

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

In the Matter of:

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**Monumental Concrete
3 DC Village Lane SW
Washington, D.C. 20032**

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U.S. EPA Docket No. CWA-03-2021-0052

*

**Proceeding under § 309(g) of the Clean
Water Act**

Respondent.

*

* * * * *

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 Monumental Concrete ("Respondent") (collectively the "Parties"), pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), authorizes the Administrator of the 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 it to the Complainant. This Consent Agreement and the attached Final Order resolve Complainant's civil penalty claims against Respondent under Section 301(a) of the Act, id. § 1311(a) 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.

JURISDICTION

3. The U.S. Environmental Protection Agency 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) and 311(b)(6).

GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CONSENT AGREEMENT AND FINAL ORDER.
6. Except as provided in Paragraphs 5, above, Respondent neither admits nor denies the factual allegations set forth in this CONSENT AGREEMENT AND FINAL ORDER.
7. 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 CONSENT AGREEMENT AND FINAL ORDER.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CONSENT AGREEMENT and waives its right to appeal the accompanying FINAL ORDER. Except as expressly provided herein, including but not limited to Paragraph 5 regarding admission to jurisdictional allegations, this waiver is not intended to nor should it be interpreted to be an admission of fact, law, or waiver of defenses in any other proceeding with other parties including any other proceedings involving Complainant.
9. 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.
10. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.
11. The Consolidated Rules, at 40 C.F.R. § 22.13(b) provide in pertinent part that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a Consent Agreement and Final Order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). Pursuant thereto, this CONSENT AGREEMENT AND FINAL ORDER simultaneously commences and concludes this administrative proceeding against Respondent.
12. Section 309(g)(2)(B) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(B), authorizes the assessment of administrative penalties against any person who violates any permit condition or limitation in an amount not to exceed \$10,000 per day for each day of violation, up to a total penalty amount of \$125,000.
13. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), any person who has violated Section 4040 of the CWA, 33 U.S.C. § 1344, after January 12, 2009 is liable

for an administrative penalty not to exceed \$18,943 per day for each day of violation up to a total penalty amount of \$236,783 for violations that occurred after November 2, 2015 and are assessed after January 15, 2019.

14. 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. In addition, pursuant to Section 309(g)(1)(B), EPA has consulted with the Department of Energy and Environment, Government of the District of Columbia ("DOEE") regarding this action and will mail a copy of this document to the appropriate DOEE official. Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides, inter alia, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any permit condition or limitation implementing certain CWA Parts in a permit issued under Section 402 of the Act, 33 U.S.C. § 1342, he shall issue an Order requiring such person to comply with such Part or requirement.

EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW

15. 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.
16. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
17. Federal regulations promulgated pursuant to the CWA define the phrase "waters of the United States" to include, among other things, (a) 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; (iii) all other waters such as intrastate lakes, rivers and streams, including intermittent streams, the use, degradation, or destruction of which would or could affect interstate commerce; (iv) tributaries of waters of the United States, and (v) all waters adjacent to these waters. 40 C.F.R. § 122.2.
18. "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.
19. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.2 and 122.26 provide that storm water discharges are "point sources" subject to NPDES permitting requirements under section 402(a) of the CWA, 33 U.S.C. § 1342(a).
20. "Stormwater" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).

21. "Storm water discharge associated with industrial activity" is defined as "the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant..." The term includes storm water discharges from facilities classified as Standard Industrial Classification ("SIC") 3273.
22. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.
23. In accordance with Section 402(a) of the Act, 33 U.S.C. § 1342(a), EPA issued a NPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity ("MSGP" or "Permit"), which, for industrial activities in the District of Columbia, became effective on June 4, 2015, expired on June 4, 2020 and will remain in effect until the proposed 2020 permit is finalized or until Respondent applies for coverage under an individual industrial stormwater permit. The Permit authorizes discharges of storm water associated with certain industrial activities in certain areas only in accordance with the conditions of the Permit.
24. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), EPA retains its authority to take enforcement action within the District of Columbia for NPDES permit violations, and proceeded with the enforcement action resolved by this CONSENT AGREEMENT AND FINAL ORDER after consultation with the District of Columbia pursuant to 33 U.S.C. § 1319(g)(1).
25. Monumental Concrete ("Respondent") is a corporation doing business in the District of Columbia and therefore, is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 232.2.
26. At all times relevant to this CONSENT AGREEMENT AND FINAL ORDER, Respondent was and is the owner and operator of the facility located at 3 DC Village Ln SW, Washington, D.C. 20032 (the "Site"), as further identified on the attached map labeled as Exhibit "A", (hereinafter "the Site" or "Monumental Site").
27. On March 13, 2018, EPA and representatives from the D.C. Department of Energy and the Environment ("DOEE") inspected the Monumental Site and based on that inspection, prepared a Clean Water Act Compliance Inspection report dated May 23, 2018. The report included a number of records and field observations.
28. By a letter dated July 5, 2018, Respondent addressed each of the records and field observations in the May 23, 2018 Inspection Report.
29. By a letter dated March 20, 2019, EPA replied to Respondent's July 5, 2018 letter.

