

**U.S. EPA REGION 3
HEARING CLERK**

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3 ("Complainant") and Claxton Smith Concrete Company ("Respondent") (collectively the "Parties"), pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319, 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, 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 the authority to enter into agreements concerning administrative penalties to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the "Consent Agreement and Final Order" or "CAFO") resolve Complainant's civil penalty claims against Respondent under the Clean Water Act ("CWA" or the "Act") for the violations alleged herein.

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

JURISDICTION

3. The U.S. Environmental Protection Agency ("EPA") has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(6).
5. On October 15, 2024, the EPA sent a communication to the West Virginia Department of Environmental Protection ("WVDEP") giving prior notice of this action in accordance with Section 309(g)(1) of CWA, 33 U.S.C. § 1319(g)(1).

GENERAL PROVISIONS

6. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.
7. Except as provided in Paragraph 6, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
8. Respondent agrees not to contest the jurisdiction of the 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.
9. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and Final Order and waives its right to appeal the accompanying Final Order.
10. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
11. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

12. 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), the EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order.
13. By signing this Consent Agreement, Respondent waives any rights or defenses that respondent has or may have for this matter to be resolved in federal court, including but not limited to any right to a jury trial, and waives any right to challenge the lawfulness of the Final Order accompanying the Consent Agreement.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

14. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into waters of the U.S. except in compliance with sections 301, 302, 306, 307, 318, 402, and 404 of the Act, 33 U.S.C. §§ 1311, 1312, 1316, 1317, 1328, 1342, and 1344.
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 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of the EPA may issue permits under the National Pollutant Discharge Elimination System ("NPDES") program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.
17. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides for the authorization of state programs to issue NPDES permits.
18. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), the State of West Virginia, through WVDEP, is authorized by the EPA to administer the NPDES program in the State of West Virginia.
19. Pursuant to Section 402(i) of the Act, 33 U.S.C. § 1342(i), the EPA retains its authority to take enforcement action within the State of West Virginia for NPDES permit violations.
20. "Discharge of a pollutant" is defined as "[a]ny addition of any 'pollutant' or combination of pollutants to 'waters of the United States' from any 'point source'." 40 C.F.R. § 122.2; *see also* 33 U.S.C. § 1362(12).
21. "Pollutant" is defined as "dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water." 40 C.F.R. § 122.2; *see also* 33 U.S.C. § 1362(6).

22. "Point source" is defined as "any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged." 40 C.F.R. § 122.2; see also 33 U.S.C. § 1362(14).
23. "Storm water" is defined as "storm water runoff, snow melt runoff, and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).
24. "Storm water discharge associated with industrial activity" means "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" and "includes, but is not limited to, storm water discharges from...material handling sites; refuse sites; sites used for the application or disposal of process waste waters...; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products... The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph (b)(14): ... Facilities classified within Standard Industrial Classification 24, ..., 29, 311, 32 (except 323)..." 40 C.F.R. § 122.26(b)(14).
25. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulation at 40 C.F.R. § 122.26(a)(1)(ii), require facilities discharging stormwater associated with industrial activity to obtain a permit. Under 40 C.F.R. § 122.26(c)(1), dischargers of stormwater associated with industrial activity must apply for an individual permit or seek coverage under a general permit.
26. Respondent is, and at all times relevant to this CAFO was, the owner and operator of the concrete manufacturing facility located at 2262 Pennsylvania Avenue, Charleston, West Virginia 25302 (the "Charleston Facility"), the concrete manufacturing facility located at 1960 US Route 60, Culloden, West Virginia 25510 (the "Culloden Facility"), and the concrete manufacturing facility located at 3133 Charleston Road, Poca, West Virginia 25159 (the "Poca Facility") (collectively, the "Facilities").
27. Respondent is a corporation organized and existing under the laws of the State of West Virginia and is thus a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
28. Respondent is, and at all times relevant to this CAFO was, engaging in "industrial activity" at the Facilities, within the meaning of 40 C.F.R. § 122.26(a)(1)(ii).
29. Pursuant to the authority of the CWA, WVDEP issued an individual NPDES Water Pollution Control Permit, Permit No. WV0117170, for the Charleston Facility (the "Charleston Permit") on January 19, 2022, with an effective date of March 1, 2022, and

an expiration date of January 18, 2027. The Charleston Permit superseded an individual permit for the Charleston Facility that had been issued on February 17, 2016. Prior to the individual permit issued on February 17, 2016, the Charleston Facility had been subject to the West Virginia NPDES Multi-Sector General Water Pollution Control Permit.

30. The Charleston Permit authorizes Respondent to “operate and maintain a disposal system and best management practices for the direct discharge of untreated storm water runoff via [Charleston Facility] Outlet 001 to the Elk River. Also to operate and maintain a treatment and disposal system and best management practices for the direct discharge of treated industrial wastes (concrete truck washout wastewater) and storm water runoff via [Charleston Facility] Outlet 002 to the Elk River.”
31. A violation of the Charleston Permit is also a violation of the CWA and may be subject to penalties established under that statute.
32. Pursuant to the authority of the CWA, WVDEP reissued its NPDES Multi-Sector General Water Pollution Control Permit, Permit No. WV0111457 (the “General Permit”) on September 12, 2019, with an effective date of October 12, 2019, and an expiration date of September 12, 2024. WVDEP modified the General Permit on January 26, 2021, with an effective date of February 25, 2021. Coverage under the General Permit has been administratively extended until September 11, 2025.
33. The Culloden Facility is subject to the General Permit. Coverage under the General Permit for the Culloden Facility, General Permit Registration No. WVG610500, was initially issued on June 21, 1995, and the most recent registration became effective on May 31, 2021 with an expiration date of September 12, 2024. Coverage under the General Permit for the Culloden Facility has been administratively extended until September 11, 2025.
34. The Poca Facility is subject to the General Permit. Coverage under the General Permit for the Poca Facility, General Permit Registration No. WVG610635, was initially issued on April 21, 1999, and the most recent registration became effective on May 31, 2021 with an expiration date of September 12, 2024. Coverage under the General Permit for the Poca Facility has been administratively extended until September 11, 2025.
35. The General Permit authorizes a permittee to discharge stormwater into the waters of the State of West Virginia, subject to certain exceptions and to the monitoring requirements and other requirements set forth in Section A, Section B, and Appendix A of the General Permit.
36. A violation of the General Permit is also a violation of the CWA and may be subject to penalties established under that statute.
37. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), the EPA retains its authority to take enforcement action within West Virginia for NPDES permit violations.

