

U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated the authority to enter into agreements concerning administrative penalties to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the "Consent Agreement and Final Order") resolve Complainant's civil penalty claims against Respondent under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), 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.

II. JURISDICTION

3. The U.S. Environmental Protection Agency ("EPA") has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(6) in assessing Class I penalties under Sections 309(g).
5. Pursuant to Section 309(g)(1)(B), EPA has consulted with the State of Delaware Department of Natural Resources and Environmental Control (DNREC) regarding this action and, subsequent to the Effective Date, EPA will mail a copy of this fully executed CONSENT AGREEMENT AND FINAL ORDER to the appropriate DNREC representative.

III. GENERAL PROVISIONS

6. For purposes of this proceeding only, Respondent admits each jurisdictional allegation set forth in this Consent Agreement and Final Order.
7. Except as provided in Paragraph 6, above, Respondent neither admits nor denies the specific factual allegations set forth below in this Consent Agreement and Final Order.
8. 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 enforcement of this Consent Agreement and Final Order.
9. For the purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.
10. 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.

11. Respondent's consent to the assessment of the civil penalty stated herein shall in no way preclude Respondent from seeking to recover any amounts paid pursuant to this Consent Agreement and Final Order from the contractors performing the work which resulted in penalties being assessed.
12. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.
13. Pursuant to Section 309(g)(4)(A) of the CWA, 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.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

14. 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.
15. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the National Pollutant Discharge Elimination System ("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. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides for the authorization of state programs to issue NPDES permits.
16. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into waters of the U.S. except in compliance with sections 301, 302, 306, 307, 318, 402, and 404 of the Act, 33 U.S.C. §§ 1311, 1312, 1316, 1317, 1328, 1342, and 1344.
17. "Pollutant" is defined as "dredged spoil, solid waste, incinerator residue, filter backwash, 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." 40 C.F.R. § 122.2. See also 33 U.S.C. § 1362(6).
18. "Discharge of a pollutant" means "[a]ny addition of any 'pollutant' or combination of pollutants to 'waters of the United States' from any 'point source.'" 40 C.F.R. § 122.2. See also 33 U.S.C. § 1362(12).
19. "Storm water" is defined as "storm water runoff, snow melt runoff, and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).
20. Section 402(p) of the CWA, 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).
21. Section 402 (p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulation at 40 C.F.R. § 122.26(a)(1)(ii), require facilities discharging stormwater associated with industrial activity to obtain a permit. Under 40 C.F.R. § 122.26(c)(1), dischargers of stormwater associated with industrial activity must apply for an individual permit or seek coverage under a general permit.
 22. Pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), EPA authorized DNREC to issue NPDES permits in the State of Delaware.
 23. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), Delaware issued an NPDES Construction General Permit which became effective on March 11, 2021 and expires March 10, 2026. In accordance with Section 402 of the CWA and Delaware's regulations, DNREC granted coverage under the General Permit to DelDOT, NPDES Permit No. 0051268 (the "General Permit") pursuant to its authority under the CWA and the NPDES program. The General Permit requires facilities that discharge storm water to a surface water body of the State to comply with specific requirements governing storm water discharges associated with industrial activities.
 24. DelDOT is a State Agency created pursuant to 29 *Del. C.* §8401 and existing under the laws of the State of Delaware and is thus 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.
 25. At all times relevant to this Consent Agreement and Final Order, DelDOT was, the owner of the Elkton Road Site, Elkton Road, MD State Line to Casho Mill Rd (hereinafter "Elkton Facility") (Site-specific Permit No. DEC006054). DelDOT as the owner contracted with Diamond Materials, LLC to perform the construction activity at the Elkton Facility pursuant to contract number T201504401. Diamond Materials, LLC was in control of the Elkton Facility at the time of the violations alleged herein. The 38-acre project reconstructs and expands sections of the roadway along Elkton Road. Site activity included approximately two miles of roadwork.
 26. At all times relevant to this Consent Agreement and Final Order, DelDOT was the owner of the Mulberry Knoll Site, T200411209 SR 24 Mulberry Knoll to SR 1 (hereinafter "Mulberry Facility") (Site-specific Permit No. DEC006064). DelDOT as the owner contracted with Mumford and Miller Concrete, Inc. to perform the construction activity at the Mulberry Facility pursuant to contract number T200411209. Mumford and Miller Concrete, Inc. was in control of the Mulberry Facility at the time of the violations alleged herein. The 12-acre project expanded SR 24 to a four-lane road and is active along the shoulder of SR24 from Mulberry Knoll Road to Lexus Way.
 27. At all times relevant to this Consent Agreement and Final Order, DelDOT was the owner of the T2018040301 Georgetown East Gateway Improvements Site

(hereinafter, “the Georgetown Facility”) (Site-specific Permit No. DEC006156). DelDOT as the owner contracted with Allan Myers MD, Inc. to perform the construction activity at the Georgetown Facility pursuant to contract number T201804301. Allan Myers MD, Inc. was in control of the Georgetown Facility at the time of the violations alleged herein. The 22.8-acre project involves construction/improvements along Market St. and Airport Rd. in Georgetown, DE.

