

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

	:	
In the Matter of:	:	Docket No. CWA-03-2019-0075
	:	
WCS Construction, LLC	:	
3303 Stanton Road	:	Proceeding to Assess Class I
Washington, DC 20020-2203	:	Administrative Penalty Under
	:	Section 309(g) of the Clean Water Act
Respondent	:	
	:	
Property known as:	:	
	:	
Archer Park	:	
1200 Mississippi Avenue SE	:	
Washington, DC 20032	:	
Phase 1 – DCR12A288 and	:	
Phase 2 DCR12A353	:	
	:	

U.S. EPA-REGION 3-RHC
FILED-24SEP2019pm1:27

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (Complainant) and the WCS Construction, LLC (Respondent), pursuant to 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. Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), authorizes the Administrator of the U.S. Environmental Protection Agency (EPA or the Agency) to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator of EPA Region III, who in turn has delegated this authority to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “CAFO”) resolve Complainant’s civil penalty claims against Respondent under the Clean Water Act (CWA or the Act) for the violations alleged herein.

2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this

administrative proceeding in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. Section 309(g)(1)(A) authorizes the assessment of a Class I or Class II civil penalty against any person who violates any National Pollutant Discharge Elimination System (NPDES) permit condition or limitation
5. Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), provides that the amount of a Class I civil penalty, pursuant to Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), may not exceed \$10,000 per violation, except that the maximum amount of any Class I civil penalty under this subparagraph shall not exceed \$25,000.
6. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), any person who has violated any NPDES permit condition or limitation between November 2, 2015 up to and through the present is liable for an administrative penalty not to exceed \$21,393 per violation up to a total civil penalty amount of \$53,484.
7. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. §§ 22.1(a)(6) and 22.50.
8. Pursuant to Section 309(g)(1)(A), EPA has consulted with the District of Columbia Department of Energy and Environment (“DC DOEE”) regarding this action and, subsequent to the Effective Date, EPA will mail a copy of this fully executed CAFO to the appropriate DC DOEE official.

GENERAL PROVISIONS

9. For the purpose of this proceeding only, Respondent admits each jurisdictional allegation set forth in this CAFO.
10. Except as provided in Paragraph 9, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
11. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
12. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CAFO and waives its right to appeal the accompanying Final Order.

13. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
14. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.
15. 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), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

16. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
17. Section 502(5) of the Act, 33 U.S.C. §1362(5), provides: "The term 'person' means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State or any interstate body."
18. Respondent is a corporation and is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
19. At all times relevant to this CAFO, Respondent was the operator of construction activities at the Archer Park Construction Project located at 1200 Mississippi Avenue SE, Washington, DC, 20032 (Facility).
20. 40 C.F.R. § 122.2 defines "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, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged."
21. 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 CWA, 33 U.S.C. § 1342(a).
22. Each conveyance from the Facility is a "point source" as that term is defined in 40 C.F.R. § 122.2.
23. 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 NPDES program under Section 402 of the Act, 33 U.S.C. § 1342.
24. 40 C.F.R. § 122.2 states, in relevant part: "*Waters of the United States* or *waters of the U.S. means:*

(1) For purposes of the Clean Water Act, 33 U.S.C. 1251 *et seq.* and its implementing regulations, subject to the exclusions in paragraph (2) of this definition, the term “waters of the United States” means:

(i) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(ii) All interstate waters, including interstate wetlands; ...

(v) All tributaries, as defined in paragraph (3)(iii) of this section, of waters identified in paragraphs (1)(i) through (iii) of this section;

(vi) All waters adjacent to a water identified in paragraphs (1)(i) through (v) of this definition, including wetlands, ponds, lakes, oxbows, impoundments, and similar waters;...

...

(3) In this definition, the following terms apply: (iii) Tributary and tributaries. The terms tributary and tributaries each mean a water that contributes flow, either directly or through another water (including an impoundment identified in paragraph (1)(iv) of this definition), to a water identified in paragraphs (1)(i) through (iii) of this definition that is characterized by the presence of the physical indicators of a bed and banks and an ordinary high water mark. These physical indicators demonstrate there is volume, frequency, and duration of flow sufficient to create a bed and banks and an ordinary high water mark, and thus to qualify as a tributary. A tributary can be a natural, man-altered, or man-made water and includes waters such as rivers, streams, canals, and ditches not excluded under paragraph (2) of this definition...”

