

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

In the Matter of:

Balfour Beatty Construction, LLC
11325 Random Hills Road, Ste. 500
Fairfax, VA 22030

Respondent

Docket No. CWA-03-2020-0052DN

Facilities located at:

Capitol Crossing Garage, East Concourse
and Platform (**Utility Relocation**)
222 Massachusetts Avenue NW
Washington, D.C. 20001
Permit No. DCR12A189

**ADMINISTRATIVE ORDER
ON CONSENT**

Capitol Crossing Garage, East Concourse
and Platform (**Highway**)
222 Massachusetts Avenue, NW
Washington, D.C. 20001
Permit No. DCR12A243

National Museum of the Marine Corps
Expansion
18900 Jefferson Davis Highway
Triangle, VA 22172
Permit No. VAR10G914

Portals V
1399 Maryland Avenue SW
Washington, D.C. 20002
Permit No. DCR100009

Wharf Development Phase 2
640 Maine Avenue SW
Washington, D.C. 20004
Permit No. DCR10005Z

I. STATUTORY AND REGULATORY BACKGROUND

1. The United States Environmental Protection Agency (“EPA”) has made the following findings of fact and issues this Administrative Order on Consent (“Consent Order”) pursuant to the authority vested in the Administrator of the EPA under Section 309(a) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(a). This authority has been delegated by the Administrator to the Regional Administrator of EPA Region III, and further delegated to the Director, Water Protection Division, Region III.

2. 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 Parts of the CWA 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.

3. 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.

4. Federal regulations promulgated pursuant to the CWA define the phrase “waters of the United States” to include, among other things, (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (ii) all interstate waters; (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.

5. “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

6. 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).

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

8. “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 construction activity including clearing, grading and excavation. 40 C.F.R. § 122.26(b)(14)(x).

9. 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.

10. An NPDES permit is required for construction activity, including clearing, grading, and excavation related to the site. *See* 33 U.S.C. § 1342, 40 C.F.R. §122.26(b)(14)(x)

11. EPA has retained the authority to issue NPDES permits in the District of Columbia.

12. 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.

13. The Commonwealth of Virginia Department of Environmental Quality (“VADEQ”) has been approved by EPA to administer the NPDES program in the Commonwealth of Virginia.

14. The 2012 General Permit for Discharges from Construction Activities, the 2012 Construction General Permit (2012 CGP), effective February 16, 2012, authorizes the discharge of stormwater from construction activity to surface waters of the District of Columbia provided that the owner of a source covered by the 2012 CGP filed a registration statement to be covered by the 2012 CGP and complied with all the requirements of the 2012 CGP.

15. The 2017 General Permit for Discharges from Construction Activities, the 2017 Construction General Permit (2017 CGP), effective February 16, 2017, authorizes the discharge of stormwater from construction activity to surface waters of the District of Columbia provided that the owner of a source covered by the 2017 CGP filed a registration statement to be covered by the 2017 CGP and complied with all the requirements of the 2017 CGP.

16. The General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater from Construction Activities, the Stormwater Construction General Permit (SWCGP), general permit number VAR10, effective July 1, 2014, authorizes operators of construction activities to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in State Water Control Board regulations that prohibit such discharges.

II. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS AND CONCLUSIONS OF LAW

CAPITOL CROSSING – UTILITY RELOCATAION

17. Respondent is a limited liability corporation, and therefore a “person” within the meaning of Part 502(5) of the Act, 33 U.S.C. § 1362(5).

18. Balfour Beatty Construction, LLC (“Respondent” or “Balfour Beatty”) performed land disturbing activities at Capitol Crossing Garage/East Concourse + Platform, 222

Massachusetts Avenue, NW, Washington, D.C. 20001 (“Capitol Crossing Utility Relocation”). The Capitol Crossing Utility Relocation site is classified under NAICS Code 236220. The storm sewer drains surrounding the site are part of a municipal separate storm sewer system (MS4). The receiving water body for the MS4 is the Anacostia River, which is classified as an impaired water body, and the Potomac River. Both are a “waters of the United States” as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

19. Respondent submitted an NPDES permit registration application on November 20, 2013, and on December 4, 2013 obtained authorization for its discharges of stormwater from the Capitol Crossing Utility Relocation site.

20. The project is permitted under the 2012 CGP, Permit No. DCR12A189.

21. On May 4, 2016, duly-authorized EPA personnel and their contractors, along with representatives from the District of Columbia Department of Energy and Environment (DOEE) (“Inspection Team”) conducted an inspection of Respondent’s Capitol Crossing Utility Relocation site, covering the surface street utility work which disturbed approximately 1.839 acres and which began in March 2014.

22. An inspection report for this Capitol Crossing Utility Relocation site inspection was developed, finalized, and sent to Respondent on August 15, 2016. A response to the inspection report was received by EPA which addressed observations noted in this inspection report.