28. At all times relevant to this Consent Agreement and Final Order, DelDOT was the owner of T201651201 Claymont Regional Transportation Center, 4544 Philadelphia Pike, Claymont, DE 19703 (hereinafter “the Claymont Facility”) (Site-specific Permit No. DEC006007). DelDOT as the owner contracted with Wagman Heavy Civil, Inc. to perform the construction activity at the Claymont Facility pursuant to contract number T201651201. Wagman Heavy Civil, Inc. was in control of the Claymont Facility at the time of the violations alleged herein. Claymont is a train station that is being rebuilt on a total of 3.8 acres.
29. Respondent, through the contracted entities identified in paragraphs 25 through 28 above, is, and at all times relevant to this Consent Agreement and Final Order, was, engaging in “construction activity” at the Facilities, within the meaning of 40 C.F.R. § 122.26(a)(1)(ii); 122.26(b)(14)(x); and 122.26(b)(15).
30. Respondent had applied for and was granted coverage under the General Permit, NPDES Permit No. 0051268, to discharge stormwater associated with industrial activity from these four Facilities. DelDOT is the Respondent in this matter as DelDOT was the only entity listed on the permits/applications. DelDOT obtained the permits at issue even though DelDOT at all times intended to contract with third parties, as identified herein, for the performance of the work at the respective sites.
31. The Facilities discharge, and at all times relevant to this Consent Agreement and Final Order discharged, stormwater identified in the respective Permits into the following waters of the United States:
 - a. Georgetown Facility – flows to an unnamed tributary to Ingram Branch which flows to the Broadkill River which flows to the Delaware Bay, a navigable-in-fact water;
 - b. Claymont Facility – flows to Naamans Creek which flows to the Delaware River, a navigable-in-fact river;
 - c. Mulberry Facility– flows to Love Creek which flows to Rehoboth Bay, a navigable-in-fact water; and
 - d. Elkton Facility – flows to the Christina River which flows to the Delaware River, a navigable-in-fact river.

All of the above are “waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

32. On May 26, 2021 (Elkton Facility), May 24, 2021 (Mulberry Facility), May 27, 2021 (Georgetown Facility), and May 26, 2021 (Claymont Facility), an EPA compliance inspection team conducted inspections of the Facilities (“Inspections”), pursuant to Section 308 of the CWA, 33 U.S.C. § 1318.
33. Based on the Inspection and review of Respondent’s responses to the Facility Inspection reports, EPA has identified the following violations of the General Permit, and Section 301 of the CWA, 33 U.S.C. § 1311, described below.

Count I

The Elkton Facility

34. The allegations from the preceding paragraphs are incorporated herein by reference.
35. Section E.1 of the General Permit requires Respondent to “develop, fully implement, and maintain at the site, the approved Plan. The Plan shall cover all site activities from the date of initiation of construction activity to the date of project completion. Pollution prevention measures, in accordance with the Delaware [Erosion and Sediment Control (“ESC”)] Handbook standard and specifications for Construction Site Waste Management and Spill Control, shall be incorporated into the Plan for construction activity....”
36. Section E.1 of the General Permit requires Respondent to, “keep the Plan current and revise the Plan whenever: a) There is a change in the design, construction, operation or maintenance of erosion and sediment control or stormwater management measures on the site; or b) The Plan proves to be ineffective in eliminating or significantly minimizing the discharge of pollutants, or in otherwise achieving the general objectives of controlling pollutants in stormwater discharges from construction activity; or c) To address any sources or potential sources of pollution identified as a result of a site inspection pursuant to Part 1.E.2 of this [Construction General Permit]....”
37. On or about June 4, 2021, in response to EPA’s records request, DeIDOT provided a copy of their Sediment and Stormwater Management Plan (hereafter “Stormwater Plan” or “Plan”).
38. At the Inspection of the Elkton Site on May 26, 2021, the EPA Inspection Team observed various areas of the Facility where Erosion and Sediment (“E&S”) controls did not appear to be installed as required by DeIDOT’s Plan, including, but not limited to:
 - a. Sheets 228 and 229 show silt fencing installed along an infiltration trench along Elkton Road which was not there at the time of the Inspection. A revision of the Plan dated 3/11/21 notes that this silt fence is to be reinstalled after work was completed in this area.
 - b. A revision of the Plan dated 02/02/21 for Sheet 229 shows a compost filter log (CFL) installed at the intersection of Elkton Road and McIntire Road which was not there at the time of Inspection.