25. 40 C.F.R. § 122.26(b)(13) defines “Storm water” as “storm water runoff, snow melt runoff and surface runoff and drainage.”
26. 40 CFR § 122.26(b)(15) defines “Storm water discharge associated with small construction activity” to include: “(i) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres...”
27. At all times relevant to this CAFO, storm water through point sources from the Facility discharged to the “municipal separate storm sewer system” or “MS4”, as that term is defined at 40 C.F.R. § 122.26(b)(8)(i), located in the District of Columbia (DC MS4) and through the DC MS4 to the Oxon Run, a tributary of the Potomac River.
28. Oxon Run and the Potomac River are each a “navigable water”, as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and a “Waters of the United States” as that term is 40 C.F.R. § 122.2.
29. At all times relevant to this CAFO, the Respondent was an “operator” as that term is defined at Section 1.1 of the Permit.

30. At all times relevant to this CAFO, Respondent was an operator of a construction project meeting the eligibility criteria set forth at Section 1.1 of the Permit.
31. At all times relevant to this CAFO, the Facility was a construction site.
32. 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 any pollutant from a point source to the waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit. Section 402(b) of the Act, 33 U.S.C. § 1342(b) provides that the Administrator may authorize a state to issue NPDES permit.
33. 40 C.F.R. § 122.2 states, in relevant part: “Discharge of a pollutant means: a) any addition of any ‘pollutant’ or combination of pollutants to waters of the United States from any point source... This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works...”
34. In accordance with Section 402(a) of the Act, 33 U.S.C. § 1342(a), EPA issued a NPDES General Permit for Discharges from Construction Activities (the Permit), which, for construction activities in the District of Columbia, became effective on February 16, 2012 and expired on February 16, 2017. The Permit authorizes discharges of storm water associated with construction activities, but only in accordance with the conditions of the Permit.
35. Part 1.4 of the Permit requires an applicant for coverage under the Permit to submit to EPA a complete and accurate Notice of Intent (NOI) for coverage prior to commencing construction activities.
36. On or about November 25, 2014, Respondent submitted a NOI for coverage under the Permit for discharges of pollutants resulting from construction activities affecting approximately four acres of the Facility during approximately April 1, 2015 through December 31, 2018 (Phase 1).
37. On or about October 26, 2015, Respondent submitted an NOI for coverage under the Permit for discharges of pollutants resulting from construction activities affecting approximately four and a quarter (4.25) acres of the Facility during approximately November 15, 2015 through November 16, 2019 (Phase 2).
38. EPA determined that the Facility was eligible for coverage under the Permit and permitted point source discharges of pollutants from the Facility through two permitting actions: 1) Phase 1 was permitted under the Permit with NPDES ID DCR12A288 and coverage was effective on February 4, 2015 and 2) Phase 2 was permitted under the Permit with NPDES ID DCR12A353 and coverage was effective on November 23, 2015.
39. In accordance with Section 1.3 of the Permit, at all times relevant to this CAFO, the Permit allowed certain point source discharges to a water of the United States provided

that appropriate stormwater controls are designed, installed, and maintained and such discharges included: Stormwater discharges, including stormwater runoff, snowmelt runoff, and surface runoff and drainage, associated with construction activity under 40 C.F.R. § 122.26(b)(15)(i).

40. At all times relevant to this CAFO, there were storm water discharges associated with small construction activity defined pursuant to 40 CFR § 122.26(b)(15)(i) and subject to the Permit.
41. At all times relevant this CAFO, Respondent was subject to the requirements of the Permit at the Facility.
42. On May 2, 2016, heavy rain fell at the Facility, such that approximately between .75 and 1.25 inches of rainfall occurred at the Facility.
43. On May 3, 2016, representatives of EPA and DOEE conducted a NPDES Construction Stormwater Non-Sampling Compliance Inspection at the Facility to evaluate Respondent's compliance with certain portions of the Permit relating to Phase 1 and Phase 2 (the Inspection).

Count I

Failure to Effectively Manage Contaminated or Turbid

Groundwater or Stormwater Prior to Discharge

44. The allegations of Paragraphs 1 through 43 of this Consent Agreement are incorporated herein by reference.
45. Part 2.1.3. (Requirements Applicable Only to Sites Using These Specific Stormwater Controls) of the Permit provides: "You are required to comply with the following requirements if you will install any of the following stormwater controls at your site..."
46. Part 2.1.3.4. (Dewatering Practices) of the Permit states, in relevant part: "You are prohibited from discharging ground water or accumulated stormwater that is removed from excavations, trenches, foundations, vaults, or other similar points of accumulation, unless such waters are first effectively managed by appropriate controls."
47. Part 2.1.3.4. of the Permit provides: "Examples of appropriate controls include, but are not limited to, sediment basins or sediment traps, sediment socks, dewatering tanks, tube settlers, weir tanks, or filtration systems (e.g., bag or sand filters) that are designed to remove sediment."
48. During the Inspection, EPA inspectors observed a portable sediment tank located near the southwest corner of the Facility and observed the drain into which the portable sediment tank discharged.
49. During the Inspection, EPA inspectors observed visible accumulated sediment residue at the bottom of the drain receiving discharges from the portable sediment tank.

