52
Payment 3	270 days from effective date of CA/FO	\$25,169.52
Payment 4	360 days from effective date of CA/FO	\$25,169.52
<b>TOTALS:</b>		<b>100,678.08</b>

7. Failure to pay the penalty in accordance with the above provisions may result in a referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
8. Further, if the payment is not received on or before the due dates, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each



30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

9. In addition, pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter.
10. Respondents also may be required to pay attorneys' fees and costs for collection proceedings in connection with nonpayment.
11. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondents' federal or state taxes.

## **VI. PUBLIC NOTICE**

1. Pursuant to CWA Section 309(g)(4), 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), this Consent Agreement is subject to public notice and comment prior to issuance of the proposed Final Order. Complainant reserves the right to withhold or withdraw consent to this Consent Agreement if public comments disclose relevant and material information that was not considered by Complainant in entering into this Consent Agreement. Respondents may withdraw from this Consent Agreement only upon receipt of written notice from the EPA that it no longer supports entry of this Consent Agreement.


## **VII. GENERAL PROVISIONS**

1. This Consent Agreement and Final Order shall apply to and be binding upon Respondents, as well as applying to and binding upon the Respondents' officers, directors, and employees, in their capacities as representatives of Respondents as well as on the Respondents' successors and assigns, including, but not limited to, Respondents' subsequent purchasers.
2. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondents' violation of any applicable provision of law, nor waiver of any defense, objection or response the Respondents may assert in response to any claim that the agreement is violated.
3. This Consent Agreement and Order shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

4. This Consent Agreement and Final Order constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the violations alleged herein. Nothing in this Consent Agreement and Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondents. Compliance with this Consent Agreement and Final Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondents to comply with such laws and regulations.
5. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
6. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this Consent Agreement and Order.
7. Respondents consent to service upon Respondents by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT:

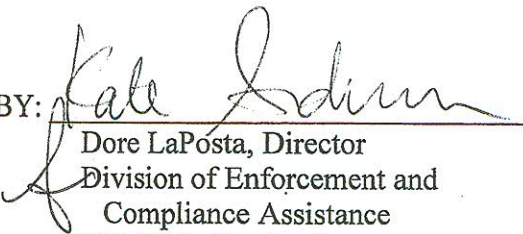
BY: \_\_\_\_\_

  
Jason Kaplan, Owner  
Kaplan Companies

DATE: \_\_\_\_\_

5/15/18

COMPLAINANT:

BY:   
Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance  
U.S. EPA, Region 2  
290 Broadway, 21st Floor  
New York, New York 10007-1866

DATE: MAY 29 2018

**VIII. FINAL ORDER**

The Regional Judicial Officer of the U.S. Environmental Protection Agency Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, NY.

7/3/2018  
Date

Helen S. Ferrara  
Helen S. Ferrara  
Regional Judicial Officer  
United States Environmental  
Protection Agency-Region 2  
290 Broadway  
New York, NY 10007-1866

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

**IN THE MATTER OF:**

Kaplan Companies, Kaplan & Sons  
Construction Corp., Kaplan Associates, K-  
Land  
433 River Road  
Highland Park, NJ 08904

**Respondents**

Proceeding Pursuant to Section 309(g) of the  
Clean Water Act, 33 U.S.C. § 1319(g)

**CONSENT AGREEMENT  
AND FINAL ORDER**

**CWA-02-2018-3401**

**CERTIFICATE OF SERVICE**

I certify that, on the date noted below, I served the foregoing fully executed Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner.

Copy by Certified Mail

Return Receipt Requested: Jonathan E. Rinde, Esq.  
Manko Gold Katcher Fox LLP  
401 City Avenue, Suite 901  
Bala Cynwyd, PA 19004

Original and One Copy  
By Internal Mail (pouch): Regional Hearing Clerk  
U.S. Environmental Protection Agency  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866

Date:

7/3/18

  
Secretary