- c. Sheet 237 shows a rock channel at an outlet east of the intersection of Elkton Road and Otts Chapel Road that was not installed at this outlet at the time of the Inspection.
 - d. Sheet 246 shows a swale with a rock channel installed that was not there at the time of the Inspection.
 - e. Sheet 255 shows a BMP [best management practice] with a rock channel at the T- intersection of Elkton Road and Millstone Drive that was not there at the time of the Inspection.
 - f. Sheets 254 and 255 show a continuous section of silt fence in proximity to the T- intersection of Elkton Road and Hamlet Way. However, a section of silt fence was observed to be missing at the time of the Inspection.
 - g. Sheet 251 appears to show silt fence connected to a rock channel at the west side of the intersection of Elkton Road and SR 4 Christina Parkway. A section of silt fence did not appear to be connected to the rock channel at the time of the Inspection.
 - h. Sheet 250 appears to show a rock channel at an outlet west of SR 4 Christina Parkway. This rock channel did not appear to be fully constructed at the time of the Inspection.
39. At the Inspection on May 26, 2021, the EPA Inspection Team also observed various areas of the Facility where controls were installed, but DeIDOT's Plan did not appear to be revised to incorporate these controls, including, but not limited to:
- a. Sheet 257 does not appear to show Compost Filter Logs ("CFL") along the Gravenor Lane roadway. A CFL was observed to be installed in this location at the time of the Inspection.
 - b. Sheet 257 does not appear to show a rock channel. A rock channel was observed along the southwest bank of the Christina River at the time of the Inspection.
40. Section D.1 (Erosion and Sediment Control Requirements) of the General Permit requires Respondent to "Design, install and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants...."
41. Section D.1.3 of the General Permit requires Respondent to "Install sediment controls along any perimeter areas of the site that will receive pollutant discharges, and b) Remove sediment before it has accumulated to one-half of the above-ground height of any perimeter control."

42. Section D.1.9 of the General Permit requires Respondent to “Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion and scour in the immediate vicinity of discharge points. Examples of control measures that can be used to comply with this requirement include the use of erosion controls and/or velocity dissipation devices (e.g., check dams, sediment traps), within and along the length of a stormwater conveyance and at the outfall to slow down runoff.”
43. At the Inspection on May 26, 2021, the EPA Inspection Team observed CFL that appeared to be ripped and/or overtaken by sediment, including:
 - a. CFL east of Otts Chapel Road appeared to be torn and covered in sediment.
 - b. A CFL west of Gravenor Lane appeared to have rips and appeared partially buried. See Sheet 257 for the CFL.
 - c. CFLs west of SR 4 Christina Parkway were observed to be sediment laden. See Sheet 250 for the location of the CFLs.
44. At the Inspection on May 26, 2021, the EPA Inspection Team observed BMPs (consisting of rock channels surrounded by CFL) that appeared to be sediment laden, overtaken by sediment, and/or had compromised CFL, including:
 - a. A BMP (noted as BMP 975 on Sheet 177 of DelDOT’s Plan) at the east side of Otts Chapel Road appeared to be sediment laden. The BMP’s CFLs appeared to be ripped and overtaken by sediment. The EPA Inspection Team also noted that this BMP was directly downstream of an area where a separate rock channel had not been installed. See Sheet 238 for the location of the BMP.
 - b. A BMP at the southeast side of Otts Chapel Road that was in proximity to an unnamed tributary. The CFL and silt fence surrounding the rock channel of this BMP appeared to be overtaken. See Sheet 243 for the location of the BMP.
 - c. A BMP west of the Christina River had a CFL installed which appeared to have rips. See Sheet 257 for the location of the BMP.
 - d. A BMP at an unnamed tributary in proximity to a T-intersection at Elkton Road and Millstone Drive appeared to have CFL installed that was overtaken with sediment. See Sheet 255 for the location of the BMP.
45. At the Inspection on May 26, 2021, the EPA Inspection Team observed silt fence that appeared to be downed and/or overtaken by sediment, including:
 - a. A section of silt fence in proximity to the T-intersection of Elkton Road and Christina Mill Drive appeared to be overtaken by sediment and to have a partial gap. See Sheet 256 for the location of the silt fence.