50. During the Inspection, EPA inspectors observed accumulated groundwater being pumped from a utility pit into a clogged filter bag (the Filter Bag).
51. During the Inspection, EPA inspectors observed water laden with sediment exiting the Filter Bag and pooling and flowing on the nearby sidewalk and street and extending towards and into storm drains located on Mississippi Avenue SE, Washington, DC.
52. On or about May 3, 2016, Respondent failed to properly manage by appropriate controls ground water or accumulated stormwater removed from excavations, trenches, foundations, vaults, or other similar points of accumulation prior to discharging such ground water or accumulated stormwater into the DC MS4 in violation of Part 2.1.3.4. of the Permit.
53. On May 3, 2016, Respondent's unauthorized discharges of accumulated stormwater that was removed from excavations, trenches, foundations, vaults, or other similar points of accumulation without first effectively managing such water by appropriate controls constitute violations of the Permit and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

Count II

Failure to Properly Handle or Store Construction Products, Materials and Wastes

54. The allegations of Paragraphs 1 through 53 of this Consent Agreement are incorporated herein by reference.
55. Part 2.3.3.3. (Storage, Handling, and Disposal of Construction Products, Materials, and Wastes) of the Permit provides in relevant part: "You must minimize the exposure to stormwater of any of the products, materials, or wastes specified below that are present at your site by complying with the requirements in this Part."
56. Part 2.3.3.3. of the Permit provides in relevant part:

To ensure you meet this requirement, you must:

 - a. For building products: In storage areas, provide either (1) cover (e.g., plastic sheeting or temporary roofs) to prevent these products from coming into contact with rainwater, or (2) a similarly effective means designed to prevent the discharge of pollutants from these areas.
 - b. For pesticides, herbicides, insecticides, fertilizers, and landscape materials:
 - i. In storage areas, provide either (1) cover (e.g., plastic sheeting or temporary roofs) to prevent these chemicals from coming into contact with rainwater, or (2) a similarly effective means designed to prevent the discharge of pollutants from these areas; and
 - ii. Comply with all application and disposal requirements included on the registered pesticide, herbicide, insecticide, and fertilizer label.
 - c. For diesel fuel, oil, hydraulic fluids, other petroleum products, and other chemicals:

- i. To comply with the prohibition in Part 2.3.1.3, store chemicals in water-tight containers, and provide either (1) cover (e.g., plastic sheeting or temporary roofs) to prevent these containers from coming into contact with rainwater, or (2) a similarly effective means designed to prevent the discharge of pollutants from these areas (e.g., spill kits), or provide secondary containment (e.g., spill berms, decks, spill containment pallets); and
 - ii. Clean up spills immediately, using dry clean-up methods where possible, and dispose of used materials properly. Do not clean surfaces or spills by hosing the area down. Eliminate the source of the spill to prevent a discharge or a continuation of an ongoing discharge.
 - d. For hazardous or toxic waste:
 - i. Separate hazardous or toxic waste from construction and domestic waste;
 - ii. Store waste in sealed containers, which are constructed of suitable materials to prevent leakage and corrosion, and which are labeled in accordance with applicable Resource Conservation and Recovery Act (RCRA) requirements and all other applicable federal, state, tribal, or local requirements;
 - iii. Store all containers that will be stored outside within appropriately sized secondary containment (e.g., spill berms, decks, spill containment pallets) to prevent spills from being discharged, or provide a similarly effective means designed to prevent the discharge of pollutants from these areas (e.g., storing chemicals in covered area or having a spill kit available on site);
 - iv. Dispose of hazardous or toxic waste in accordance with the manufacturer's recommended method of disposal and in compliance with federal, state, tribal, and local requirements; and
 - v. Clean up spills immediately, using dry clean-up methods where possible, and dispose of used materials properly. Do not clean surfaces or spills by hosing the area down. Eliminate the source of the spill to prevent a discharge or a furtherance of an ongoing discharge.
 - e. For construction and domestic waste: Provide waste containers (e.g., dumpster or trash receptacle) of sufficient size and number to contain construction and domestic wastes. In addition, you must:
 - (1) On work days, clean up and dispose of waste in designated waste containers; and
 - (2) Clean up immediately if containers overflow.
- 57. During the Inspection, EPA inspectors observed chemical, fuel or other containers, including at least one container with an open dispenser, located on the rain soaked ground in an open uncovered area near the materials storage shed.
- 58. During the Inspection, EPA inspectors observed chemical, fuel and other containers, in an unprotected area, lying on their side on the rain soaked ground.

