

2013 is liable for an administrative penalty not to exceed \$ 16,000 per day for each day of violation occurring after January 12, 2009 up to a total penalty amount of \$187,500.

II. EPA's FACTUAL AND JURISDICTIONAL ALLEGATIONS, and CONCLUSIONS OF LAW

4. Walmart, a corporation with a headquarters address at 2001 SE Tenth Street, Bentonville, Arkansas, is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

5. At all times relevant to this CAFO, Respondent has owned and/or operated a construction site and retail store in Washington, D.C.

6. Respondent's Washington, D.C. construction site and/or retail store is located at 5929 Georgia Avenue, NW, between 9th Street NW, Peabody Street NW and Missouri Avenue NW, Washington, D.C. 20011 and is also known as site 5968-00 (the 5929 Georgia Avenue Construction Site, or Construction Site).

7. 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.

8. 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.

9. 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 discharged through a "point source" is subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).

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

11. "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.

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

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

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

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

16. On or about April 2, 2012, Respondent (through its agent or representative) submitted a NOI for coverage under the 2012 Permit for the 5929 Georgia Avenue Construction Site.

17. EPA determined that the 5929 Georgia Avenue Construction Site was eligible for coverage under the 2012 CGP, effective April 17, 2012, and assigned Permit Tracking Number DCR12A008 which had an expiration date of February 15, 2017.

18. Pursuant to Section 7 of the 2012 Permit, Respondent prepared a Stormwater Pollution Prevention Plan (“SWPPP”) which it maintains at the Construction Site.

19. Any water discharge from the 5929 Georgia Avenue Construction Site ultimately flows into either Rock Creek or the Potomac River.

20. On February 21, 2013 representatives of EPA conducted an inspection of the 5929 Georgia Avenue Construction Site (the February 2013 Inspection).

21. On October 31, 2013, EPA prepared a final Clean Water Act Compliance Inspection Report for the 5929 Georgia Avenue Construction Site (EPA’s Inspection Report). EPA’s Inspection Report also included six appendices (exhibit log, photo log, document log, etc.).

22. Walmart received a copy of EPA’s Inspection Report which was sent by e-mail on October 31, 2013. Walmart prepared and submitted a response to EPA on November 26, 2013.

23. Based upon the February 2013 Inspection, EPA identified four categories of violations, among six observations, which it has concluded were violations of the 2012 CGP and Section 301 of the Act, 33 U.S.C. § 1311.

24. Section 2.1 of the 2012 CGP lists erosion and sediment control requirements applicable to all discharges from construction sites covered by the CGP. Section 2.1.1.3.b of the 2012 CGP requires the installation of all stormwater controls in accordance with good engineering practices, including applicable design specifications.

25. Section 2.1.1.4 of the 2012 CGP requires the permittee to ensure that all erosion and sediment controls remain in effective operating condition during permit coverage and are protected from activities that would reduce their effectiveness.

26. Section 2.1.2.2 of the 2012 CGP requires the installation of perimeter controls around construction sites. This section specifically requires permittees to install sediment controls along those perimeter areas of the site that will receive stormwater from earth disturbing activities. This section also requires removal of sediment before it has accumulated to one-half of the above-ground height of any perimeter control.

27. The EPA inspection team observed approximately 103 linear feet of what appeared to be a safety fence along the east side of the construction entrance along Peabody Street NW. The fence was frayed and not trenched. Standard engineering practices as identified in the Erosion and Sediment (E&S) specifications call for silt and super silt fencing to embed geotextile material a minimum of 8 inches below the surface in order to prevent the migration of sediment beneath the fencing ("trenching"). An additional 30 linear feet of super silt fence located along the eastern property boundary south of the construction site exit had sediment that covered approximately 75 percent of the silt fence vertical height and was also not trenched in accordance with the E&S specifications.

28. The EPA observations described in Paragraph 27 of this CAFO are a violation of the erosion and sediment control requirements of Section 2.1 of the 2012 CGP and the specific requirement to install perimeter controls in accordance with Section 2.1.2.2.