38. The Charleston Facility discharges, and at all times relevant to this CAFO, discharged stormwater and/or authorized non-stormwater through outlets identified in the Charleston Permit into the Elk River, a tributary to the Kanawha River. The Elk River and the Kanawha River are Traditional Navigable Waters and are “waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).
39. The Culloden Facility discharges, and at all times relevant to this CAFO, discharged stormwater and/or authorized non-stormwater through outlets identified in its Stormwater Pollution Prevention Plan (“SWPPP”) into a relatively permanent unnamed tributary which connects to Indian Fork, which is relatively permanent, which connects to Mud River and ultimately to the Kanawha River. Indian Fork, Mud River, and the Kanawha River are “waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).
40. The Poca Facility discharges, and at all times relevant to this CAFO, discharged stormwater and/or authorized non-stormwater through outlets identified in its SWPPP into the Pocatalico River. The Pocatalico River is a Traditional Navigable Water and a “water of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).
41. On June 28, 2022, an EPA inspection team conducted a stormwater inspection of the Charleston Facility (the “Charleston Inspection”); on June 6, 2023, an EPA inspection team conducted a stormwater inspection of the Culloden Facility (the “Culloden Inspection”); and on September 18, 2023, an EPA inspection team conducted a stormwater inspection of the Poca Facility (the “Poca Inspection,” collectively, the “Inspections”). The purpose of the Inspections was to determine Respondent’s compliance with the CWA and the Charleston Permit and the General Permit.
42. On July 18, 2023, the EPA sent Respondent a Notice of Potential Violations and Opportunity to Confer Letter regarding the Charleston Facility.
43. On February 20, 2025, the EPA sent Respondent a Notice to Show Cause letter regarding the Culloden Facility and the Poca Facility.

Count 1

Failure to Maintain the SWPPP for the Charleston Facility

44. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
45. Charleston Permit Section C.16 requires that “The permittee shall implement and maintain the storm water pollution prevention plan (SWPPP) for the site. The plan shall describe and ensure the implementation of practices which are to be used to reduce the pollutants in storm water discharges associated with the industrial activity at the facility and to assure compliance with the terms and conditions of this permit.”

46. Section 1.4 of the SWPPP for the Charleston Facility (the "Charleston SWPPP") states: "The truck wash basin is equipped with a ramp so that sediment can be removed and baffles to aid in reducing suspended sediment. The overflow water is pumped via piping to the [outlet] basin to the east of the diesel tank building."¹ This is depicted in the Charleston Facility site map in Attachment B to the Charleston SWPPP, which notes that the contents of the truck wash area are pumped to the outlet.
47. Section 3.11 of the Charleston SWPPP states: "A dumpster is used to collect solid waste and other garbage generated at the garage and processing plant. The dumpster is emptied weekly by Waste Management."
48. At the Charleston Inspection, Charleston Facility representatives explained that the truck wash area does not drain anywhere unless there is a heavy rain, in which case it will overflow towards the sediment basin for Outlet 001. The facility operator will pump the sludge into a large pile of recycled scrap material so that water filters out through the sediment. This practice was not outlined in the Charleston SWPPP.
49. At the Charleston Inspection, Charleston Facility representatives stated that due to the extreme decline in production at the Charleston Facility, Smith Concrete moved the dumpster to the Poca Facility. The facility operator carries any waste out of the Charleston Facility and disposes of it at the Poca Facility. This practice was not outlined in the Charleston SWPPP.
50. At the time of the Charleston Inspection, Respondent violated Section C.16 of the Charleston Permit by failing to have an accurate description of site operations included in the Charleston SWPPP.
51. In failing to comply with Section C.16 of the Charleston Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, Respondent violated Section 301 of the Act, 33 U.S.C. § 1311, and is subject to the assessment of penalties under Section 309 of the CWA, 33 U.S.C. § 1319.

Count 2

Failure to Comply with Discharge Limitations for the Charleston Facility

52. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
53. Charleston Permit Section A.001 describes the discharge limitations for stormwater runoff from Outlet 001. Iron has a maximum daily limit of 1.5 mg/l, but all other pollutant limits are on a report-only basis.

¹ West Virginia uses the term "outlet," but the Charleston SWPPP, the Culloden SWPPP, and the Poca SWPPP refer to the outlets as "outfalls." Throughout this order, "outlet" is used for consistency and is inserted where an SWPPP uses "outfall," including when an SWPPP uses a capitalized name for an outlet (such as "Outfall 001").

54. Charleston Permit Section A.002 describes the discharge limitations for stormwater runoff from Outlet 002. For Outlet 002, total suspended solids (TSS) have a maximum daily limit, and pH has instantaneous minimum and maximum limits. All other limits are on a report-only basis.
55. From May 31, 2022 through January 1, 2024, the Charleston Facility experienced 7 effluent limit exceedances from Outlet 001 and 002, which it reported in its Discharge Monitoring Reports ("DMRs"). The effluent limits exceeded include iron, TSS and pH as indicated in Table 1 below.

Table 1: Outlets 001 and 002 DMR Reported Effluent Exceedances (May 2022 through January 2024).

Monitoring Period Date	Outlet	Parameter Description	Statistical Base Type	DMR Value	DMR Value Unit	Limit Value	Limit Value Unit	% Exceedance
5/31/2022	002-A	pH	INST MIN	5.4	SU	6	SU	
9/30/2022	001-B	Iron, total recoverable	DAILY MX	2.22	mg/L	1.5	mg/L	48
9/30/2022	002-A	Solids, total suspended	DAILY MX	114	mg/L	50	mg/L	128
3/31/2023	002-A	Solids, total suspended	DAILY MX	56	mg/L	50	mg/L	12
8/31/2023	002-A	Solids, total suspended	DAILY MX	67	mg/L	50	mg/L	34
10/31/2023	002-A	Solids, total suspended	DAILY MX	67	mg/L	50	mg/L	34
1/31/2024	002-A	Solids, total suspended	DAILY MX	138	mg/L	50	mg/L	176

56. On the dates noted in Table 1, above, Respondent violated Sections A.001 and A.002 of the Charleston Permit by failing to comply with discharge limitations.
57. In failing to comply with Sections A.001 and A.002 of the Charleston Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, Respondent violated Section 301 of the Act, 33 U.S.C. § 1311, and is subject to the assessment of penalties under Section 309 of the CWA, 33 U.S.C. § 1319.

Count 3

Failure to Comply with Monitoring Requirements for the Charleston Facility

58. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.

59. Charleston Permit Section A.001 describes the monitoring requirements for stormwater runoff from Outlet 001. All pollutants have quarterly sampling and monitoring requirements.
60. Charleston Permit Section A.002 describes the monitoring requirements for stormwater runoff from Outlet 002. All pollutants have monthly sampling and monitoring requirements except for chlorine and chemical oxygen demand, which have quarterly sampling and monitoring requirements.
61. The Charleston Facility failed to timely submit 23 complete DMRs from March 31, 2022 through January 31, 2025 as indicated in the Table 2 below.

Table 2: Outlets 001 and 002 Late DMRs Reported (March 2022 through January 2025).