59. During the Inspection, EPA inspectors observed a large open rain soaked carboard box on the rain soaked ground containing trash piled above the upper edges of the box.
60. During the Inspection, EPA inspectors observed trash and building materials strewn on the ground at the Facility.
61. On May 3, 2016, Respondent violated Part 2.3.3.3. (Storage, Handling, and Disposal of Construction Products, Materials, and Wastes) of the Permit by failing to minimize the exposure to stormwater of products, materials, or wastes at the Facility in violation of Part 2.3.3.3. of the Permit.
62. On May 3, 2016, Respondent's failure to minimize the exposure to stormwater of any of the products, materials, or wastes specified in Part 2.3.3.3. of the Permit that were present at the Facility constitutes violations of the Permit and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

Count III

Incomplete Stormwater Pollution Prevention Plan (SWPPP)

63. The allegations of Paragraphs 1 through 62 of this Consent Agreement are incorporated herein by reference.
64. Part 7.1.1. (Requirement to Develop a SWPP Prior to Submitting Your NOI) of the Permit states: "All operators associated with a construction project to be covered under this permit must develop a SWPPP."
65. Part 7.2.7. (Construction Site Pollutants) of the Permit states: "The SWPPP must include the following:
 - 7.2.7.1 A list and description of all the pollutant-generating activities on your site.
 - 7.2.7.2 For each pollutant-generating activity, an inventory of pollutants or pollutant constituents (e.g., sediment, fertilizers and/or pesticides, paints, solvents, fuels) associated with that activity, which could be exposed to rainfall, or snowmelt, and could be discharged from your construction site. You must take into account where potential spills and leaks could occur that contribute pollutants to stormwater discharges. You must also document any departures from the manufacturer's specifications for applying fertilizers containing nitrogen and phosphorus, as required in Part 2.3.5.1."
66. During the Inspection, EPA inspectors reviewed Respondent's SWPP and identified that the SWPP indicated that no fuel was stored on site.
67. During the Inspection, EPA inspectors observed more than one small fuel containers and one large fuel tank at the Facility.
68. During at least February 4, 2015 through May 3, 2016, Respondent's SWPPP did not include an accurate list and description of all pollutant-generating activities at the Facility or an accurate in inventory of pollutants or pollutant constituents (e.g., sediment, fertilizers and/or pesticides, paints, solvents, fuels) associated with each listed activity,

which could be exposed to rainfall, or snowmelt, and could be discharged from the Facility in violation of Part 7.2.7. of the Permit.

69. During at least February 4, 2015 through May 3, 2016, Respondent's failure to have a SWPPP, which included an accurate list and description of all pollutant-generating activities at the Facility or an accurate inventory of pollutants or pollutant constituents (e.g., sediment, fertilizers and/or pesticides, paints, solvents, fuels) associated with each listed activity, which could be exposed to rainfall, or snowmelt, and could be discharged from the Facility, constitutes violations of the Permit and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

CIVIL PENALTY

70. As described above, EPA finds that Respondents have violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and are therefore liable to the United States for a civil penalty in accordance with Section 309(g) of the Act, 33 U.S.C. § 1319(g).
71. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **EIGHT-THOUSAND ONE-HUNDRED Dollars (\$8,100)**, which Respondent shall be liable to pay in accordance with the terms set forth below.
72. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 309(g) of the Act, 33 U.S.C. § 1319(g), including the following: 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. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Interim Clean Water Act Settlement Penalty Policy*, March 1, 1995, which reflects the statutory penalty criteria and factors set forth at Section 309(g) of the Act, 33 U.S.C. § 1319(g), the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.
73. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made 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 (Docket No. CWA-03-2019-0075).
 - 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

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously to:

Kathleen Root, Esq.
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC40)
1650 Arch Street
Philadelphia, PA 19103-2029
Root.kathleen@epa.gov

and

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

74. 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 of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
75. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed CAFO. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed CAFO, with a date stamp indicating the date on which the CAFO was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
76. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of the fully executed and filed CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest 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).

77. ADMINISTRATIVE COSTS: The costs of the EPA'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 – Case 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.
78. LATE PAYMENT PENALTY: 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).
79. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this CAFO.

