

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

IN RE:

J. WILLIS SMITH AND BROTHER, INC. : DOCKET No. CWA-03-2009-0217  
and A. SMITH AND SONS SHIPYARD :  
Respondents :

Facility Address:

6211 Pennington Avenue  
Baltimore, Maryland 21226

CONSENT AGREEMENT

**I. STATUTORY AUTHORITY**

1. This Consent Agreement, ("CA"), and the accompanying Final Order, ("FO"), (collectively "CAFO"), are entered into by the Director of the Office of Enforcement, Compliance and Environmental Justice, United States Environmental Protection Agency Region III, ("Complainant" or "EPA"), and J. Willis Smith and Brother, Inc. and A. Smith and Sons Shipyard, (collectively "Respondents"), pursuant to Sections 309(g)(2)(B) and 311(b)(6) of the Clean Water Act, as amended, ("CWA"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, ("Consolidated Rules").

**II. PRELIMINARY STATEMENTS**

2. On September 24, 2009, Complainant issued a Complaint and Notice of Opportunity for Hearing, Docket No. CWA-03-2009-0217.
3. The Complaint alleged that Respondents violated the regulations promulgated in accordance with:
  - A. Section 311(j) of the CWA, 33 U.S.C. § 1321(j); and
  - B. Section 402 of the CWA, 33 U.S.C. § 1342.

4. EPA notified the State of Maryland, through the Maryland Department of the Environment, of its intent to commence this administrative action against Respondents in accordance with Section 309(a) of the CWA, 33 U.S.C. § 1319(a).
5. EPA provided public notice and an opportunity to comment on the Complaint in accordance with Sections 309(g)(4)(A) and 311(b)(6) of the CWA, 33 U.S.C. §§ 1319(g)(4)(A) and 1321(b)(6), prior to issuing the Final Order, and received no comments thereto.
6. For purposes of this CAFO, Respondents admit the jurisdictional allegations of the Complaint which are set forth in this CA.
7. For purposes of this CAFO, Respondents agree not to contest EPA's jurisdiction to execute this Consent Agreement, the issuance of the Final Order, or the enforcement thereof.
8. For purposes of this CAFO, Respondents hereby expressly waive their rights to a hearing under Sections 309(g) and 311(b)(6) of the CWA, 33 U.S.C. §§ 1319(g) and 1321(b)(6), on any issue of fact or law in the Complaint.
9. For purposes of this CAFO, Respondents hereby expressly waive any right to contest the allegations set forth in this Consent Agreement and any right to appeal the accompanying Final Order.
10. Respondents neither admit nor deny the specific factual allegations contained in this CAFO, except as provided in paragraph 6.
11. Each party to this CAFO shall pay its own costs and attorneys' fees associated with this proceeding under Docket No. CWA-03-2009-0217.
12. The provisions of this CAFO shall be binding upon Complainant and Respondents, including the officers, directors, employees, successors, and assigns of the Respondents.
13. Respondents certify to EPA by their signatures herein that they are presently in compliance with the specific regulatory sections and subsections of the CWA referenced in the claims and allegations herein.
14. This CAFO shall not relieve Respondents of their obligations to comply with all applicable provisions of federal, state or local law nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

### **III. EPA FINDINGS OF FACT AND CONCLUSIONS OF LAW**

15. J. Willis Smith and Brother, Inc. and A. Smith and Sons Shipyard, (collectively

"Respondents"), are Maryland corporations with their principal offices at 6211 Pennington Avenue, Baltimore, Maryland 21226.