23. Based upon the May 4, 2016 Capitol Crossing Utility Relocation site inspection, EPA representatives identified the following violations of the 2012 CGP and the CWA as described below.

24. **Failure to Authorize Discharges from Construction Support Activities in accordance with 2012 CGP Part 1.3(c).** The 2012 CGP has a requirement that construction support activity is required to have permit coverage and stormwater controls for stormwater discharges. At the time of the inspection, the Inspection Team observed two areas that were being used by the Respondent but were not included in the Stormwater Pollution Prevention Plan (SWPPP) or the erosion and sediment control plans. The “Verizon Lot” which was being used for equipment staging and material storage, and the highway access ramp belonging to the District of Columbia Department of Transportation (DDOT) that was being used by the Respondent’s construction vehicles for access to the highway level of the construction site, neither of which was outlined in the limit of disturbance in the SWPPP or permit plans. Failure to include these areas in the SWPPP and permit plans is a violation of the 2012 CGP.

25. **Failure to Post Notice of Permit Coverage in accordance with 2012 CGP Part 1.5.** The 2012 CGP requires that Respondent post a sign or other notice conspicuously and at a safe, publicly accessible location in close proximity to the project site and visible from the public road with a font large enough to be viewed from a public right-of-way. It must also include a point of contact name and phone number where additional information may be obtained. At the time of the inspection, the Inspection Team observed that the signs were not visible from a public area and had the incorrect contact information written on them since the point of contact

no longer worked for Respondent. Failure to post notice of permit coverage is a violation of the 2012 CGP.

26. **Failure to Maintain Erosion and Sediment Controls in accordance with 2012 CGP Part 2.1.1.4(a).** The 2012 CGP requires that all erosion and sediment controls required in this Part remain in effective operating condition during permit coverage and are protected from activities that would reduce their effectiveness. At the time of the inspection, the Inspection Team noticed unmaintained controls at vehicle exit points that contained sediment-coated gravel, stockpiles covered with broken and ripped tarps, sediment-laden erosion socks and inlet filter fabric, inlets that were not fully protected with filter fabric and covered in silt and debris, and inlet filter fabric that contained holes. Respondent failed to ensure that erosion and sediment controls remained in effective operating condition in violation of the 2012 CGP.

27. **Failure to Install Perimeter Controls in accordance with Part 2.1.2.2(a) of the 2012 CGP.** The 2012 CGP requires installation of sediment controls along the perimeter areas of the site that will receive stormwater from earth disturbing activities. At the time of inspection, no perimeter controls were installed along the perimeter of the construction trailer area. The approved erosion and sediment control plans provided during inspection indicated that silt fence is to be installed at this location. In addition, no stormwater perimeter controls were installed at the Verizon Lot and no perimeter fencing had been installed since the beginning of its use. Failure to install perimeter controls is a violation of the 2012 CGP.

28. **Failure to Minimize Sediment Track-Out in accordance with Part 2.1.2.3 of the 2012 CGP.** The 2012 CGP requires minimization of track-out from vehicles exiting the construction site through various means, including restricting vehicle use to properly designated exit points; using appropriate stabilization techniques, using controls to remove sediment from tires prior to exiting, and removal of deposited sediment, among other things. At the time of the inspection, the Inspection Team noticed four deficient vehicle exit points that were not installed according to the SWPPP, so approved and appropriate stabilization techniques were not implemented, not designed according to the approved erosion and sediment control plans, not properly maintained, and had sediment and gravel build-up and muddy water ponding where the concrete apron met the street. Respondent's failure to minimize track-out is a violation of the 2012 CGP.

29. **Failure to Control Discharges from Stockpiled Sediment or Soil in accordance with Part 2.1.2.4 of the 2012 CGP.** The 2012 CGP requires stockpiles to be located outside of the natural buffer zone, physically separated from other storm water controls, and protected from contact using a temporary perimeter sediment barrier. Respondent must take action to avoid direct contact with precipitation and protect from wind, and must not hose down soil or sediment accumulated on the pavement unless connected to a sedimentation basin, trap, or other control. The Inspection Team observed sediment piles that did not have a temporary perimeter sediment barrier and were not fully covered, piles of gravel, sand, and concrete debris that either had no temporary perimeter controls, had been covered with a white tarp that had large holes, or that were partially covered with portions exposed. Sediment-laden water was observed pooling around all the piles. Stormwater runoff from the piles flowed under the safety fence onto the street and ultimately to an unprotected inlet. Failure to control discharges from these stockpiles is a violation of the 2012 CGP.

30. **Failure to Protect Storm Drain Inlets in accordance with Part 2.1.2.9 of the 2012 CGP.** The 2012 CGP requires the installation of protection measures that remove sediment from discharge prior to entry into a storm drain inlet. To maintain these, the 2012 CGP requires cleaning, removal or replacement of the protection measures as sediment accumulates and the filter becomes clogged and/or performance is compromised. Upon discovery, sediment must be removed by the end of the same day or by the end of the following day if removal by the same work day is not feasible. At the time of the inspection, the Inspection Team observed two inlets without any inlet protection and at least 15 inlets that were in need of maintenance. Failure to properly protect storm drain inlets is a violation of the 2012 CGP.