Outlet	Monitoring Period End Date	DMR Due Date	DMR Received Date	DMR Submission Days Late
001	3/31/2022	4/25/2022	4/29/2022	4
002	3/31/2022	4/25/2022	4/29/2022	4
002	6/30/2022	7/25/2022	8/8/2022	14
002	7/31/2022	8/25/2022	10/17/2022	53
002	8/31/2022	9/25/2022	1/19/2023	116
001	9/30/2022	10/25/2022	11/3/2022	9
002	9/30/2022	10/25/2022	11/3/2022	9
002	10/31/2022	11/25/2022	4/7/2023	131
002	01/31/2023	02/25/2023	4/7/2023	39
001	06/30/2023	07/25/2023	8/11/2023	14
001	09/30/2023	10/25/2023	12/8/2023	41
002	09/30/2023	10/25/2023	12/8/2023	41
002	10/31/2023	11/25/2023	1/5/2024	10
002	03/31/2024	04/25/2024	6/3/2024	26
002	05/31/2024	06/25/2024	7/19/2024	23
001	06/30/2024	07/25/2024	8/28/2024	33
002	06/30/2024	07/25/2024	8/28/2024	33
001	09/30/2024	10/25/2024	12/5/2024	39
002	09/30/2024	10/25/2024	1/3/2025	70
002	10/31/2024	11/25/2024	1/3/2025	39
001	12/31/2024	01/25/2025	3/7/2025	37
002	12/31/2024	01/25/2025	3/7/2025	37
002	01/31/2025	02/25/2025	4/18/2025	50

62. On at least the dates noted in Table 2, above, Respondent violated Sections A.001 and A.002 of the Charleston Permit by failing to comply with monitoring requirements.
63. In failing to comply with Sections A.001 and A.002 of the Charleston Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, Respondent violated Section 301 of the Act, 33 U.S.C. § 1311, and is subject to the assessment of penalties under Section 309 of the CWA, 33 U.S.C. § 1319.

Count 4

Failure to Maintain Good Housekeeping for the Charleston Facility

64. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
65. Charleston Permit Section C.1 states: "The permittee shall practice good housekeeping including maintaining the facility grounds. There shall be no scattered parts, equipment, debris, etc. Any and all drums shall be either stored in a covered area or kept upon pallets and properly sealed."
66. Section 3.2 of the Charleston SWPPP states, "The plant management encourages good housekeeping practices throughout the plant by proper maintenance of equipment and monthly inspections."
67. At the Charleston Inspection, the EPA inspection team observed a fluid actively dripping from the front loader on the premises. Representatives from the Charleston Facility indicated that this was most likely hydraulic fluid. The EPA inspection team observed a closed, 5-gallon bucket of hydraulic fluid near the front loader, which Charleston Facility representatives stated was going to be put into the front loader later that day.
68. At the Charleston Inspection, the EPA inspection team observed three 55-gallon drums in the storage room of the Charleston Facility, and there were no signs and/or labels indicating the contents of these drums.
69. At the Charleston Inspection, the EPA inspection team observed multiple 5-gallon buckets in the admix/storage room. Four of these buckets were in front of the chemical tanks and contained within a 3-foot-high walled space, but they contained unknown substance(s).
70. At the time of the Charleston Inspection, Respondent violated Section C.1 of the Charleston Permit by failing to maintain good housekeeping at the Charleston Facility, as indicated by the observations in Paragraphs 67-69.
71. In failing to comply with Section C.1 of the Charleston Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, Respondent violated Section 301 of the Act, 33 U.S.C. § 1311, and is subject to the assessment of penalties under Section 309 of the CWA, 33 U.S.C. § 1319.

Count 5

Failure to Contain Pollutants at the Charleston Facility

72. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
73. Charleston Permit Section C.20 requires: "The permittee shall operate and maintain loading and unloading facilities in such a manner so as, to the maximum extent practicable, preclude spillage of concrete, chemicals, etc. used at the facility, and shall take all actions necessary to clean up and control any such spill which may occur."
74. At the Charleston Inspection, Representatives from the Charleston Facility told the EPA inspection team that Smith Concrete had erected concrete berms around the Facility's fence to help prevent stormwater from leaving the property and entering nearby Elk Creek. However, there was one area along the fence line that was observed not to have a concrete berm in front of it, and this area was downgradient of previous unloading and washout areas for the Facility.
75. At the Charleston Inspection, the EPA inspection team observed dried concrete that appeared to have flowed down from the previous unloading area, through the fence, and onto a neighboring property. WVDEP had issued a Notice of Violation to the Facility for this runoff in September 2021. Representatives from the Charleston Facility explained that the current practice is to perform wash-out procedures over a concrete-lined sedimentation basin, and any sludge from this process is now collected and poured over the mixed sediment scrap pile to filter out water.
76. At the time of the Charleston Inspection, Respondent violated Section C.20 of the Charleston Permit by failing to contain pollutants at the Charleston Facility, as indicated by the observations in Paragraphs 74-75.
77. In failing to comply with Section C.20 of the Charleston Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, Respondent violated Section 301 of the Act, 33 U.S.C. § 1311, and is subject to the assessment of penalties under Section 309 of the CWA, 33 U.S.C. § 1319.

Count 6

Failure to Revise the SWPPP for the Culloden Facility After Benchmark Exceedances and Take Corrective Actions to Prevent the Discharge of Pollutants

78. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
79. General Permit Section A, Table E.2 describes benchmark monitoring concentrations which must be measured quarterly. For total suspended solids, the benchmark monitoring concentration is 100 mg/L.

Table E.2: Benchmark Monitoring for Concrete and Gypsum Product Manufacturers

Pollutants of Concern	Benchmark Monitoring Concentration	Measurement Frequency
Total Suspended Solids (TSS)	100 mg/L	Quarterly
Total Recoverable Iron	1.5 mg/L	Quarterly
pH	6.0 to 9.0 S.U.	Quarterly