16. Each Respondent is a person within the meaning of:
  - A. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2; and
  - B. Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
17. Respondents are, and were at the time of the violations alleged in this Complaint, the owners and/or operators of the facility located at 6211 Pennington Avenue, Baltimore, Maryland 21226, which is adjacent to Curtis Bay.
18. The Respondents' facility is a ship building and repair facility that has been in operation since circa 1905.
19. Respondents are the "owner or operator" of the facility (hereinafter "Smith facility"), as that term is defined at Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.
20. On September 23, 2008, a team of inspectors from EPA's Office of Enforcement, Compliance and Environmental Justice conducted a multi-media inspection of the Smith facility.
21. Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), provides that the President shall issue regulations, *inter alia*, "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from vessels and from onshore and offshore facilities, and to contain such discharges . . .".
22. On December 11, 1973, EPA promulgated Oil Pollution Prevention regulations set forth at 40 C.F.R. Part 112 to implement Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1). Such regulations took effect on January 10, 1974.
23. Pursuant to 40 C.F.R. § 112.1(b), with certain exceptions not relevant here, regulations set forth at 40 C.F.R. Part 112 apply to owners or operators of non-transportation-related onshore or offshore facilities engaged in, *inter alia*, storing or consuming oil or oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities within the meaning of 40 C.F.R. Part 110, into or upon the navigable waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1, or the adjoining shorelines.
24. "Oil" is defined in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2 to include any kind of oil in any form, including petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil.

25. 40 C.F.R. § 110.3(b) defines "harmful quantity" for purposes of Section 311 of the CWA, 33 U.S.C. § 1321, to include discharges that "cause a film or sheen upon . . . the surface of the water or adjoining shorelines."
26. Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), defines "discharge" to include any spilling, leaking, pumping, pouring, emitting, or dumping other than federally permitted discharges pursuant to a permit under 33 U.S.C. § 1342.
27. For purposes of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), "navigable water" is defined by 40 C.F.R. §§ 110.1 and 112.2 to include, among other things, tributaries to waters that could be used for industrial purposes or interstate commerce.
28. On September 23, 2008, the Smith facility had the capacity to store greater than 1,320 gallons of oil in the following containers:
  - A. One metal storage tank with an estimated capacity of 2,000 gallons under a two-sided structure and exposed to the elements near an oil storage shed;
  - B. Two metal storage tanks with an estimated capacity of 1,000 gallons each at an outside area used for storing steel plates and pipes;
  - C. Two metal storage tanks with an estimated capacity of 500 gallons each at an outside area used for storing steel plates and pipes;
  - D. One metal storage tank labeled "OILY WATER ONLY" with an estimated capacity of 500-550 gallons outside;
  - E. One metal storage tank labeled "WASTE OIL ONLY" with an estimated capacity of 500-550 gallons outside;
  - F. One portable metal tank with an estimated capacity of 200 gallons outside near an oil storage shed;
  - G. One lube oil tank with an estimated capacity of 250 gallons inside an oil storage shed; and
  - H. Approximately 6-10 drums with capacities of 55 gallons.
29. The Smith facility is an "onshore facility" within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.
30. The Smith facility is a "non-transportation" facility within the meaning of 40 C.F.R. § 112.2, Appendix A thereto.
31. The Smith facility is engaged in storing or consuming oil or oil products.

32. Pursuant to 40 C.F.R. § 112.3(a), owners or operators of onshore facilities that became operational before August 16, 2002, and that could reasonably be expected to discharge oil in harmful quantities, as described in 40 C.F.R. Part 110, into or upon the navigable waters of the United States or adjoining shorelines, shall prepare a Spill Prevention Control and Countermeasure ("SPCC") Plan and maintain and amend such Plan as necessary.
33. The Smith facility has been in operation as an onshore facility within the meaning of 40 C.F.R. Part 112 since prior to August 16, 2002.
34. Due to the Smith facility's location, adjacent to Curtis Bay, all oil storage tanks and drums are in close proximity to Curtis Bay which empties into the Patapsco River which empties into the Chesapeake Bay.
35. Curtis Bay, Patapsco River and Chesapeake Bay, are navigable waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 112.2.
36. Due to their locations, the oil storage tanks and drums at the Smith facility can be expected to discharge oil in harmful quantities within the meaning of 40 C.F.R. Part 110 into or upon the navigable waters of the United States or adjoining shorelines.
37. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source to waters of the United States except in compliance with, among other things, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
38. Section 402(a) of the CWA, 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.
39. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.1 and 122.26 provide that facilities that have "storm water discharges associated with industrial activity" are "point sources" subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).