29. Section 2.1.2.3 of the 2012 CGP, as part of the soil and erosion control requirements, specifically requires all permittees to minimize the track-out of sediment from vehicles exiting the construction site onto off-site streets, other paved areas, and sidewalks. To comply with this requirement, the permittee must: a) restrict vehicle use to properly designated exit points; b) use appropriate stabilization techniques at all points that exit onto paved roads so that sediment removal occurs prior to vehicle exit; c) where necessary, use additional controls to remove sediment from vehicle tires prior to exit; and d) where sediment has been tracked-out from the site onto the surface of off-site streets, other paved areas, and sidewalks, the permittee

must remove the deposited sediment by the end of the same work day in which the track-out occurs or by the end of the next work day if track-out occurs on a non-work day. In addition, the District Department of the Environment (DDOE) Standards and Specifications for Soil Erosion and Sediment Control, Section 1.0 Stabilized Construction Entrances, require a minimum track-out pad length of 50 feet, a minimum track-out pad width of 10 feet, and crushed stone aggregate (2 to 3 inches) placed at least 6 inches deep over the length and width of the entrance.

30. During the February 2013 Inspection, the EPA inspection team observed the tracking of sediment onto the paved areas around the construction site entrance along Peabody Street NW. The EPA inspection team also observed that sediment had filled the voids between the crushed aggregate at the construction entrance along Peabody Street NW.

31. The EPA observations described in Paragraph 30 of this CAFO are a violation of the erosion and sediment control requirements of Section 2.1 of the 2012 CGP and the specific requirement to minimize sediment track-out in accordance with Section 2.1.2.3

32. Section 2.1.2.9 of the 2012 CGP, as part of the soil and erosion control requirements, specifically lists the requirements for protecting storm drain inlets. If stormwater is discharged from the construction site to any storm drain inlet that carries stormwater flow from the construction site directly to a surface water (and it is not first directed to a sediment basin, sediment trap, or similarly effective control), the permittee must: a) install inlet protection measures that remove sediment from the discharge prior to entry into the storm drain inlet; 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, the deposited sediment must be removed by the end of the same work day in which it is found or by the end of the following work day if removal by the same work day is not feasible. Chapter 5, Title 21, Section 543.19 of DDOE regulations for stormwater runoff from construction sites require that sediment traps or basins and other erosion and sediment controls be employed at all times to protect inlets or storm sewers below silt-producing areas.

33. During the February 2013 Inspection, the EPA inspection team observed storm drain inlets that were improperly protected. Both storm drain inlets were located along Georgia Avenue and according to the E&S Plan/Site Map Sheet ES1 drawing, inlet protection is required for both storm water drain inlets. A review of Respondent's daily construction self-inspection report from February 20, 2013 did not identify either of these two inlets as needing inlet protection or repairs.

34. The EPA observations described in Paragraph 33 of this CAFO are a violation of the erosion and sediment control requirements of Section 2.1 of the 2012 CGP and the specific requirement to protect storm drain inlets in accordance with Section 2.1.2.9.

35. Section 7 of the 2012 CGP lists the general requirements to develop a SWPPP prior to a permittee submitting its NOI to be covered by the CGP. Section 7.2 of the 2012 CGP includes the minimum contents of the required SWPPP. Sections 7.2.6 and 7.2.10.1 of the 2012 CGP govern site map requirements and stormwater control measures to be used during construction activities. These sections require the permittee to include a site map in its SWPPP that features, among other items, the locations where stormwater and allowable non-stormwater will be discharged. The SWPPP must also include all stormwater control measures that will be installed and maintained on site to meet all the CGP effluent limitations applicable to discharges from construction sites.

36. During the February 2013 Inspection, the EPA inspection team observed wash water originating from the truck tire wash rack area located within the construction site exit facing onto 9th Street NW discharging from the construction site. The water was flowing beneath a fence along the property boundary, down a private drive, onto 9th Street NW, and into a storm drain inlet. Although a Gutterbuddy[®] was in place on the storm drain inlet, the wash water was bypassing the Gutterbuddy[®] and flowing into the storm drain inlet. The E&S Plan/Site Map Sheet ES1 does not identify a discharge at this location. According to the E&S Plan/Site Map Sheet ES1 drawing, an earth dike should direct the flow from the truck tire wash rack to the settling tanks prior to discharge. Additionally, site personnel stated that all wash water from the wash rack area should be captured and pumped to the three-chambered settling tanks followed by a filter bag to removed sediment.