80. General Permit Section B.6.a.1 requires: "Upon reviewing a laboratory report showing a first-time exceedance of a benchmark concentration the permittee must immediately take all reasonable steps necessary to minimize or prevent the discharge of pollutants until a permanent solution is installed and made operational... 'All reasonable steps' means that the permittee has undertaken initial actions to assess and address the condition causing the corrective action, including, for example, cleaning up any exposed materials that may be discharged in a storm event (e.g., through sweeping, vacuuming) or making arrangements (i.e., scheduling) for a new BMP to be installed at a later date. 'All reasonable steps' for purposes of complying with Section 6 means reviewing the SWPPP to determine if modifications are necessary, when in fact, a corrective action is not necessary must include documenting why a corrective action is not necessary."
81. General Permit Section B.6.a.4. requires Respondent to modify the SWPPP "after the average of four consecutive samples are above the benchmark level for the sampled parameter." Control measures may also need to be modified based on a modification of the SWPPP to ensure that sampled parameters meet benchmark levels. General Permit Section B.6.a.4 also states: "Modification is also triggered if less than four benchmark samples have been taken, but the results are such that an exceedance of the four quarter average is mathematically certain (i.e., if the sum of quarterly sample results to date is more than four times the benchmark level)."
82. According to the September 2022 Discharge Monitoring Report ("DMR"), Outlet 001 at the Culloden Facility had a benchmark exceedance in Total Suspended Solids, with a DMR value of 476 mg/L. This value is more than four times the benchmark level of 100 mg/L and makes an exceedance of the four-quarter average mathematically certain.
83. Respondent last modified the SWPPP for the Culloden Facility (the "Culloden SWPPP") on November 15, 2019, and not after this September 2022 benchmark exceedance.
84. On the date of the Culloden Inspection, Respondent had failed to modify the Culloden SWPPP as required by Section A Table E.2, Section B.6.a.1, and Section B.6.a.4 of the General Permit.
85. Additionally, on the date of the Culloden Inspection, there was no evidence of Smith Concrete taking corrective actions to prevent pollution in response to the September 2022 data. Corrective actions were not documented, and no corrective actions log was

provided by Smith Concrete, so it was unclear what corrective actions were taken to address the benchmark exceedance.

86. At the time of the Culloden Inspection, Respondent was in violation of Section A Table E.2, Section B.6.a.1, and Section B.6.a.4 of the General Permit by failing to modify the Culloden SWPPP and take corrective actions to prevent the discharge of pollutants.
87. In failing to comply with Section A Table E.2, Section B.6.a.1, and Section B.6.a.4 of the General Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, Respondent violated Section 301 of the Act, 33 U.S.C. § 1311, and is subject to the assessment of penalties under Section 309 of the CWA, 33 U.S.C. § 1319.

Count 7

Failure to Conduct Self-Inspections of Outlet 002 at the Culloden Facility

88. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
89. General Permit Section B.10 requires Respondent to quarterly “perform and document a visual examination of the stormwater discharge associated with industrial activity for each outlet.”
90. General Permit Section B.17.A.2.a.8 requires Respondent “to inspect designated equipment and plant or other appropriate areas for quarterly visual inspections... Records of the inspections and any resulting corrective actions shall be maintained in the SWPPP.”
91. The Culloden SWPPP Section 4, “Schedules and Procedures for Monitoring,” indicates that the sample locations are “[Outlet] 001 and 002.” The Culloden SWPPP Section 5, “Inspections,” indicates the plant manager conducts monthly inspections.
92. At the Culloden Inspection, the EPA inspection team reviewed the plant manager’s monthly inspection logbook and found monthly inspection logs for Outlet 001 only. The EPA inspection team photographed several inspection logbook entries during the Culloden Inspection on June 6, 2023. The earliest photographed logbook entry was March 11, 2022.
93. For at least the months of March 11, 2022 through at least June 6, 2023, Respondent violated Section B.10 and Section B.17.A.2.a.8 of the General Permit by failing to conduct and document inspections for Outlet 002.
94. In failing to comply with Section B.10 and Section B.17.A.2.a.8 of the General Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, Respondent violated Section 301 of the Act, 33 U.S.C. § 1311, and is subject to the assessment of penalties under Section 309 of the CWA, 33 U.S.C. § 1319.

Count 8

Failure to Develop, Implement, and Modify the Culloden SWPPP, Including the Site Map

95. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
96. General Permit Section A, "Monitoring Requirements," Table E.2 in Paragraph 79 above, describes benchmark monitoring concentrations which must be measured quarterly.
97. General Permit Section A, "Monitoring Requirements," states: "Furthermore, permittees must obtain approval of their SWPPP and install and implement all controls and measures contained in their SWPPPs and must modify the SWPPP in accordance with Section B.17.C [sic] when conditions warrant."
98. General Permit Section B.17 requires Respondent to develop and implement a SWPPP for the Culloden Facility. Section B.17.A.1.a.1 requires the SWPPP to include a site map which indicates: "each drainage and discharge structure, an outline of the drainage area of each discharge point, each past or present area used for outdoor storage or disposal of significant materials; each existing structural control measure to reduce pollutants in stormwater runoff; materials loading and access area; each hazardous waste storage or disposal facility..."
99. General Permit Section B.17.A.2.a.3 requires the SWPPP to "include a preventive maintenance program that involves inspection and maintenance of stormwater pollution prevention devices... as well as inspecting and testing plant equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters."
100. General Permit Section B.17.A.2.a.8 requires Respondent "to inspect designated equipment and plant or other appropriate areas for quarterly visual inspections... Records of the inspections and any resulting corrective actions shall be maintained in the SWPPP."
101. At the Culloden Inspection, the EPA inspection team reviewed the Culloden SWPPP. The Culloden SWPPP site map did not indicate 1) each past or present area used for outdoor storage or disposal of significant materials; 2) each existing structural control measure to reduce pollutants in stormwater runoff; 3) the materials loading and access area; or 4) the storage site of hazardous waste that was described as potential pollution sources in Section 2 of the Culloden SWPPP.
102. At the Culloden Inspection, the EPA inspection team reviewed the Culloden SWPPP. The Culloden SWPPP did not include a preventive maintenance program that involves inspection, sampling, and maintenance of stormwater pollution prevention devices or inspection and testing of plant equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

103. On the date of the Culloden Inspection, the Culloden SWPPP site map did not contain all the required elements from General Permit Section B.17.A.1.a.1, specifically: 1) each past or present area used for outdoor storage or disposal of significant materials; 2) each existing structural control measure to reduce pollutants in stormwater runoff; 3) the materials loading and access area; or 4) the storage site of hazardous waste that was described as potential pollution sources in Section 2 of the Culloden SWPPP.
104. At the time of the Culloden Inspection, Respondent was in violation of Section A, "Monitoring Requirements," Section B.17.A.2.a.3, and Section B.17.A.2.a.8 of the General Permit by failing to include and implement a preventive maintenance program for the maintenance of stormwater pollution prevention devices in the Culloden SWPPP, and violated Section B.17, including Section B.17.A.1.a.1 of the General Permit by failing to develop and implement the Culloden SWPPP, including the site map.
105. In failing to comply with Section A, "Monitoring Requirements," and Section B.17, including Section B.17.A.1.a.1, Section B.17.A.2.a.3, and Section B.17.A.2.a.8 of the General Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, Respondent violated Section 301 of the Act, 33 U.S.C. § 1311, and is subject to the assessment of penalties under Section 309 of the CWA, 33 U.S.C. § 1319.