31. **Failure to Minimize the Exposure of Construction Products, Materials, and Wastes to Stormwater in accordance with Parts 2.3.3.3.(a), 2.3.3.3(c)(i), and 2.3.3.3(f) of the 2012 CGP.** Under the 2012 CGP, Respondent must provide cover for building products to prevent these products from coming into contact with rainwater. At the inspection, the Inspection Team observed a pallet of Sakrete™ bags (concrete mix) that were hardened, indicating that rainwater had come into contact with the product. The pallet was not stored within secondary containment. Additionally, under the 2012 CGP, Respondent must store chemicals in waterproof containers and provide cover, spill kits, or secondary containment. At the inspection, the Inspection Team observed an area with multiple uncovered containers including a fuel container, a hand sprayer with unknown contents, white buckets with unknown contents, and a container of Shell Rotella motor oil. None of the containers were stored under cover or within secondary containment. Failure to properly cover building materials, failure to store fuel, and fluid and petroleum products not in watertight containers or secondary containment are violations of the 2012 CGP.

32. **Failure to Correctly Complete and Sign Self-Inspection Reports in accordance with Part 4.1.7 of the 2012 CGP.** Under the 2012 CGP, facility inspection reports must be completed and signed within 24 hours of an inspection, and contain all the relevant information incidental to the inspection such as the date and time, name of inspecting official, and a summary of the findings. The Inspection Team found some of the inspection reports missing while others were not signed. Failure to correctly complete and sign inspection reports is a violation of the 2012 CGP.

33. **Failure to Conduct Site Inspections at a Correct Frequency in accordance with Part 4.1.2 of the 2012 CGP.** Under the 2012 CGP, site inspections must be conducted in accordance with one of two schedules unless subject to another part of the permit. Those schedules are either every 7 calendar days or once every 14 calendar days and within 24 hours of the occurrence of a storm event of 0.25 inches or greater. To determine the size of a rain event, Respondent must either keep a properly maintained rain gauge or obtain storm information from a representative weather station. For any day that rainfall is greater than 0.25 inches, total rainfall for the day must be recorded in accordance with Part 4.1.7.1.d. At the time of the inspection, the Inspection Team observed five self-inspection reports that were conducted more than 7 days apart, which is the frequency identified in the SWPPP. Failure to conduct site inspections at the correct frequency is a violation of the 2012 CGP.

34. **Failure to Include all Vehicle Exit Points and Construction Support Activities on the Project Site Map in accordance with Part 7.2.6.1 of the 2012 CGP.** Under the 2012 CGP, the SWPPP must include a legible site map, or series of maps that show the

boundaries of the property and location of all construction activities, including earth-disturbing activities, location of construction materials and construction support activities, among other things. At the time of the inspection, the SWPPP did not include the Verizon Lot, and three vehicle exit points were also missing. Failure to include all construction support activities on the site map is a violation of the 2012 CGP.

35. Failure to Describe All Stormwater Control Measures in the SWPPP in accordance with Part 7.2.10.1 of the 2012 CGP. Under the 2012 CGP, the SWPPP must describe all stormwater control measures that are or will be installed and maintained at the site to meet the requirements of Part 2 of the 2012 CGP which include the type of stormwater control measure to be installed and maintained, including design information, the specific sediment controls that will be installed, and use of perimeter controls, among other things. At the time of the inspection, the Respondent had silt fencing listed as a form of perimeter control, but no silt fencing was in place; vehicle construction points were to contain metal wash racks with 25 feet of 2 to 3-inch crushed aggregate on either side, but no specific stabilization methods were observed at the vehicle exit points; all storm drain inlets were to be protected with geotextile fabric held in place with wire mesh and stone, but only erosion socks were in place; and trees were to be boxed-in to prevent mechanical injury with protective measures extending beyond the dripline, however, representatives of Respondent indicated that extending controls out to tree driplines was not feasible in the urban setting of the construction site, yet the SWPPP had not been modified to indicate this, all in violation of the 2012 CGP.

36. Failure to Modify the SWPPP in Response to a Required SWPPP Modification Condition in accordance with Parts 7.4.1.1 and 7.4.2 of the 2012 CGP. The SWPPP requires that whenever new operators become active in construction activities, or changes are made to construction plans, stormwater control measures, pollution prevention measures, or other activities at the site that are no longer accurately reflected in the SWPPP, the SWPPP must be modified within seven (7) calendar days. At the time of the inspection, the Inspection Team discovered that the last modification was completed on June 27, 2014, and had not been modified to reflect the following changed conditions: the Verizon Lot was being used for equipment staging material storage, and two construction vehicle locations were not listed; there were no perimeter controls implemented along the site boundaries, though the SWPPP indicated that silt fence was to be installed in certain areas; the vehicle exit points did not have metal wash racks as specified by the SWPPP; the curb inlets were protected with erosion socks, but the SWPPP indicated curb inlets are to be protected with geotextile fabric held in place with wire mesh and stone; and the trees were protected with orange, mesh fencing, as opposed to the fencing included in the SWPPP. Failure to modify the SWPPP when required and within the seven-day deadline are violations of the 2012 CGP SWPPP modification requirements.