#### COUNT 1

##### (CWA - Spill Prevention Control and Counter-Measure Plan)

40. The allegations contained in Paragraphs 1 through 39 of this CA are incorporated herein by reference.
41. Based on the available oil storage capacity, Respondents can store more than 1,320 gallons of oil in above-ground storage tanks at the Smith facility.

42. The Smith facility is subject to the SPCC requirements of 40 C.F.R. §§ 112.1-112.7.
43. From at least the date of the inspection on September 23, 2008, Respondents had not prepared an SPCC plan for the Smith facility, as required by 40 C.F.R. § 112.3(a).
44. From at least the date of the inspection on September 23, 2008, Respondents had not implemented an SPCC plan for the Smith facility, as required by 40 C.F.R. § 112.3(a).
45. Respondents' failure to comply with 40 C.F.R. § 112.3(a) by preparing and implementing an SPCC plan for the Smith facility constitutes a violation of the CWA for which a civil penalty may be assessed pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii).

COUNT II  
(CWA - Storm Water)

46. The allegations contained in Paragraphs 1 through 45 of this CA are incorporated herein by reference.
47. Respondents' facility discharges storm water directly into Curtis Bay, which is a "water of the United States," as that term is defined at 40 C.F.R. § 122.2.
48. Respondents filed a permit application for a General Permit for Discharges from Marinas with the Maryland Department of the Environment, ("MDE"), and MDE received Respondents' application on or about November 6, 2003.
49. Respondents were subsequently issued General Permit No. 02MA For Discharges From Marinas ("Permit"), by MDE for the Smith facility and the Permit became effective on January 20, 2004.
50. The Permit contains certain terms and conditions, *inter alia*, the requirement that Respondents develop a Storm Water Pollution Prevention Plan, under Section B of Part V of the Permit, with the minimum contents listed in Section C of Part V of the Permit.
51. Among the minimum contents of a Storm Water Pollution Prevention Plan listed in Section C of Part V of the Permit are the following requirements:
1. "Inventory of Exposed Materials. An inventory of the types of materials handled at the site that potentially may be exposed to precipitation." Permit V(C)(4).
  2. "Risk Identification and Summary of Potential Pollution Sources. A narrative description of the potential pollutant sources from the following activities, if

applicable: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities (i.e., abrasive blasting, sanding, painting); and onsite waste disposal practices." Permit V(C)(7).

3. Each facility covered under the Permit shall develop a description and implementation schedule of Storm Water Management Controls appropriate for the facility and shall implement the described Storm Water Management Controls. The following list includes some the areas where Storm Water Management Controls are to be described, scheduled and implemented under the Permit V(C)(8).
  - A. "Material Storage Areas. All stored and containerized materials (fuels, paints, solvents, waste oil, antifreeze, batteries) must be plainly labeled and stored in a protected, secure location away from drains. The plan must describe measures that prevent or minimize contamination of the storm water runoff from such storage areas . . . Above-ground storage tanks, drums, and barrels permanently stored outside must be delineated on the site map with a description of the containment measures in place to prevent leaks and spills . . . Those facilities where abrasive blasting is performed must specifically include a discussion on the storage and disposal of spent abrasive materials generated at the facility." Permit V(C)(8)(a)(iii).
  - B. "Preventative Maintenance. A preventative maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators and sediment traps to ensure that oil, spent abrasives, paint chips, and solids will be intercepted and retained prior to entering the storm drainage system) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems." Permit V(C)(8)(b).
  - C. "Inspections. Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility on a monthly basis. The following areas shall be included in all inspections: pressure washing area; blasting, sanding, and painting areas; material storage areas; engine maintenance and repair areas; material handling areas; bilge water treatment areas and general yard area. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of the inspections shall be maintained." Permit V(C)(8)(d).
4. "Employee Training. Employee training programs shall inform personnel, responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible at all levels for storm water