Count 9

Failure to Maintain Good Housekeeping at the Culloden Facility

106. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
107. General Permit Section B.17.A.2.a.4 requires Respondent to develop in its SWPPP a description of good housekeeping practices and to implement those practices, maintaining a clean, orderly facility.
108. The SWPPP for the Culloden Facility at Section 3.2 states: "The plant management encourages good housekeeping practices throughout the plant by proper maintenance of equipment and bi-weekly inspections."
109. At the time of the Culloden Inspection, the EPA inspection team observed an accumulation of used rags by the office sign located adjacent to the smaller sedimentation basin. There was vegetation growing out of the rags, suggesting they had been there for an extended period.
110. At the time of the Culloden Inspection, the EPA inspection team observed a bag of topsoil over the property boundary towards the unnamed tributary of Indian Fork. Additional bags of topsoil were adjacent to the sedimentation basin. Raw materials in the concrete storage barriers were uncovered, and there was sediment track out.
111. At the time of the Culloden Inspection, the EPA inspection team observed the sedimentation basin that was constructed in front of Outlet 001. Flow enters the basin

and makes its way through a tiered system, through a pipe, and out through Outlet 001. There was exposed soil in front of the sedimentation basin. The sedimentation basin was murky and had a green discoloration. The weirs in the sedimentation basin had sediment buildup.

112. At the time of the Culloden Inspection, the truck washout basin was compacted with sediment, and the collected water had a green discoloration.
113. At the time of the Culloden Inspection, the designated containment area for trucks to dispose of excess sludge and admixture materials contained hardened concrete with evidence of a stormwater flow path. A Culloden Facility representative explained that once the admixture settles and solidifies, a jackhammer is used to crush up old materials before taking them to a reclaimer at the Poca Facility.
114. At the time of the Culloden Inspection, the containment area had a downward slope with no sidewall protection, and materials were migrating. Some materials were outside of the containment area boundaries.
115. At the time of the Culloden Inspection, the Culloden Facility's northern fence surrounding the back portion of this containment area was overgrown, and solidified concrete materials were piled higher than the fence line.
116. At the time of the Culloden Inspection, Respondent was in violation of Section B.17.A.2.a.4 of the General Permit by failing to maintain good housekeeping at the Culloden Facility, including failing to develop in its SWPPP a description of good housekeeping practices and to implement those practices by maintaining a clean, orderly facility, as indicated by the observations in Paragraphs 109-115. The description of good housekeeping practices in the Culloden SWPPP were vague, and the observations of disorder described in Paragraphs 106-112 indicated that Respondent was not practicing good housekeeping at the Culloden Facility.
117. In failing to comply with Section B.17.A.2.a.4 and Appendix A, Section II.1 of the General Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, Respondent violated Section 301 of the Act, 33 U.S.C. § 1311, and is subject to the assessment of penalties under Section 309 of the CWA, 33 U.S.C. § 1319.

Count 10

Failure to Install Complete Outlet Markers at the Culloden Facility

118. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
119. General Permit Appendix A, Section I.13 requires that a permanent marker be posted at the establishment in accordance with Title 47, Series 11, Section 9 of the West Virginia Code of State Rules.

120. West Virginia Code R. § 47-11-9.2 states: "A marker shall be posed on the stream bank at each outlet covered by the permit...The marker shall consist of the name of the establishment to which the permit was issued, the permit number, and the outlet number... The marker shall be a minimum of two (2) feet by two (2) feet and shall be a minimum of three (3) feet above ground level."
121. At the Culloden Inspection, the EPA inspection team found that the sign for Outlet 001 did not include the facility name, and the permit number was partially missing.
122. At the time of the Culloden Inspection, Respondent was in violation of Appendix A, Section I.13 of the General Permit by failing to install complete outlet markers at the Culloden Facility.
123. In failing to comply with Appendix A, Section I.13 of the General Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, Respondent violated Section 301 of the Act, 33 U.S.C. § 1311, and is subject to the assessment of penalties under Section 309 of the CWA, 33 U.S.C. § 1319.

Count 11

Failure to Comply with Monitoring Requirements for the Poca Facility

124. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
125. General Permit Appendix A, Section III.1 states: "Permittee's quarterly reporting start date is determined by the date coverage under the GP was issued and/or reissued. Registrations issued/reissued on the first through the fifteenth of a month will use that month to determine the quarterly reporting date. Registrations issued after the fifteenth of each month will use the next month to determine the reporting start date."
126. Coverage under the General Permit for the Poca Facility was initially issued on April 21, 1999, and the most recent registration became effective on May 31, 2021. Therefore, pursuant to General Permit Appendix A, Section III.2, DMRs were required to be submitted by January 25th, April 25th, July 25th and October 25th of each year.
127. General Permit Section A, Table E.2 requires Benchmark Monitoring for Concrete and Gypsum Product Manufacturers, as shown in Paragraph 79, above.
128. General Permit Appendix A, Section III.2 states, "Permittee shall submit each reporting period, a Discharge Monitoring Report (DMR) indicating in terms of concentration, the values of the constituents listed in Part A analytically determined to be in the effluent(s)... The required DMRs must be submitted electronically unless otherwise approved by the agency in writing, in which case the following applies... The required DMR should be mailed no later than 25 days following the end of the reporting period..."

129. Respondent failed to submit timely DMRs, as noted in Table 3, below, for the Poca Facility as required by Appendix A, Section III.1 and Appendix A, Section III.6 of the General Permit.

Table 3: DMR Submittals at the Poca Facility for Monitoring Periods December 2021 through July 2024

Outlet Number	Monitoring Period End Date	DMR Due Date	DMR Submittal Date
001, 002, 003	12/31/2021	1/25/2022	5/11/2022
002, 003	12/31/2022	1/25/2023	Not Submitted
001, 003	3/31/2023	4/25/2023	Not Submitted
002, 003	6/30/2023	7/25/2023	Not Submitted
001, 002, 003	9/30/2023	10/25/2023	12/5/2023
001, 002, 003	6/30/2024	7/25/2024	Not Submitted

130. On the dates noted in Table 3, above, Respondent violated Appendix A, Section III.1 of the General Permit by failing to submit timely DMRs for the Poca Facility.
131. In failing to comply with Appendix A, Section III.1 of the General Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, Respondent violated Section 301 of the Act, 33 U.S.C. § 1311, and is subject to the assessment of penalties under Section 309 of the CWA, 33 U.S.C. § 1319.

Count 12

Failure to Retain Records for the Poca Facility

132. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
133. General Permit Appendix A, Section III.6, states: "The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for the permit, for a period of at least three (3) years from the date of the sample, measurement, report or application."

134. At the Poca Inspection, Poca Facility representatives were unable to provide the previous 3 years of records, including copies of DMRs and chains of custody for DMR samples. The Poca Facility Representative stated that he did not have any of these records stored onsite electronically or in hardcopy.
135. At the time of the Poca Inspection, Respondent was in violation of Appendix A, Section III.6 of the General Permit by failing to retain required records of monitoring information for the Poca Facility.
136. In failing to comply with Appendix A, Section III.6 of the General Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, Respondent violated Section 301 of the Act, 33 U.S.C. § 1311, and is subject to the assessment of penalties under Section 309 of the CWA, 33 U.S.C. § 1319.