CAPITOL CROSSING – HIGHWAY

37. Respondent performed land disturbing activities at Capitol Crossing Garage/East Concourse + Platform, 222 Massachusetts Avenue, NW, Washington, D.C. 20001 (“Capitol Crossing Highway”). The Capitol Crossing Highway site is classified under NAICS Code 236220. The storm sewer drains surrounding the site are part of a municipal separate storm sewer system (MS4). The receiving water body for the MS4 is the Anacostia River, which is classified as an impaired water body, and the Potomac River. Both are a “waters of the United

States” as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

38. Respondent submitted a registration application on July 7, 2014, and on July 21, 2014 obtained authorization for its discharges of stormwater from the Capitol Crossing Highway site.

39. The project is permitted under the NPDES 2012 CGP, Permit No. DCR12A243.

40. On September 7, 2016, duly-authorized EPA personnel and their contractors, along with representatives from DOEE (“Inspection Team”) conducted an inspection of Respondent’s Capitol Crossing Highway site, covering the highway level work which disturbed approximately 17.27 acres and began in August 2014.

41. An inspection report for this Capitol Crossing Highway site inspection was developed, finalized, and sent to Respondent on January 20, 2017. A response to the inspection report was received by EPA which addressed observations noted in this inspection report.

42. Based upon the September 7, 2016 Capitol Crossing Highway site inspection, EPA representatives identified the following violations of the 2012 CGP and the CWA as described below.

43. **Failure to Install and Maintain Storm Drain Inlet Protection in accordance with Part 2.1.2.9 of the 2012 CGP.** Section 2.1.2.9 of the 2012 CGP requires that if you discharge to any storm drain inlet that carries stormwater flow from your site directly to a surface water and it is not first directed into a sediment basin, trap, or similar control, and you have authority to access the storm drain inlet you must install inlet protection measures that remove sediment and maintain the protection measures as sediment accumulates. Where evidence of sediment accumulation is found, it must be removed by the same workday or the end of the following day if same day is not feasible. At the time of the inspection, the Inspection Team observed six at-grade drop inlets that were only partially protected from stormwater runoff by filter fabric; the grates were covered with a filter fabric that did not fully cover the inlet opening, leaving gaps along the sides; the inlets were coated in sediment and needed maintenance; and there was silt and debris on the ground throughout the construction site. Additionally, eight inlets were observed to be in need of maintenance. Failure to install and maintain storm drain inlet protections are violations of the 2012 CGP.

44. **Failure to Prevent Building Products from Coming into Contact with Rainwater in accordance with Part 2.3.3.3(a) of the 2012 CGP.** The 2012 CGP requires that Respondent provide pollution prevention with regard to the storage, handling and disposal of construction products, materials and wastes such as providing cover or secondary containment to building products. At the time of the inspection, the Inspection Team observed bags of Sakrete, some opened, that did not have secondary containment, as well as bags of grout mix, various packaged building materials piled along the tunnel wall, and a bag of unknown material that was flat and hardened, many of which were located near stormwater inlets. Failure to provide cover or secondary containment is a violation of the 2012 CGP.

45. **Failure to Prevent Chemical Containers from Coming into Contact with Rainwater in accordance with Part 2.3.3.3(c)(i) of the 2012 CGP.** The 2012 CGP requires that Respondent implement pollution prevention with regard to the storage, handling and disposal of construction products, materials and wastes such as storing in a water-tight container and providing cover or secondary containment to petroleum products. At the time of the Inspection, the Inspection Team observed several fuel containers stored along the west side of the I-395 North Tunnel where tiling work was being performed. The containers were not stored within secondary containment and the storage area was located slightly upslope and north of drop inlets, posing a threat to surface water via the Municipal Separate Sewer System (MS4). Failure to provide secondary containment of petroleum chemical containers is a violation of the 2012 CGP.

46. **Failure to Property Clean up and Dispose of Construction and Domestic Waste in accordance with Part 2.3.3.3(e) of the 2012 CGP.** The 2012 CGP requires the use of waste containers of sufficient size and number to contain construction and domestic wastes, which must be cleaned up and disposed of on work days and immediately if containers overflow. At the time of the inspection, the Inspection Team observed construction and domestic waste throughout the construction site. Specifically, there was trash located in the water-filled trench along the west side of the I-395 South tunnel and on/around multiple inlets. Failure to properly dispose of trash is a violation of the 2012 CGP.