management, of the components and goals of the storm water pollution prevention plan . . . The pollution prevention plan shall identify how often training will take place, but in all cases training must be held at least twice per calendar year. Employee training must, at a minimum, address the following areas when applicable to a facility: used oil management; spent solvent management; proper disposal of spent abrasives; proper disposal of vessel wastewaters; spill prevention and control; fueling procedures; general good housekeeping practices; proper painting and blasting procedures; and used battery management." Permit V(C)(9).

5. "Record-keeping and Internal Reporting Procedures: Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan." Permit V(C)(10).
  6. "Non-Storm Water Discharges. The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges, other than those authorized in Part I Section B of this permit or flows from fire fighting systems. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the on-site drainage points that were directly observed during the test." Permit V(C)(11).
  7. "Comprehensive Site Compliance Evaluation. A site inspection shall be conducted annually by appropriate responsible personnel to verify that the description of potential pollutant sources required under Part V Section C2 is accurate, the drainage map has been updated to reflect current conditions, and the controls to reduce pollutants identified in the storm water pollution prevention plan are being implemented and are adequate. Records documenting significant observations made during the site inspection shall be retained as part of the storm water pollution prevention plan for three years." Permit V(C)(13).
52. At the time of the inspection on September 23, 2008, Respondents failed to have an appropriate Storm Water Pollution Prevention Plan at the Smith facility as required by the Permit.
  53. At the time of the inspection on September 23, 2008, Respondents' Storm Water Pollution Prevention Plan did not include the lead acid batteries in the Inventory of Exposed Materials as required by the Permit V(C)(4).
  54. At the time of the inspection on September 23, 2008, Respondents' Storm Water Pollution Prevention Plan did not include a narrative description of storage areas for lead acid batteries and spent abrasive blasting materials that are a potential source of pollutants as required by the Permit V(C)(7).



55. At the time of the inspection on September 23, 2008, Respondents' Storm Water Pollution Prevention Plan did not include a description or implementation schedule for Storm Water Management Controls for paint storage areas, lead acid battery storage areas or a specific discussion of the storage and disposal of spent abrasive blasting materials as required by the Permit V(C)(8)(a)(iii).
56. At the time of the inspection on September 23, 2008, Respondents' Storm Water Pollution Prevention Plan did not include a description or implementation schedule for the timely inspection and maintenance of storm water management devices and other preventative maintenance of facility equipment and systems as required by the Permit V(C)(8)(b).
57. For the time period beginning at least as early as the start of 2005 until the time of the inspection on September 23, 2008, Respondents' did not have a record of monthly inspections as required by the Permit V(C)(8)(d).
58. At the time of the inspection on September 23, 2008, Respondents' Storm Water Pollution Prevention Plan did not identify how often employee training on implementing storm water pollution plan activities occurs as required by the Permit V(C)(9).
59. At the time of the inspection on September 23, 2008, Respondents were not documenting inspections and maintenance activities and incorporating records of these activities into the Storm Water Pollution Prevention Plan as required by the Permit V(C)(10).
60. At the time of the inspection on September 23, 2008, Respondents' Storm Water Pollution Prevention Plan did not include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges other than those authorized by the Permit or flows from fire fighting systems as required by the Permit V(C)(11).
61. For the time period beginning at least as early as the start of 2005 until the time of the inspection on September 23, 2008, Respondents' Storm Water Pollution Prevention Plan did not contain records documenting significant observations from the Annual Comprehensive Site Compliance Evaluations for the previous three years as required by the Permit V(C)(13).
62. Respondents' Storm Water Pollution Prevention Plan failed to contain the Permit requirements listed above in paragraph 51 and thereby, Respondents have violated Section 402 of the CWA, 33 U.S.C. § 1342, for which a penalty may be assessed pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d).