Count 13

Failure to Develop and Modify the SWPPP, Including the Site Map, for the Poca Facility

137. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
138. General Permit Section A, "Monitoring Requirements," states: "Furthermore, permittees must obtain approval of their SWPPP and install and implement all controls and measures contained in their SWPPPs and must modify the SWPPP in accordance with Section B.17.C [sic] when conditions warrant."
139. General Permit Section B.17.A.1.a.1 requires the SWPPP to include a map showing "each drainage and discharge structure."
140. General Permit Section B.17.A.2.a.3 requires the SWPPP to "include a preventive maintenance program that involves inspection and maintenance of stormwater pollution prevention devices... as well as inspecting and testing plant equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters."
141. General Permit Section A, Table E.2 requires Benchmark Monitoring for Concrete and Gypsum Product Manufacturers to conduct quarterly benchmark monitoring samples and quarterly visual examinations samples, as shown in Paragraph 79, above.
142. At the Poca Inspection, Poca Facility representatives stated that the SWPPP for the Poca Facility (the "Poca SWPPP") had not been updated since 2019. They indicated that several operations had changed since the last time the Poca SWPPP was modified.
143. At the Poca Inspection, the EPA inspection team observed stormwater activities at the Poca Facility that were not outlined in the Poca SWPPP or site map. Examples of discrepancies include:

- a. Several berms had been constructed to channel stormwater discharge toward the outlets, and this was not described in the Poca SWPPP.
 - b. Sediment basins were being emptied at different frequencies than were outlined in the Poca SWPPP.
 - c. The Poca SWPPP indicates that stormwater monitoring is to take place twice per year, but the General Permit in Section A table E.2 indicates that samples are required once per quarter. Facility representatives stated that they were sampling once per quarter.
 - d. There were two unmapped locations on the property that had the potential for stormwater discharges. The first was off the road that separated the north and south-fenced areas at the Poca Facility (Smith Lane). There appeared to be a depression in the road that would channel water toward the unmapped discharge point. The discharge led toward a set of railroad tracks, which extended downhill toward the Pocatolico River. The second location was positioned toward the entrance of the Poca Facility, where extra concrete is poured to make concrete blocks. The pouring area was also not described in the Poca SWPPP, but stormwater was collecting in a drainage area next to where the concrete was poured and where the concrete blocks were stored. There was a grate at the end of the drainage, and Poca Facility representatives were unsure where the grate drained to. The grate was located directly across from the Pocatolico River.
144. At the Poca Inspection, the Poca SWPPP did not include a preventive maintenance program that involves inspection and maintenance of stormwater pollution prevention devices or inspection and testing of plant equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.
145. At the time of the Poca Inspection, Respondent was in violation of Section A, "Monitoring Requirements," of the General Permit by failing to modify the Poca SWPPP in accordance with Section B.17.C [sic] when conditions warrant, including failing to include a site map showing "each drainage and discharge structure" as required by Section B.17.A.1.a.1 of the General Permit and failing to "include a preventive maintenance program that involves inspection and maintenance of stormwater pollution prevention devices... as well as inspecting and testing plant equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters" as required by Section B.17.A.2.a.3 of the General Permit.
146. In failing to comply with Section A, "Monitoring Requirements," of the General Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, Respondent violated Section 301 of the Act, 33 U.S.C. § 1311, and is subject to the assessment of penalties under Section 309 of the CWA, 33 U.S.C. § 1319.

Count 14
Failure to Mitigate Discharge at the Poca Facility

147. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
148. General Permit Appendix A, Section I.3 states: "The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit, which has a reasonable likelihood of adversely affecting human health or the environment."
149. At the Poca Inspection, the EPA inspection team observed raw material used for concrete mixing stored in a semi-roofed area, and the raw material had migrated out of the roofed portion, leaving a large amount of raw material not covered by a roof. The raw material was located upgradient of the outlets at the Poca Facility. Additionally, raw material had spilled and was on the ground surrounding the loading zone where trucks drive through.
150. At the Poca Inspection, the EPA inspection team observed the truck wash basin where concrete delivery trucks are cleaned prior to leaving the Poca Facility lacked best management practices ("BMPs") to prevent the contents from flowing into the yard, and water containing chemicals such as acid and neutralizer was leaking out of the basin. The water appeared to be flowing down grade toward Outlet 001. There was a milky-white liquid present in the water that was flowing toward the outlet, and Poca Facility representatives were unsure what the liquid was.
151. At the Poca Facility, the EPA inspection team observed a berm made of unconsolidated gravel material that was channeling runoff from the truck wash area directly to Outlet 001. A Poca Facility representative stated that he had made the berm to prevent the mixing of acid and truck wash debris with stormwater flowing toward the outlet, but the water was flowing around the side of the berm and directly toward Outlet 001 at the time of the Poca Inspection.
152. At the Poca Inspection, the EPA inspection team observed a tank of "acid neutralizer and vehicle wash" used for cleaning the concrete delivery trucks as they leave the Poca Facility did not have secondary containment. The tank was positioned directly next to a wash basin where acid and neutralizer chemicals drain after the trucks are washed.
153. At the Poca Inspection, the EPA inspection team observed open oil and chemical containers that were placed under a dilapidated lean-to structure that was positioned several meters uphill from the Pocatolico River. The hill drained toward the Pocatolico River. There were cracks and holes in the structure, and the area inside the structure appeared to be wet from the previous day's rain event.
154. At the Poca Inspection, the EPA inspection team observed multiple full storage totes and drums full of "moisture reducer" chemicals that were being stored outside. A Poca

Facility representative stated that he had constructed a containment structure around the chemical storage area out of concrete blocks, but the containment was not leak-proof. There were also several empty totes being stored in this area, and a Poca Facility representative stated that the totes would not be removed by their contractor until they had 12 empty totes to haul away.

155. At the Poca Inspection, the EPA inspection team observed that multiple abandoned vehicles were leaking oil and hydraulic fluid onto the ground. Most of the vehicles were in uncovered areas of the yard. One vehicle was parked in the covered truck maintenance area, but the fluid beneath the truck appeared to flow toward the stormwater drainage that was directing flows toward the perimeter of the property.
156. At the time of the Poca Inspection, Respondent was in violation of Appendix A, Section I.3 of the General Permit by failing to mitigate discharge at the Poca Facility through failing to take all reasonable steps to minimize or prevent any discharge which has a reasonable likelihood of adversely affecting human health or the environment, as indicated by the observations in Paragraphs 149-155. Discharge in violation of the General Permit was likely to occur if stormwater flowed over the leaking and exposed fluids or the gravel and raw materials described in Paragraphs 149-155.
157. In failing to comply with Appendix A, Section I.3 of the General Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, Respondent violated Section 301 of the Act, 33 U.S.C. § 1311, and is subject to the assessment of penalties under Section 309 of the CWA, 33 U.S.C. § 1319.