47. **Failure to Conduct Site Inspections at a Correct Frequency in accordance with Part 4.1.2 of the 2012 CGP.** Under the 2012 CGP, site inspections must be conducted in accordance with one of two schedules unless subject to another part of the permit. Those schedules are either every 7 calendar days or once every 14 calendar days and within 24 hours of the occurrence of a storm event of 0.25 inches or greater. To determine the size of a rain event, Respondent must either keep a properly maintained rain gauge or obtain storm information from a representative weather station. For any day that rainfall is greater than 0.25 inches, total rainfall for the day must be recorded in accordance with Part 4.1.7.1.d. Self-inspection reports only covered the Capitol Crossing Highway (DCR12A243) permitted area every other week, and the Capitol Crossing Utility Relocation (DCR12A189) permitted areas were covered opposite weeks. Therefore, Respondent performed half the amount of self-inspections as the Permit requires. Failure to perform weekly reports is a violation of the 2012 CGP.

48. **Failure to Correctly Complete and Sign Self-Inspection Reports in accordance with Part 4.1.7.1 of the 2012 CGP.** The 2012 CGP requires inspection reports to be completed and signed within 24 hours. At the time of the inspection, the self-inspection report dated June 3, 2016 that was provided electronically by the Project Manager was not signed. Failure to correctly complete and sign inspection reports is a violation of the 2012 CGP.

NATIONAL MUSEUM OF THE MARINE CORPS EXPANSION

49. Respondent performed land disturbing activities at the National Museum of the Marine Corps Expansion site, 18900 Jefferson Davis Hwy, Triangle, VA 22172 (“Marine Corps Museum”). The Marine Corps Museum site is classified under NAICS Code 236220. The receiving water bodies for this site is King Highway Pond and Joplin Pond, which are classified

as impaired water bodies and are a “waters of the United States” as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

50. Respondent submitted a registration application to the VADEQ on March 4, 2015, tracking number VAR10G914 under VPDES Stormwater Construction General Permit (SWCGP) and on June 2, 2015 obtained authorization for its discharges of stormwater from the Marine Corps Museum site.

51. On September 8, 2016, duly-authorized EPA personnel and their contractors, along with representatives from VADEQ (“Inspection Team”) conducted an inspection of Respondent’s Marine Corps Museum site.

52. The Marine Corps Museum site is a building expansion that approximately doubles the size of the original museum. This site disturbed approximately 14.8 acres and began on July 20, 2014.

53. An inspection report for this Marine Corps Museum site inspection was developed, finalized, and sent to Respondent on March 15, 2017. A response to the inspection report was received by EPA which addressed observations noted in the Inspection Report.

54. Based upon the September 8, 2016 Marine Corps Museum site inspection, EPA representatives identified the following violations of the SWCGP and the CWA as described below.

55. **Failure to Conduct Inspections at the Required Frequency in accordance with 2014 SWCGP Part I.B.4.** The SWCGP has the requirement to conduct inspections once every four business days or at least every five business days and within 48-hours after storm events for sites that discharge to impaired waters. The Inspection Team observed that seven out of the previous ten self-inspections had date gaps greater than five business days. Failure to conduct inspections at the required frequency is a violation of the SWCGP.

56. **Failure to have a Signed Copy of the VPDES Permit Registration Statement Included in the Onsite SWPPP in accordance with the 2014 SWCGP Part II.A.1.a.** The 2014 SWCGP has the requirement to have a signed copy of the VPDES registration statement in the SWPPP document. There was no signed VPDES Registration statement on site for the Inspection Team to review at the time of the inspection. Failure to have a signed registration statement on site is a violation of the SWCGP.

57. **Failure to Properly Implement the SWPPP in accordance with the 2014 SWCGP Part II.E.** The 2014 SWCGP has the requirement to implement the SWPPP, including that all control measures must be properly maintained in effective working condition in accordance with good engineering practices and manufacture specifications. The Inspection Team observed:

- a. The construction entrance was not stabilized per Virginia state specifications such as improper size, improper stone aggregate, and the lack of filter fabric underliner.

- b. Curb inlet protection was not installed per Virginia state specifications such as an erosion sock falling into the inlet and an erosion sock laden with sediment and debris, rendering it in ineffective working condition.
- c. Four drop inlets that had evidence of sediment and debris potentially flowing into the inlet.
- d. Super silt fencing was not installed per Virginia state specifications since it was overlapping and stapled together.
- e. Super silt fencing was not in effective working condition since sections were collapsed, installed at an incorrect height, and had too much sediment accumulation per Virginia state specifications.
- f. Silt fencing perimeter controls were collapsed, had sediment accumulation to the top of the filter fabric, and lack of structural controls to prevent sediment movement from a stockpile to a sediment trap.

Failure to properly implement the SWPPP is a violation of the SWCGP.

58. Failure to Conspicuously Post a Copy of the Notice of Coverage Letter Near the Main Entrance of the Construction Activity in accordance to 2014 SWCGP Part II.C. The 2014 SWCGP has the requirement to post conspicuously a copy of the notice of coverage letter near the main entrance of the construction activity. There was no such notice of coverage at the time of the inspection. Failure to properly post notice of permit coverage is a violation of the SWCGP.