30. On June 4, 2019, DOEE conducted an inspection and filed an inspection report on EPA's inspection form. DOEE conducted a "follow-up" inspection on July 8, 2019.

Count 1
Failure to Apply for a Permit

31. The allegations of Paragraphs 1 through 30 of this Consent Agreement are incorporated herein by reference.
32. Stormwater discharges leaving the Site drain into tributaries of the Potomac River. The Potomac River is a "waters of the United States" as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2; 40 C.F.R. § 122.2.
33. DOEE issued an Administrative Order on October 5, 2016 which ordered the Respondent to submit a Notice of Intent for coverage under 2015 MSGP.
34. From June 4, 2015 through March 8, 2018, for a total of 32 months, unauthorized discharges from the Site, including process water discharges, occurred without coverage under an NPDES permit. Thereafter Respondent submitted a Notice of Intent to apply for a permit, and on March 8, 2018, Respondent received authorization to discharge under the 2015 MSGP, permit tracking number, DCR053057 which permit expired on June 4, 2020 and has been administratively extended, pending application for an individual permit, through December 30, 2020.
35. Except as in compliance with section 1342, 33 U.S.C. § 1342, Section 301 of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source into waters of the U.S. except in compliance with a permit issued pursuant to an NPDES program under Section 402 of the Act, 33 U.S.C. § 1342.
36. From the time period between June 4, 2015 and March 8, 2018, Respondent violated Section 301 of the CWA, 33 U.S.C. § 1311(a) by discharging pollutants without a permit.
37. In failing to comply with 301 of the CWA, 33 U.S.C. § 1311(a), Respondent is subject to the assessment of penalties under Section 309 of the CWA, 33 U.S.C. § 1319(g).

CIVIL PENALTY

38. 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 \$30,000, which Respondent shall be liable to pay in accordance with the terms set forth below.
39. 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 EPA's Supplemental Guidance to the 1995 Interim Clean Water Act Settlement Penalty Policy for Violations of the Industrial Stormwater Requirements September 8, 2016 (Supplemental Guidance) which reflects the statutory penalty criteria and factors set forth at Section 309(g), 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.

40. 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-03-2021-0052.
- a. All checks shall be made payable to the "United States Treasury".
- b. 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 979077
St. Louis, MO 63197-9000

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

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

- d. 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:

Pamela J. Lazos
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC40)
1650 Arch Street
Philadelphia, PA 19103-2029
lazos.pamela@epa.gov

41. 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.
42. 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 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 EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
43. 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. 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 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).
44. 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.
45. 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).
46. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this CONSENT AGREEMENT AND FINAL ORDER.

GENERAL SETTLEMENT CONDITIONS

47. 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.
48. 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 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.

CERTIFICATION OF COMPLIANCE

49. 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

50. 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.

RESERVATION OF RIGHTS

51. This CONSENT AGREEMENT AND FINAL ORDER resolves only EPA's claim for civil penalties for the specific violation[s], alleged against Respondent in this CONSENT AGREEMENT AND FINAL ORDER for discharging without a permit in violation of 33 U.S.C. § 1311(a). 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 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.

EXECUTION /PARTIES BOUND

52. 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.

EFFECTIVE DATE

53. 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, 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

54. 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.

In Re: Monumental Concrete
EPA Docket No. CWA-03-2021-0052

FOR RESPONDENT MONUMENTAL CONCRETE:

Date: 1.22.21

By:  _____

Rebecca McCollum
General Manager, Monumental Concrete

For 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: _____

By: _____

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

ATTORNEY FOR COMPLAINANT:

Date: _____

By: _____

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

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

In the Matter of:

**Monumental Concrete
3 DC Village Lane SW
Washington, DC 20032**

Respondent

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: **U.S. EPA Docket No. CWA-03-2021-0052**
:
: **Proceeding under Section 309(g) of the Clean**
: **Water Act**
:
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: **FINAL ORDER**
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FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Monumental Concrete, 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, 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*, EPA’s Supplemental Guidance to the 1995 Interim Clean Water Act Settlement Penalty Policy for Violations of the Industrial Stormwater Requirements September 8, 2016 (*Supplemental Guidance*) which reflects the statutory penalty criteria and factors set forth at Section 309(g), 33 U.S.C. § 1319(g); the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19; the applicable EPA memoranda addressing EPA’s civil penalty policies to account for inflation; and the statutory factors set forth in Section 309(g), 33 U.S.C. § 1319(g), which include: 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;

NOW, THEREFORE, PURSUANT TO Section 309(g) 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 \$30,000 in accordance with the payment provisions 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 and the regulations promulgated thereunder.

This Consent Agreement and Final Order will become final and effective thirty (30) days after having been signed by the Regional Judicial Officer and filed with the Regional Hearing Clerk.

Date

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