Count 15

Failure to Properly Operate and Maintain the Poca Facility

158. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
159. General Permit Appendix A, Section II.1 states: "The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit."
160. At the Poca Inspection, the EPA inspection team observed the truck washout area at the Poca Facility, which is used to clean the concrete off the trucks after their return from a delivery, contained a sediment basin that was inundated with solids. It appeared that approximately 60 percent of the larger basin's capacity was unusable due to a buildup of concrete. Poca Facility representatives stated that they were unable to remove the solids from the basin because there was already a buildup of solids in the area that they normally deposit solids in.
161. At the Poca Inspection, the EPA inspection team observed a pile of sediment approximately 30 feet high in the solids storage area, and Poca Facility representatives

stated that they could no longer deposit solids there until some were hauled away for landfill deposit. As a result of the solids backlog, Poca Facility representatives had placed solids directly next to the sediment basin. The sediment basin was positioned approximately 10 meters upstream of Outlet 003, and it appeared that stormwater had run over the surface of the filled sediment basin to Outlet 003.

162. At the Poca Inspection, Poca Facility representatives stated to the EPA inspection team that the sediment basins regularly overflowed during rain events. They also indicated that a water recycling pump and tank were normally used to prevent the basins from overflowing, but that the system was out of service. Poca Facility representatives did not know when the pump and tank would be put back online to remove water from the basins.
163. At the Poca Inspection, the EPA inspection team observed the concrete settling basins located directly upstream of Outlets 001 and 003 were inundated with dirt and debris, and the concrete settling basins had been partially dug out prior to the inspection. Poca Facility representatives stated that during rain events, samples were often scooped from the inundated settling basins because there was not enough flow for the water to flow over the overflow to the outlets.
164. At the Poca Inspection, the EPA inspection team observed two concrete settling basins in sequence directly upstream of Outlet 002 that were connected by pipes positioned near the top of the basins. The second basin (positioned closest to the Pocatolico River) was filled with cattails and debris at the time of the Poca Inspection.
165. At the time of the Poca Inspection, Respondent was in violation of Appendix A, Section II.1 of the General Permit by failing to properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit, as indicated by the observations in Paragraphs 160-164. These observations indicate that the settlement basins and the solids storage area were not operational or properly maintained.
166. In failing to comply with Appendix A, Section II.1 of the General Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, Respondent violated Section 301 of the Act, 33 U.S.C. § 1311, and is subject to the assessment of penalties under Section 309 of the CWA, 33 U.S.C. § 1319.

Count 16

Failure to Maintain Good Housekeeping at the Poca Facility

167. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.

168. General Permit Section B.17.A.2.a.4 requires Respondent to develop in its SWPPP a description of good housekeeping practices and to implement those practices, maintaining a clean, orderly facility.
169. The Poca SWPPP Section 3.2 states: "The plant management encourages good housekeeping practices throughout the plant by proper maintenance of equipment and monthly inspections."
170. While the Poca SWPPP encourages good housekeeping practices, it does not specifically describe examples of which good housekeeping practices are to be conducted at the Poca Facility.
171. At the time of the Poca Inspection, the EPA inspection team observed piles of trash and scrap metal around the property that were uncovered and uncontained.
172. At the time of the Poca Inspection, the EPA inspection team found a large pile of cardboard that was soaked in oil, sitting in an uncovered area.
173. At the time of the Poca Inspection, the EPA inspection team observed that the monthly routine inspection sheets did not contain much detail, and many of the observations that were made by the EPA inspection team were not present in the monthly inspection logs. Almost all of the inspection sheets were marked as "Excellent" for structure condition, and "No" for trash in area, erosion, and nearby activities that could impact stormwater quality. The sheet for September 2023 was marked as "Yes" for trash in area, as well as for nearby activities that could impact stormwater quality. There was no record of any routine maintenance that had occurred as a result of these inspections.
174. At the time of the Poca Inspection, the EPA inspection team observed concrete material tracked- out onto Smith Lane, down-gradient of several large piles of used concrete rubble/dust. The material was being stored on the northeastern corner of the property until the concrete material could be crushed and recycled. There were no BMPs in place to prevent the runoff (e.g., silt barriers, berms, etc.).
175. At the time of the Poca Inspection, Respondent was in violation of Section B.17.A.2.a.4 of the General Permit by failing to maintain good housekeeping at the Poca Facility, including failing to develop in its SWPPP a description of good housekeeping practices and to implement those practices by maintaining a clean, orderly facility, as indicated by the observations in Paragraphs 171-174. The description of good housekeeping practices in the Poca SWPPP were vague, and the observations of disorder described in Paragraphs 171-174 indicated that Respondent was not practicing good housekeeping at the Poca Facility.
176. In failing to comply with Section B.17.A.2.a.4 of the General Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, Respondent violated Section 301 of the Act, 33 U.S.C. § 1311, and is subject to the assessment of penalties under Section 309 of the CWA, 33 U.S.C. § 1319.

CIVIL PENALTY

177. In settlement of the 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 fifty-five thousand dollars (\$55,000), which Respondent shall be liable to pay in accordance with the terms set forth below.
178. The civil penalty is based upon the EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), including, the following: the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to the EPA's Interim Clean Water Act Settlement Penalty Policy dated March 1, 1995, which reflects the statutory penalty criteria and factors set forth at Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), 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.
179. Respondent agrees to pay a civil penalty in the amount of **\$55,000** ("Assessed Penalty") within thirty (30) days of the Effective Date of this Consent Agreement and Final Order.
180. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA website: <https://www.epa.gov/financial/makepayment>. For additional instructions see: <https://www.epa.gov/financial/additional-instructions-making-payments-epa>. Any checks should be made payable to "Treasurer, United States of America." However, for any payments made after September 30, 2025, and in accordance with the March 25, 2025 Executive Order on Modernizing Payments To and From America's Bank Account, Respondent shall pay using one of the electronic payments methods listed on EPA's How to Make a Payment website and will not pay with a paper check.
181. When making a payment, Respondent shall:
- a. Identify every payment with Respondent's name and the docket number of this Consent Agreement, CWA-03-2025-0119,
 - b. Concurrently with any payment or within 24 hours of any payment, Respondent shall serve Proof of Payment simultaneously **by email** to the following person(s):

Lauren Curry
Assistant Regional Counsel
curry.lauren@epa.gov,

U.S. Environmental Protection Agency
Cincinnati Finance Center
CINWD_AcctsReceivable@epa.gov,

and

U.S. EPA Region 3 Regional Hearing Clerk
R3_Hearing_Clerk@epa.gov.