PORTALS V

59. Respondent performed land disturbing activities at the Portals V site, 1399 Maryland Avenue SW, Washington, D.C. 20002. The Portals V site is classified under NAICS Code 236220. The storm sewer drains surrounding the site are part of a municipal separate storm sewer system (MS4). The receiving water body for the MS4 is the Anacostia River, which is classified as an impaired water body, and the Potomac River. Both are a “waters of the United States” as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

60. Respondent submitted a registration application on March 13, 2017, and on March 27, 2017 obtained authorization for its discharges of stormwater from the Portals V site.

61. The project is permitted under the NPDES 2017 CGP, Permit No. DCR100009.

62. On November 29, 2017, duly-authorized EPA personnel and their contractors, along with representatives from DOEE (“Inspection Team”) conducted a construction stormwater inspection of the Portals V site.

63. The project consisted of the construction of a residential building with 14 above-ground levels, and 3 below-ground parking levels. During the inspection, the Inspection Team observed E&S best management practices (BMPs), areas of disturbance, stormwater discharge points, materials handling and storage areas, construction entrances/exits, and stormwater drainage/conveyance areas. This site disturbed approximately 2 acres and began in May of 2017.

64. An inspection report for this Portals V site inspection was developed, finalized, and sent to Respondent on January 30, 2018. A response to the inspection report was received by EPA which addressed observations noted in this inspection report.

65. Based upon the November 29, 2017 Portals V site inspection, the Inspection Team identified the following violations of the 2017 CGP and the CWA as described below.

66. **Failure to Post Notice of Permit Coverage in accordance with 2017 CGP Part 1.5.** The 2017 CGP has the requirement to post a sign or other notice conspicuously and at a safe, publicly accessible location in close proximity to the project site and visible from the public road with a font large enough to be viewed from a public right-of-way, and include a point of contact name and phone number where additional information may be obtained. At the time of the inspection, the Inspection Team observed that the Respondent had not posted a notice of coverage at or in close proximity to the site. There was a generic “erosion, runoff, or stormwater pollution” posting at the site, but it did not include any information about CGP coverage. Failure to post notice of permit coverage is a violation of the 2017 CGP.

67. **Failure to Ensure that all Stormwater Controls are Maintained and Remain in Effective Operating Condition in accordance with 2017 CGP Part 2.1.4.** The 2017 CGP has a requirement that all stormwater controls are maintained and remain in effective operating condition during permit coverage and are protected from activities that would reduce their effectiveness. The inspection Team noted that the silt fence installed along the west perimeter of the site had several collapsed sections of the silt fence, and the discharge point from the portable sediment tank associated with the onsite dewatering operation was constructed from two inverted traffic cones catching the effluent and discharging it to the storm sewer, which differs from the site’s erosion and sediment control plans. Failure to maintain stormwater controls in operating condition is a violation of the 2017 CGP.

68. **Failure to Properly Minimize Sediment Track-Out in accordance with 2017 CGP Part 2.2.** The 2017 CGP has a requirement to implement erosion and sediment controls to minimize the discharge of pollutants in stormwater from construction activities. Specifically, to restrict vehicle use to properly designated exit points, use appropriate stabilization techniques at all points that exit onto paved roads, implement additional track-out controls as necessary to ensure that sediment removal occurs prior to vehicle exit, and the removal of deposited sediment by the end of the same business day in which the track-out occurs. The Inspection Team observed that the vehicle entrance/exit was not properly stabilized and there was no geotextile fabric under the stone (according to site representatives) and the stone was not the proper size or depth. Additionally, sediment track-out from the entrance/exit onto 14th Street SW was observed. Failure to minimize sediment track-out is a violation of the 2017 CGP.

69. **Failure to Implement Proper Pollution Prevention Procedures in accordance with 2017 CGP Part 2.3.** The 2017 CGP has a requirement to store chemicals in water-tight containers and provide cover or secondary containment, immediate clean-up of spills, and proper removal and disposal of hardened concrete. The Inspection Team observed multiple 55-gallon drums containing form release treatment were stored in the north area of the site without cover or secondary containment, multiple petroleum product stains, trash in a secondary containment structure outside of a designated waste container, and spilled/dumped concrete in multiple

locations. Failure to implement proper pollution prevention procedures is a violation of the 2017 CGP.

70. **Failure to Modify the SWPPP in Accordance with Current Site Conditions in accordance with 2017 CGP Part 7.4.1.** The 2017 CGP has a requirement to modify the SWPPP within seven days of when changes are made to construction plans, stormwater controls, or other activities at the site that are no longer accurately reflected in the SWPPP. The Inspection Team observed that the site's erosion and sediment site map was not reflective of current site conditions at the time of the inspection. Specifically, the erosion and sediment map showed that the south stabilized construction entrance/exit had been removed, but it was in place at the time of the inspection. Additionally, silt fence was not installed along the entirety of the west perimeter of the site as called for on the Erosion and Sediment drawing. Failure to modify the SWPPP when site conditions change is a violation of the 2017 CGP.