GENERAL SETTLEMENT CONDITIONS

80. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and represents that, to the best of Respondent's knowledge and belief, this CAFO does not contain any confidential business information or personally identifiable information from Respondent.
81. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this CAFO, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

82. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

83. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This CAFO does not constitute a waiver, suspension or modification of the requirements of the Act, 33 U.S.C. §§ 1251 et seq., or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

84. This CAFO resolves only EPA's claims for civil penalties for the specific violation[s] alleged against Respondent in this CAFO. 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. 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, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the Act, 33 U.S.C. §§ 1251 et seq., the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this CAFO after its effective date.

PARTIES BOUND

85. This CAFO shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

EFFECTIVE DATE

86. Pursuant to 40 C.F.R. § 22.45(b), this CAFO shall be issued only after a 40-day public notice and comment period is concluded. This CAFO will become final and effective thirty (30) days after having been signed by the Regional Administrator or his delegate, the Regional Judicial Officer, filed with the Regional Hearing Clerk, and served on Respondent by certified mail, or ten (10) days after conclusion of the public notice and comment period described in 40 C.F.R. § 22.45(b), whichever is later.

ENTIRE AGREEMENT

87. This constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this CAFO.

FOR RESPONDENT: WCS Construction, LLC.

Date: 8/5/19


By: 
NAME: D. SCOTT VOSSLER
TITLE: PRESIDENT
WCS Construction, LLC.

FOR EPA:

For the Complainant:

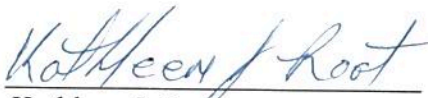
After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: SEP 23 2019

By: 
Karen Melvin
Director, Enforcement and Compliance
Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:

Date: 8/6/2019

By: 
Kathleen J. Root
Sr. Assistant Regional Counsel
U.S. EPA – Region III

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

In the Matter of:

Docket No. CWA-03-2019-0075

**WCS Construction, LLC
3303 Stanton Road
Washington, DC 20020-2203**

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

Respondent

Property known as:

U.S. EPA-REGION 3-RHC
FILED-24SEP2019pm1:27

**Archer Park
1200 Mississippi Avenue SE
Washington, DC 20032
Phase 1 – DCR12A288 and
Phase 2 DCR12A353**

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, WCS Construction, LLC (Respondent), have executed a document entitled “Consent Agreement,” which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22 (with specific reference to [Sections 22.13(b) and 22.18(b)(2) and (3)]. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

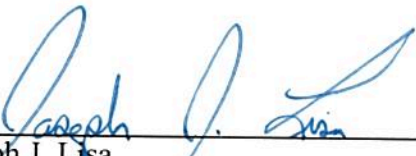
Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, the statutory factors set forth in Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d).

NOW, THEREFORE, PURSUANT TO Section 309 of the Clean Water Act, 33 U.S.C. § 1319, and Section 22.18(b)(3) of the Consolidated Rules, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **EIGHT-THOUSAND ONE-HUNDRED**

Dollars (\$8,100), in accordance with the payment provision set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of the Clean Water Act, 33 U.S.C. §§ 1251 et seq., and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is thirty (30) days after this Final Order is filed with the Regional Hearing Clerk, pursuant to 33 U.S.C. § 1319(g)(5) or ten (10) days after conclusion of the public notice and comment period described in 40 C.F.R. § 22.45(b), whichever is later.



Joseph J. Lisa
Regional Judicial Officer and Presiding Officer
U.S. EPA Region III

Date: Sept. 24, 2019

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

In the Matter of:

Docket No. CWA-03-2019-0075

WCS Construction, LLC
3303 Stanton Road
Washington, DC 20020-2203

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

Respondent

Property known as:

Archer Park
1200 Mississippi Avenue SE
Washington, DC 20032
Phase 1 DCR12A288 and Phase 2 DCR12A353

CERTIFICATE OF SERVICE

I certify that on SEP 24 2019, the original and one (1) copy of foregoing *Consent Agreement and Final Order*, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the same to each of the following persons, in the manner specified below, at the following addresses:

Copy served via **CERTIFIED MAIL, RETURN RECEIPT REQUESTED** to:

Erin Frazee Masini
Associate
Fox Rothschild LLP
1030 15th Street, N.W.
Suite 380 East
Washington, DC 20005

Copy served via **Hand Delivery or Inter-Office Mail** to:

Kathleen J. Root, Esq.
Sr. Assistant Regional Counsel
Office of Regional Counsel (3RC40)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Dated: SEP 24 2019

Bevin Esposito

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III

TRACKING NUMBER(S): 7015 1520 00030896 2670