- b. A section of silt fence along the east side of the intersection at Elkton Road and SR 4 Christina Parkway appeared to be downed. See Sheet 251 for the location of the silt fence.
 - c. An area west of SR 4 Christina Parkway with a drainage outlet that did not appear to have controls installed. This area was in direct proximity to an unnamed tributary. DeIDOT's Plan did not clearly identify this drainage outlet or any associated controls for it. See Sheet 250 for the general location of the outlet.
- 46. Section D.1.8 (Protect storm drain inlets) of the General Permit requires Respondent to "a. Install inlet protection measures that remove sediment from discharges prior to entry into any storm drain inlet that carries stormwater flow from the site; and b. Clean, or remove and replace, the protection measures as sediment accumulates, the filter becomes clogged, and/or performance is compromised. Where there is evidence of sediment accumulation adjacent to the inlet protection measure, remove the deposited sediment by the end of the same business day in which it is found or by the end of the following business day if removal by the same business day is not feasible."
- 47. At the Inspection on May 26, 2021, the EPA Inspection Team observed inlets that appeared to have debris stored within the controls and/or were being overtaken by sediment, including:
 - a. An inlet west of McIntire Road appeared to have sediment at half the height of the fence. There also appeared to be trash and other debris within the inlet control. See Sheet 229 for the location of the inlet.
 - b. An inlet east of McIntire Road appeared to have debris stored within the inlet control. See Sheet 229 for the location of the inlet.
 - c. An inlet east of West Branch Christina River appeared to have debris stored within the inlet control. See Sheet 234 for the location of the inlet.
- 48. Section D.1.4 (Minimize sediment track-out) of the General Permit requires Respondent to "a. Restrict vehicle use to properly designated exit points; b. Use appropriate stabilization techniques at all points that exit onto paved roads, sidewalks, or other paved areas that is consistent with the standard and specifications for stabilized construction entrances in the most recent version of the Delaware ESC Handbook; c. Implement additional track-out controls (e.g., use of wheel washing, rumble strips, and rattle plates) as necessary to ensure that sediment removal occurs prior to vehicle exit...." Standard No. E-14 (2014) of DeIDOT's Standard Construction Details has specifications for stabilized construction entrances, which includes the required dimensions, the use of DE. #3 Stone, and the use of a drainage pipe.
- 49. At the Inspection on May 26, 2021, the EPA Inspection Team observed various

stabilized construction entrances (“SCEs”) on DeIDOT’s Plan that did not appear to have been constructed. Several areas of the Facility appeared to be active with the potential for sediment track-out, including:

- a. Sheet 229 shows SCEs on the west side and east side of the intersection of Elkton Road and McIntire Road. There did not appear to be SCEs and installed at the time of the Inspection. On the Facility’s weekly inspection report on 4/15/21 the SCE was noted as not having been constructed.
 - b. Sheet 235 shows SCEs on the west side and east side of the intersection of Elkton Road and Otts Chapel Road. There did not appear to be SCEs installed at the time of the Inspection.
 - c. Sheet 235 was marked with a revision on 4/21/21 to install an SCE at the service road west of Otts Chapel Road. There did not appear to be an SCE installed at the time of the Inspection, and there was visible track-out on the roadway. On the Facility’s 5/13/21 weekly inspection report, this item was noted as needing a correction for over 49 days.
 - d. Sheet 246 shows an SCE at the west side of the intersection of Elkton Road and Interchange Blvd Driveway 1. Sheet 246 was marked with a revision on 4/21/21 that required the SCE to be moved slightly south down Interchange Blvd Driveway 1. The EPA Inspection Team observed this area and noted that there did not appear to be an SCE constructed, and there was visible track-out on the roadway.
 - e. Sheet 250 shows an SCE on the east side of the intersection of Elkton Road and SR4 Christina Parkway. There did not appear to be an SCE installed at the time of the Inspection.
50. Section D.1 (Erosion and Sediment Control Requirements) of the General Permit requires Respondent to “Design, install and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants...” Standard No. E-1 (2020) of DeIDOT’s Standard Construction Details has specifications for concrete washout with polyurethane liner, sign, and berm dimensions.
51. At the Inspection on May 26, 2021, the EPA Inspection Team observed an area that appeared to be utilized as a concrete washout. This area had cement staining on the ground. A polyurethane liner appeared to be present in the area but not being utilized. This area is also not designated as a concrete washout area on DeIDOT’s Plan. See Sheet 250 for the location of the concrete washout.
52. Based upon the assertions and allegations above, EPA concludes Respondent’s failure to comply with Parts D and E of the General Permit on the date of the Inspection has resulted in violations of Parts D and E of the General Permit.
53. In failing to comply with the General Permit, Respondent is in violation of Section 301 of the CWA, 33 U.S.C. § 1311, and is subject to the assessment of penalties under the CWA.