37. The EPA observations described in paragraph 36 of this CAFO are a violation of the requirements to develop and maintain a SWPPP in accordance with Section 7 of the 2012 CGP.

38. Based upon the February 2013 Inspection, EPA has concluded that Respondent's failures to: 1) properly install perimeter controls; 2) minimize sediment track-out; 3) maintain storm water drain inlet protection; and 4) maintain and update its SWPPP, violate the 2012 CGP and Section 301 of the Act, 33 U.S.C. § 1311.

III. CONSENT AGREEMENT AND FINAL ORDER

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

40. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law set forth in this CAFO.

41. Respondent waives any defenses it might have as to jurisdiction and venue, its right to contest the allegations through hearing or otherwise; and its right to appeal the proposed final order accompanying the consent agreement.

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

43. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consents to issuance of this CAFO without adjudication.

44. Each party to this action shall bear its own costs and attorney fees.

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

46. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.

47. 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)(A), EPA has consulted with DDOE regarding this action, and will mail a copy of this document to the appropriate DDOE official.

48. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA HEREBY ORDERS AND Respondent HEREBY CONSENTS to pay a civil penalty in the amount of twenty thousand dollars (\$20,000) in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.

49. Respondent shall pay the total administrative civil penalty of twenty thousand dollars (\$20,000) within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c). Payment shall be made by one of the following methods set forth below.

Payment by check to "United States Treasury":

By regular mail:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Contact Eric Volck (513-487-2105)

By overnight delivery:

U.S. Bank
Government Lock Box 979077
US EPA, Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: Eric Volck (513-487-2105)

By Wire Transfer:

Federal Reserve Bank of New Lancaster
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New Lancaster, NY 10045
(Field Tag 4200 of the wire transfer message should read:
D 68010727 Environmental Protection Agency)

By Automated Clearinghouse (ACH) Transfers for receiving U. S. currency (also known as REX or remittance express):

PNC Bank
ABA = 051036706
Environmental Protection Agency

Docket No. CWA-03-2015-0048

Account Number: 310006
CTX Format
Transaction Code 22 - checking
808 17th Street, NW
Washington, D.C. 20074

Contact for ACH: John Schmid (202-874-7026)

On-Line Payments:

The On-Line Payment Option, available through the Dept. of Treasury, can be accessed from the information below:

WWW.PAY.GOV
Enter sfo 1.1 in the search field
Open form and complete required fields.

Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

Respondent shall send notice of such payment, including a copy of the check if payment is made by check, to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk (3RC00)

U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

-and-

Robert J. Smolski
Mail Code 3RC20
Office of Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

50. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251 *et seq.*, or any regulations promulgated thereunder.

51. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

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 payments as required herein or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

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

52. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which 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).

53. This Consent Agreement and Order resolve only the civil claims against Respondent for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. § 301 *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

54. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondent's violation of any applicable provision of law.

55. The penalty specified in Paragraph 48 shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

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

57. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

58. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

IV. EFFECTIVE DATE

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

FOR RESPONDENT, WAL-MART STORES, INC.:

Date: 12-15-14

By: 

Name: Carl Crowe

Title: Vice President of Construction

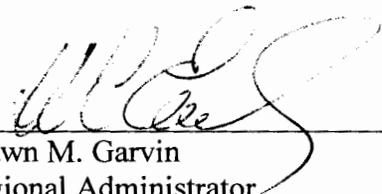
FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 2-9-2015


Jon M. Capacasa, Director
Water Protection Division

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

this 26th day of March, 2015


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

CERTIFICATE OF SERVICE

I certify that on this date I caused to be sent by certified mail, return receipt requested, a copy of this "Consent Agreement and Final Order" to the following persons:

Richard S. Davis, Esquire
Beverage & Diamond
1350 I Street, NW
Suite 700
Washington, D.C. 20005-3311

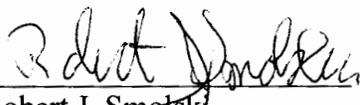
and a copy delivered by hand to:

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

Additionally, I caused to be sent by first class mail a copy of this "Consent Agreement and Final Order" to the following persons:

Sheila Besse
District of Columbia Department of the Environment
SW-Construction
51 N Street, NE #5
Washington, D.C. 20002

Date: MAR 27, 2015


Robert J. Smolski
Senior Assistant Regional Counsel