“Proof of Payment” means, as applicable, a copy of the check, confirmation of credit card or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with the appropriate docket number and Respondent’s name.

182. Interest, Charges, and Penalties on Late Payments. Pursuant to 33 U.S.C. § 1319(g)(9), 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 40 C.F.R. § 13.11, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Consent Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and the EPA is authorized to recover the following amounts.

- a. Interest. Interest begins to accrue from the Effective Date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. § 1319(g)(9). The rate of interest is the IRS standard underpayment rate.
- b. Handling Charges. The United States’ enforcement expenses including, but not limited to, attorneys’ fees and costs of collection proceedings.
- c. Late Payment Penalty. A twenty percent (20%) quarterly non-payment penalty.

183. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Consent Agreement, the EPA may take additional actions. Such actions the EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14;
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government

for, a person to satisfy the debt the person owes the United States government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with the EPA or engaging in programs the EPA sponsors or funds, per 40 C.F.R. § 13.17.
 - d. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 33 U.S.C. § 1319(g)(9). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.
184. Allocation of Payments. Pursuant to 31 C.F.R. § 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to the principal that is the outstanding Assessed Penalty amount.
185. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Consent Agreement shall not be deductible for purposes of federal taxes.
186. Payment of the civil penalty is due and payable immediately upon the Effective Date of this Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed as of the effective date of this Consent Agreement and Final Order by Respondent in accordance with 40 C.F.R. § 13.9(a).
187. The Parties consent to service of the Final Order by e-mail at the following valid email addresses: curry.lauren@epa.gov (for Complainant), and rhanshaw@bowlesrice.com (for Respondent).
188. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, the EPA is required to send to the IRS annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that the EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, **including** amounts paid for "restitution or remediation of property" or to come "into compliance with a law." The EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide the EPA with

sufficient information to enable it to fulfill these obligations, the EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 ("Request for Taxpayer Identification Number and Certification"), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent's correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to the EPA's Cincinnati Finance Center at henderson.jessica@epa.gov, within 30 days after the Final Order ratifying this Consent Agreement is filed, and the EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the effective date, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:
 - i. notify the EPA's Cincinnati Finance Center of this fact, via email, within 30 days after the 30 days after the Effective Date of the Final Order per Paragraph 195; and
 - ii. provide the EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

GENERAL SETTLEMENT CONDITIONS

189. 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.
190. Respondent certifies that any information or representation it has supplied or made to the 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. The EPA shall have the right to institute further actions to recover appropriate relief if the 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 the 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

191. Respondent certifies to the EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with the Administrative Order on Consent between Respondent and the EPA, Docket No. CWA-03-2025-0003DN, which addresses the violations alleged herein as to the Poca Facility.

OTHER APPLICABLE LAWS

192. 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 the 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 CWA, 33 U.S.C. § 1251 *et seq.*, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

193. This Consent Agreement and Final Order resolves only the EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. The EPA reserves the right to commence action against any person, including Respondent, in response to any condition which the 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). The EPA reserves any rights and remedies available to it under the CWA, 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

194. 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 providing the signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that the person signing 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

195. 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 ("Effective Date") thirty (30) days after having been signed by the Regional Administrator or his delegate, the Regional Judicial Officer, and filed with the Regional Hearing Clerk.


ENTIRE AGREEMENT

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

For Respondent: Claxton Smith Concrete Company

Date: 6/26/2025

By:


Patsy Smith✓
President

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Acting Director of the Enforcement & Compliance Assurance Division of the United States Environmental Protection Agency, Region 3, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or the Regional Administrator's designee, the Regional Judicial Officer, issue the attached Final Order.

By: **ANDREA BAIN** Digitally signed by ANDREA BAIN
Date: 2025.08.26 07:55:00 -04'00'

[Digital Signature and Date]
Acting Director
Enforcement & Compliance Assurance Division
U.S. EPA – Region 3
Complainant

Attorney for Complainant:

By: **MANUEL
RONQUILLO** Digitally signed by MANUEL
RONQUILLO
Date: 2025.08.26 08:50:47 -04'00'

[Digital Signature and Date]
Lauren Curry
Assistant Regional Counsel
U.S. EPA – Region 3

**U.S. EPA REGION 3
HEARING CLERK**

Section 309(g)(3) of the Clean Water Act, 33 U.S.C. § 1319(g)(3), and as adjusted in accordance with the appropriate Adjustment of Civil Monetary Penalties for Inflation, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing the EPA's civil penalty policies to account for inflation.

NOW, THEREFORE, PURSUANT TO Section 309 of the Clean Water Act, 33 U.S.C. Section 1319, 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 **FIFTY-FIVE THOUSAND DOLLARS (\$55,000.00)**, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), and comply with the terms and conditions of the Consent Agreement.

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

The effective date of the attached Consent Agreement and this Final Order is thirty (30) days after the date on which this Final Order is filed with the Regional Hearing Clerk.

By: **DONZETTA
THOMAS**  Digitally signed by DONZETTA
THOMAS
Date: 2025.08.28 11:18:46 -04'00'

Regional Judicial and Presiding Officer
U.S. EPA Region 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103

In the Matter of:	:	
	:	
Claxton Smith Concrete Company	:	
3133 Charleston Road	:	U.S. EPA Docket No. CWA-03-2025-0119
Poca, West Virginia 25159-7261	:	
	:	Proceeding under Section 309(g) of the Clean
Respondent.	:	Water Act
	:	
Charleston Facility	:	
2262 Pennsylvania Avenue	:	
Charleston, West Virginia 23302	:	
	:	
Culloden Facility	:	
1960 US Route 60	:	
Culloden, West Virginia 25510	:	
	:	
Poca Facility	:	
3133 Charleston Road	:	
Poca, West Virginia 25159-7261,	:	
	:	
Facilities.	:	

CERTIFICATE OF SERVICE

I certify that the foregoing ***Consent Agreement and Final Order*** was filed with the EPA Region 3 Regional Hearing Clerk on the date that has been electronically stamped on the ***Consent Agreement and Final Order***. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email to:

Jeff Smith, VP – Chief Operations
Claxton Smith Concrete Company
smithpoca@aol.com
3133 Charleston Road
Poca, West Virginia 25159-7261

Roger G. Hanshaw
Bowles Rice LLP
rhanshaw@bowlesrice.com
600 Quarrier Street
Charleston, WV 25301

In Re: Claxton Smith Concrete Company

EPA Docket No. CWA-03-2025-0119

Lauren Curry
Assistant Regional Counsel
U.S. EPA, Region 3
curry.lauren@epa.gov

Angela Weisel
Life Scientist
U.S. EPA, Region 3
weisel.angela@epa.gov

BEVIN ESPOSITO

Digitally signed by BEVIN
ESPOSITO
Date: 2025.08.28 14:39:16 -04'00'

[Digital Signature and Date]

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 3