Count II
The Mulberry Site

54. The allegations from the preceding paragraphs are incorporated herein by reference.
55. Section E.1 of the General Permit requires Respondent to, “develop, fully implement, and maintain at the site, the approved Plan. The Plan shall cover all site activities from the date of initiation of construction activity to the date of project completion. Pollution prevention measures, in accordance with the Delaware ESC Handbook standard and specifications for Construction Site Waste Management and Spill Control, shall be incorporated into the Plan for construction activity....”
56. Section E.1 of the General Permit requires Respondent to, “keep the Plan current and revise the Plan whenever: a) There is a change in the design, construction, operation or maintenance of erosion and sediment control or stormwater management measures on the site; or b) The Plan proves to be ineffective in eliminating or significantly minimizing the discharge of pollutants, or in otherwise achieving the general objectives of controlling pollutants in stormwater discharges from construction activity; or c) To address any sources or potential sources of pollution identified as a result of a site inspection pursuant to Part 1.E.2 of this [Construction General Permit]....”
57. Section D.1 (Erosion and Sediment Control Requirements) of the General Permit requires Respondent to “Design, install and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants....”
58. Section D.1.5 of the General Permit requires Respondent to “Manage stockpiles or land clearing debris piles composed, in whole or in part, of sediment and/or soil.” Section D.1.5.b requires Respondent to “Install a sediment barrier (e.g., berms, dikes, fiber rolls, compost logs, silt fences, or sandbags) along all down gradient perimeter areas.”
59. At the Inspection of the Mulberry Site on May 24, 2021, the EPA Inspection Team observed a stockpile in the staging area. This stockpile was not on DelDOT’s Plan and did not appear to have controls enclosing it.
60. Section D.1.4 (Minimize sediment track-out) of the General Permit requires Respondent to “a. Restrict vehicle use to properly designated exit points; b. Use appropriate stabilization techniques at all points that exit onto paved roads, sidewalks, or other paved areas that is consistent with the standard and specifications for stabilized construction entrances in the most recent version of the Delaware ESC Handbook; c. Implement additional track-out controls (e.g., use of wheel washing, rumble strips, and rattle plates) as necessary to ensure that sediment removal occurs prior to vehicle exit....”
61. At the Inspection on May 24, 2021, the EPA Inspection Team observed a

construction entrance in the staging area. This construction entrance was not on DelDOT's Plan. The construction entrance appeared to be sediment laden.

62. Section D.4.5 (For spill prevention) of the General Permit states, "k. Leaks and drips; k.ii. Do not allow oil, grease, fuel or chemicals to drip on the ground...; k.iv. Repair leaky equipment promptly or remove problem vehicles and equipment from the site. Clean up contaminated soil immediately...; k.vi. Clean up all leaks. Promptly dispose of waste and spent clean up materials."
63. At the Inspection on May 24, 2021, the EPA Inspection Team observed oil staining on the ground in proximity to vehicles working in proximity to the Infiltration Trench between Mulberry Road and Warrington Road
64. Based upon the assertions and allegations above, EPA concludes Respondent's failure to comply with Parts D and E of the General Permit on the date of the Inspection has resulted in violations of Parts D and E of the General Permit.
65. In failing to comply with the General Permit, Respondent is in violation of Section 301 of the CWA, 33 U.S.C. § 1311, and is subject to the assessment of penalties under the CWA.

Count III
The Georgetown Facility

66. The allegations in the preceding paragraphs are incorporated by reference.
67. Section D.1.8 (For protection of storm drain inlets) of the General Permit requires Respondent to " a. Install inlet protection measures that remove sediment from discharges prior to entry into any storm drain inlet that carries stormwater flow from the site, and b. Clean, or remove and replace, the protection measure as sediment accumulates, the filter becomes clogged, and/or performance is compromised. Where there is evidence of sediment accumulation adjacent to the inlet protection measure, remove the deposited sediment by the end of the same business day in which it is found or by the end of the following business day if removal by the same business day is not feasible."
68. At the Inspection of the Georgetown Facility on May 27, 2021, the EPA Inspection Team observed two inlets and the associated inlet protection covered in what appeared to be sediment or micro seed.
69. Section D.4.b of the General Permit requires Respondent to "Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present of the site to precipitation and stormwater...."
70. Section D.4.3 (For waste management) requires that "a. All waste materials shall be collected and stored in securely lidded dumpsters in a location that does not drain to a waterbody; b. Waste materials shall be salvaged and/or recycled whenever possible; c. The dumpsters shall be emptied a minimum of twice per

week, or more if necessary. The licensed trash hauler is responsible for cleaning out dumpsters; d. Trash shall be disposed of in accordance with all applicable Delaware laws....”