THE WHARF DEVELOPMENT PHASE 2

71. Respondent performed land disturbing activities at the Wharf Development Phase 2 site, 640 Maine Avenue SW, Washington, D.C. 20004. The Wharf Development Phase 2 site is classified under NAICS Code 236220. The storm sewer drains surrounding the site are part of a municipal separate storm sewer system (MS4). The receiving water body for the MS4 is the Washington Ship Channel, a tributary to the Anacostia River, which is classified as an impaired water body and 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) and 40 C.F.R. § 122.2.

72. Respondent submitted a registration application on December 3, 2018, and on December 17, 2018 obtained authorization for its discharges of stormwater from the Wharf Development Phase 2 site.

73. The project is permitted under the NPDES 2017 CGP, Permit No. DCR10005Z.

74. On June 26, 2019, duly-authorized EPA personnel and their contractors ("Inspection Team") conducted a construction stormwater inspection of the Wharf Development Phase 2 site.

75. The project consisted of a mixed-use development of residential units, hotel rooms, a park, office space, retail space and two parking garages below grade. During the inspection, the Inspection Team observed E&S best management practices (BMPs), areas of disturbance, stormwater discharge points, materials handling and storage areas, construction entrances/exits, and stormwater drainage/conveyance areas. This site disturbed approximately 9.5 acres and began in March of 2019.

76. An inspection report for this Wharf Development Phase 2 site inspection was developed, finalized, and sent to Respondent on August 28, 2019. A response to the inspection report was received by EPA which addressed observations noted in this inspection report.

77. Based upon the June 26, 2019 Wharf Development Phase 2 site inspection, the Inspection Team identified the following violations of the 2017 CGP and the CWA as described below.

78. Failure to Post Notice of Permit Coverage in accordance with 2017 CGP Part 1.5. The 2017 CGP has the requirement to post a sign or other notice conspicuously and at a safe, publicly accessible location in close proximity to the project site and visible from the public road with a font large enough to be viewed from a public right-of-way, and a point of contact name and phone number where additional information may be obtained. At the time of the inspection, the Inspection Team observed that the Respondent had not posted a notice of coverage at or in close proximity to the site. There was a generic “erosion, runoff, or stormwater pollution” DOEE posting at the site, but it did not include any information about CGP coverage. Failure to post notice of permit coverage is a violation of the 2017 CGP.

79. Failure to Ensure that all Stormwater Controls are Maintained and Remain in Effective Operating Condition in accordance with 2017 CGP Part 2.1.4. The 2017 CGP has a requirement that all stormwater controls are maintained and remain in effective operating condition during permit coverage and are protected from activities that would reduce their effectiveness. The Inspection Team noted that the silt fence installed adjacent to Maine Avenue SW and Water Street SW was in need of maintenance due to observations of teared and collapsed silt fencing. Additionally, the Inspection Team observed an inlet along Water Street SW that was in need of maintenance due to aggregate accumulation on top of the structure and the inlet protection had fallen into the inlet. Third, the Inspection Team observed inlet protection on Maine Avenue SW that was in need of maintenance due to having a gap between the inlet and the inlet protection, with the accumulation of sediment in front of and adjacent to the inlet. Failure to maintain stormwater controls in operating condition is a violation of the 2017 CGP.

80. Failure to Properly Minimize Sediment Track-Out in accordance with 2017 CGP Part 2.2. The 2017 CGP has a requirement to implement erosion and sediment controls to minimize the discharge of pollutants in stormwater from construction activities. Specifically, to restrict vehicle use to properly designated exit points, use appropriate stabilization techniques at all points that exit onto paved roads, implement additional track-out controls as necessary to ensure that sediment removal occurs prior to vehicle exit, and the removal of deposited sediment by the end of the same business day in which the track-out occurs. The Inspection Team observed sediment track-out on Maine Avenue SW from the construction entrance. Additionally, there was heavy sediment accumulation in the stabilized construction entrance. Failure to minimize sediment track-out is a violation of the 2017 CGP.

81. Failure to Implement Proper Pollution Prevention Procedures in accordance with 2017 CGP Part 2.3. The 2017 CGP has a requirement to store chemicals in water-tight containers and provide cover or secondary containment, immediate clean-up of spills, and proper removal and disposal of hardened concrete. The Inspection Team observed a piece of heavy equipment with a leaking diesel tank. The diesel leaked from the tank to the ground with no drip pan or other method of containing the leak. Additionally, the Inspection Team observed an oil container, small portable diesel containers, buckets filled with used oil, and an oil drip pan on the ground at the site. None of the containers were in covered areas or had other means to effectively minimize pollutant discharge. Failure to implement proper pollution prevention procedures is a violation of the 2017 CGP.