71. At the Inspection on May 27, 2021, at the south end of the Cheer Community Center parking lot northwest corner of Sand Hill Rd and Route 9 intersection, the EPA Inspection Team observed construction materials including uncovered opened bags labeled mortar mix, an unidentified waste pile, an uncovered pile of what appeared to be asphalt. Construction materials and waste were on the ground at the southwest corner of Route 9 and Airport Rd intersection.
72. Section D.4.4. a, b, and e (For equipment maintenance) states “a. If possible, equipment should be taken to off-site commercial facilities for washing and maintenance; b. If performed on-site, vehicles shall be washed with high-pressure water spray without detergents in an area contained by an impervious berm...; e. Washout from concrete trucks shall be disposed of in a designated concrete washout area for hardening and proper disposal....”
73. Section D.4.5.j. (For spill clean ups) states “i. If it is safe to do so, immediately contain and clean up any chemical and/or hazardous material spills. ii. Properly dispose of used oil, fluids, lubricants and spill clean-up materials. iii. Do not bury spills or wash down with water.”
74. At the Inspection on May 27, 2021, the EPA Inspection Team did not observe any concrete washout areas onsite. At the Inspection on May 27, 2021, the EPA Inspection Team observed that there was evidence of concrete spills that had not been cleaned up in areas where concrete had been poured.
75. Section D.1.5 of the General Permit states: “Manage stockpiles or land clearing debris piles composed, in whole or in part, of sediment and/or soil.... b. Install a sediment barrier (e.g., berms, dikes, fiber rolls, compost logs, silt fences, or sandbags) along all downgradient perimeter areas.... d. Soil stockpiles must be temporarily or permanently stabilized within 14 calendar days in accordance with the standard and specifications for temporary or permanent stabilization in the most recent version of the Delaware ESC Handbook if the stockpiles are not part of active construction processes....”
76. At the Inspection on May 27, 2021, the EPA Inspection Team observed that the stockpiles onsite did not have perimeter controls and were not stabilized. In addition, the stockpile locations were not identified in the Approved Plans.
77. Section D of the General Permit requires Respondent to “Stabilize exposed portions of the site. Implement and maintain stabilization measures (e.g. seeding protected by erosion controls until vegetation is established, sodding, mulching, erosion control blanket, hydromulch) that minimize erosion from exposed portion of the site. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period

exceeding 14 calendar days....”

78. At the Inspection on May 27, 2021, the EPA Inspection Team observed that there were areas that had not been fully stabilized with evidence of erosion northeast corner of Sand Hill Rd and Route 9 intersection. There were unstabilized areas along the banks of sediment basin 1-3. There was a partially unstabilized area north of the Cheer Community Center east side of Sand Hill Rd with evidence of sedimentation in the riprap and some erosion above the flared end section of the pipe.
79. Section D.1.10.e (Installation of a sediment basin or similar impoundment) of the General Permit requires Respondent to “Use erosion controls and velocity dissipation devices to prevent erosion at inlets and outlets.” Delaware ESC Handbook Detail No. DE-ESC-3.1.4 Sheet 11 states, “8. Maintenance. a. Repair all damages caused by soil erosion and construction equipment at or before the end of each working day....”
80. At the Inspection on May 27, 2021, the EPA Inspection Team observed erosion and raveling along the banks of sediment basin on the south side of Route 9 east of Airport Road Best Management Practice (“BMP”) No. 1032. BMP 1031 Forebay No. 2. showed evidence of erosion above the flared end section of pipe; this location was also noted in weekly self-inspection reports for having an insufficiently sized compost filter log first identified on March 11, 2021 and not identified as resolved/closed until April 8, 2021. BMP 1033 Permanent Pool flared end section of pipe did not have riprap installed and there was evidence of erosion around it.
81. Section E.1 of the General Permit requires Respondent to “develop, fully implement, and maintain at the site, the approved Plan. The Plan shall cover all site activities from the date of initiation of construction activity to the date of project completion. Pollution prevention measures, in accordance with the Delaware [Erosion and Sediment Control (“ESC”)] Handbook standard and specifications for Construction Site Waste Management and Spill Control, shall be incorporated into the Plan for construction activity....”
82. Section E.1 of the General Permit requires Respondent to, “keep the Plan current and revise the Plan whenever: a) There is a change in the design, construction, operation or maintenance of erosion and sediment control or stormwater management measures on the site; or b) The Plan proves to be ineffective in eliminating or significantly minimizing the discharge of pollutants, or in otherwise achieving the general objectives of controlling pollutants in stormwater discharges from construction activity; or c) To address any sources or potential sources of pollution identified as a result of a site inspection pursuant to Part 1.E.2 of this [Construction General Permit]....”
83. At the Inspection on May 27, 2021, the EPA Inspection Team observed many

locations where riprap was specified in the Approved Plans, but no riprap was present at the time of the Inspection particularly locations of flared end sections of pipes.

84. Based on the above assertions and allegations, EPA concludes Respondent's failure to comply with Parts D and E of the General Permit on the date of the Inspection has resulted in violations of Parts D and E of the General Permit.
85. In failing to comply with the General Permit, Respondent is in violation of Section 301 of the CWA, 33 U.S.C. § 1311, and is subject to the assessment of penalties under the CWA.

Count IV
The Claymont Facility

86. The allegations in the preceding paragraphs are incorporated by reference.
87. Section D.1 of the General Permit requires Respondent to "[d]esign, install and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants."
88. Section D.1.8 of the General Permit requires Respondent to "[i]ninstall inlet protection measures that remove sediment from discharges prior to entry into any storm drain inlet that carries stormwater flow from the site" and requires Respondent to "[c]lean, or remove and replace, the protection measures as sediment accumulates, the filter becomes clogged, and/or performance is compromised." If there is evidence of sediment accumulation adjacent to the inlet protection measure, Respondent must "remove the deposited sediment by the end of the same business day in which it is found or by the end of the following business day if removal by the same business day is not feasible."
89. Section E.1 of the General Permit requires Respondent to "develop, fully implement, and maintain at the site, the approved Plan" which must cover "all site activities from the date of initiation of construction activity to the date of project completion." In this Plan, Respondent must incorporate "[p]ollution prevention measures, in accordance with the Delaware ESC Handbook standard and specifications for Construction Site Waste Management and Spill Control...for construction activity."
90. At the Inspection of the Claymont Facility on May 26, 2021, the EPA Inspection Team observed a control measure on the northwest perimeter of the Claymont Facility in proximity to Philadelphia Pike filled with gravel. The EPA Inspection Team also observed a sediment laden inlet without adequate protection.
91. Based on the above assertions and allegations, EPA concludes Respondent's failure to comply with Parts D and E of the General Permit on the date of the Inspection has resulted in violations of Parts D and E of the General Permit.

92. In failing to comply with the General Permit, Respondent is in violation of Section 301 of the CWA, 33 U.S.C. § 1311, and is subject to the assessment of penalties under the CWA.

VI. CIVIL PENALTY

93. 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 twenty-five thousand dollars (\$25,000), which Respondent shall be liable to pay in accordance with the terms set forth below. EPA and Respondent agree that the civil penalty assessed herein is allocated equally among the four (4) Facilities where violations were noted, equating to a violation of \$6,250.00 per Facility.
94. 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), 33 U.S.C. § 1319(g), including, the following: the seriousness of the violation or violations; the economic benefit (if any) resulting from the violation; any history of such violations; any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, 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 the statutory penalty criteria and factors set forth at Section 309(g), 33U.S.C. § 1319(g), and the appropriate Adjustment of Civil Monetary Penalties for Inflation, pursuant to 40 C.F.R. Part 19.
95. 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 include reference to Respondent's name and address, and the Docket Number of this action, i.e., EPA Docket No.CWA-03-2024-0003.
 - b. All checks shall be made payable to the "United States Treasury".
 - c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000
 - d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<http://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 by email to:

Pamela J. Lazos
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC40)
lazos.pamela@epa.gov

and

U.S. EPA Region III Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov.

96. 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.
97. Payment of the civil penalty is due and payable immediately upon the effective date of this Consent Agreement and Final Order Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed as of the effective date of this Consent Agreement and Final Order in accordance with 40 C.F.R. §13.9(a).
98. INTEREST: Interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the effective date of this Consent Agreement and Final Order, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the effective date of this Consent Agreement and Final Order. 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).

99. 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). If payment is not received within 30 calendar days of the effective date of this Consent Agreement, 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.
100. 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).
101. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

VI. GENERAL SETTLEMENT CONDITIONS

102. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
103. 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.
104. 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 Consent Agreement and Final Order, 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.