III. ORDER.

AND NOW, this _____ day of _____, 2020, pursuant to Section 309(a)(1) of the Act, 33 U.S.C. § 1319(a)(1), Respondent is hereby ORDERED and CONSENTS to immediately take all actions necessary to comply with all NPDES Permits and the Clean Water Act. In addition, for a period of no less than one year from the date of the effective date of this Order, Respondent must implement the compliance tasks detailed in, and in accordance with, Attachment A.

All documents required herein shall be submitted via email and regular mail to:

Mike Greenwald (3ED32)
NPDES Section
Enforcement & Compliance Assurance Division
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Greenwald.Michael@epa.gov

IV. GENERAL PROVISIONS

85. The following certification must accompany each submission by Respondent pursuant to this Consent Order and must be signed by a Representative of Respondent authorized to sign on behalf of Respondent:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

86. Respondent's compliance with the terms of this Order shall not relieve Respondent of the obligation to comply with all applicable provisions of the CWA or any other Federal, State or local law or regulation. This Order does not constitute a waiver or modification of the terms or conditions of any permit.

87. Issuance of this Order is not an election by EPA to forego any civil or criminal action otherwise authorized by the CWA. EPA reserves the right to seek any remedy available under the law that it deems appropriate to address the violations described herein. Compliance with this Order shall not be a defense to any action commenced pursuant to such authorities. Failure to comply and/or respond to this Order, or providing misleading or false information,

In Re: Balfour Beatty Construction, LLC
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may subject you to civil and/or criminal sanctions pursuant to, 33 U.S.C. § 1319, and/or a civil judicial action initiated by the U.S. Department of Justice.

88. Issuance of this Order does not affect EPA's authority to seek additional information under Section 308 of the CWA, 33 U.S.C. § 1318, or otherwise affect EPA's ability to enforce or implement the CWA.

89. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

90. By entering into this Order, the Respondent does not admit any liability for the civil claims alleged herein.

V. EFFECTIVE DATE

This ORDER is effective after receipt by Respondent of a fully executed document.

SO ORDERED:

Date: _____

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

AGREED TO:

Date: 5/14/20



Balfour Beatty Construction, LLC
Corporate Official

Attachment A

Injunctive Relief Compliance Tasks for Balfour Beatty Mid-Atlantic Division

1. Stormwater Management:

- a. Respondent will assign management of daily compliance with the relevant NPDES permit to the superintendent responsible for each site in the Mid-Atlantic Division.
- b. Respondent will assign oversight of compliance with the relevant NPDES permits for its sites in the Mid-Atlantic Division to the Division Safety Health and Environment (“SHE”) Director.
 - i. The SHE Director will complete a third-party training course regarding erosion and sediment control management.
 - ii. The SHE Director, or designee of the SHE Director, will conduct a quarterly, in-person review of compliance with the relevant NPDES permit at each site in the Mid-Atlantic Division.
 1. The aforementioned quarterly review shall include a review of NOI coverage, BMP implementation and maintenance, and frequency of inspections.
 - iii. The SHE Director, and any designee of the SHE Director, will obtain additional training regarding stormwater management, including erosion and sediment control practices.

2. Pre-Construction Review:

- a. Respondent will perform a review, prior to the start of construction, on each site in the Mid-Atlantic Division, which will include:
 - i. A determination of whether the site has NOI coverage as required by the applicable NPDES permit.
 - ii. A determination of whether the site SWPPP has been developed as required by the applicable NPDES permit.
 - iii. A determination of whether BMPs have been installed as required by the site SWPPP.
- b. Respondent will review the site BMP types and installation with the relevant regulatory body prior to the commencement of earth-disturbing activities.

3. Site Inspections:

- i. Respondent will implement and maintain a system to manage the completion and tracking of inspections and corrective actions in

accordance with the requirements of the relevant NDPES permits for its sites in the Mid-Atlantic Division. Such a system shall be designed to:

1. provide notifications to project superintendents, and other site personnel, regarding rain events;
2. include standardized weekly inspection forms across the relevant jurisdictions (subject to coordination with, and approval of, the delegated state regulators);
3. track the completion of weekly inspections; and
4. track the identification and completion of corrective actions from inspections.

4. Cost:

- a. Within one year from the effective date of the Order, Respondent commits to implementing items 1, 2, and 3 above.
- b. Within two years of the effective date of the Order, Respondent commits to spend, at a minimum, \$35,000 for items 1, 2, and 3 above, or other initiatives meant to enhance Respondent's stormwater management.

5. Summary Report:

- a. Within 30 days following the one-year anniversary of the effective date of the Order, Respondent shall submit for EPA's review a summary report detailing the adherence to items 1, 2, 3, and 4 above.
- b. If the \$35,000 required in 4.b. is not spent prior to the one-year anniversary of the effective date of the Order, then, within 30 days following completion of 4.b., Respondent shall submit for EPA's review a summary report detailing the adherence to item 4.b. above.