VI. CERTIFICATION OF COMPLIANCE

105. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief that is currently is in compliance with regard to the violations

alleged in this Consent Agreement.

VII. OTHER APPLICABLE LAWS

106. Nothing in this Consent Agreement and Final Order 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 Consent Agreement and Final Order does not constitute a waiver, suspension, or modification of the requirements of the Clean Water Act, or any regulations promulgated thereunder.

VIII. RESERVATION OF RIGHTS

107. This Consent Agreement and Final Order resolves only EPA's claim for civil penalties for the specific violations, alleged against Respondent in this Consent Agreement and Final Order. 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).
108. EPA reserves any rights and remedies available to it under the Clean Water Act, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

IX. EXECUTION/PARTIES BOUND

109. This Consent Agreement and Final Order 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 Consent Agreement and Final Order.

X. EFFECTIVE DATE

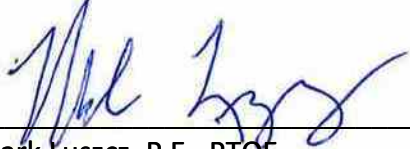
110. Pursuant to 40 C.F.R. § 22.45(b), this Consent Agreement and Final Order shall be issued only after a 40-day public notice and comment period is concluded. This Consent Agreement and Final Order will become final and effective thirty (30) days after having been signed by the Regional Administrator or his delegate, the Regional Judicial Officer, and filed with the Regional Hearing Clerk.

XI. ENTIRE AGREEMENT

111. This Consent Agreement and Final Order 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 Consent Agreement and Final Order.

For Respondent: Delaware Department of Transportation

Date: 01/23/2024

By: 
Mark Luszcz, P.E., PTOE
Deputy Director Operations & Support
Delaware Department of Transportation
800 S. Bay Road
Dover, DE 19901
(302) 760-2356
Mark.Luszcz@delaware.gov

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement & 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: _____

By: _____

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

Attorney for Complainant:

Date: _____

By: _____

Pamela J. Lazos
Senior Assistant Regional
Counsel U.S. EPA –
Region III

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 22.18(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*, EPA’s *Interim Clean Water Act Settlement Penalty Policy*, March 1, 1995, and the statutory factors set forth in Section 309(g)(2)(B)(3) of the CWA, 33 U.S.C. §1319(g)(2)(B)(3).

NOW, THEREFORE, PURSUANT TO Section 309(a) of the CWA, 33 U.S.C. § 1319(g), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **TWENTY-FIVE THOUSAND DOLLARS (\$25,000)**, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c) 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 and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is thirty days after the date on which this Final Order is filed with the Regional Hearing Clerk.

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

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III
Philadelphia, Pennsylvania 19103**

In the Matter of:	:
State of Delaware	:
Delaware Department of Transportation	:
a/k/a DelDOT	: U.S. EPA Docket No. CWA-03-2024-0003
800 Bay Road	:
Dover, Delaware 19903	:
	:
Respondent	:
Elkton Site	:
940 Elkton Road, Newark, DE 19971	: Proceeding under Section 309 of the Clean
39.665556, -75.776111	: Water Act, 33 U.S.C. § 1319(g)
	:
Mulberry Site	:
SR24 from Mulberry Knoll Road to Lexus	: Consent Agreement and Final Order
Way, Rehoboth Beach, DE 19971	:
38.724000; -75.143000	:
	:
Georgetown Site	:
Market St. and Airport Rd. Georgetown, DE	:
19947	:
38.699400; -75.368600	:
	:
Claymont Site	:
4544 Philadelphia Pike, Claymont, DE 19703	:
39.804615; -75.447155	:
	:
Facilities	:
	:

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was filed with the EPA Region III Regional Hearing Clerk on the date that has been electronically stamped on the Consent Agreement and Final Order. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing Consent Agreement and Final Order to each of the following persons, in the manner specified below, at the following addresses:

Copies served via UPS and email to:

Mark Luszcz, P.E., PTOE
Deputy Director Operations & Support
Delaware Department of Transportation
800 S. Bay Road
Dover, DE 19901
(302) 760-2356
Mark.Luszcz@delaware.gov

With copies served via email to:

Pamela J. Lazos
Sr. Assistant Regional Counsel
U.S. EPA, Region III
lazos.pamela@epa.gov

Chuck Schadel
Life Scientist
U.S. EPA, Region III
schadel.chuck@epa.gov

By:

[*Digital Signature and Date*]
Regional Hearing Clerk USEPA
Region III