#### **IV. CIVIL PENALTY**

63. Based on the foregoing and having taken into account the penalty factors set forth at Sections 309(g)(3) and 311(b)(8) of the CWA, 33 U.S.C. §§ 1319(g)(3) and 1321(b)(8), Complainant has determined that the total appropriate civil penalty for the violations alleged in the Complaint is \$23,750.00, which shall be paid within THIRTY (30) calendar days of receipt of this CAFO by Respondents and in accordance with paragraphs 65 and 66 of this CAFO.
64. The penalty factors were applied to the particular facts and circumstances of this case with specific reference to EPA's Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act, August 1998, Interim Clean Water Act Settlement Penalty Policy, March 1, 1995, and the Civil Monetary Penalty Adjustment Rule, 40 C.F.R. Part 19.
65. Payment of the civil penalty amount of \$3,873.00 for Count I, above, shall be made by cashier's check, certified check or electronic wire transfer, in the following manner:
- A. All payments by Respondents shall reference their names and addresses, Docket Number of this action (Docket No. CWA-03-2009-0217), and "Oil Spill Liability Trust Fund - 311";
  - B. All checks shall be made payable to "Environmental Protection Agency;"
  - C. All payments made by check and sent by regular mail shall be addressed and mailed to:  
  
U.S. Environmental Protection Agency, Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
  
The Customer Service contact for the above method of payment is Natalie Pearson at 314-418-4087.
  - D. All payments made by check and sent by overnight delivery service shall be addressed and sent to:  
  
U.S. Environmental Protection Agency, Fines and Penalties  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

The Customer Service contact for the above method of payment is Natalie Pearson at 314-418-4087.

- E. All electronic wire transfer payments shall be directed to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency"

The Federal Reserve Bank of New York Customer Service phone number for the above method of payment is 212-720-5000.

- F. All payments through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury  
REX Cashlink ACH Receiver  
57 Riverdale Ct.  
Riverdale, MD 20737  
ABA = 051036706  
Transaction Code 22 – checking  
Environmental Protection Agency  
Account 310006  
CTX Format

The Customer Service contact for this method of payment is 866-234-5681.

- G. There is an on-line payment option available through the Department of Treasury. This payment option can be accessed from [www.pay.gov](http://www.pay.gov). Enter sfo 1.1 in the search field and complete all required fields in the form.

66. Payment of the civil penalty amount of \$19,877.00 for Count II, above, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

- A. All payments by Respondents shall reference their names and addresses and the Docket Number of this action (Docket No. CWA-03-2009-0217);
- B. All checks shall be made payable to "United States Treasury;"
- C. All payments made by check and sent by regular mail shall be addressed and

mailed to:

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

The Customer Service contact for the above method of payment is Natalie Pearson at 314-418-4087.

- D. All payments made by check and sent by overnight delivery service shall be addressed and sent to:

U.S. Environmental Protection Agency, Fines and Penalties  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101

The Customer Service contact for the above method of payment is Natalie Pearson at 314-418-4087.

- E. All electronic wire transfer payments shall be directed to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Field Tag 4200 of the Fedwire message should read "D 68010727  
Environmental Protection Agency"

The Federal Reserve Bank of New York Customer Service phone number for the above method of payment is 212-720-5000.

- F. All payments through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury  
REX Cashlink ACH Receiver  
57 Riverdale Ct.  
Riverdale, MD 20737  
ABA = 051036706  
Transaction Code 22 - checking  
Environmental Protection Agency

Account 310006  
CTX Format

The Customer Service contact for this method of payment is 866-234-5681.

G. There is an on-line payment option available through the Department of Treasury. This payment option can be accessed from [www.pay.gov](http://www.pay.gov). Enter sfo 1.1 in the search field and complete all required fields in the form.

67. At the same time that any payment is made in accordance with paragraphs 65 and 66, Respondents shall mail copies of any corresponding check or written notification confirming any electronic wire transfer, to:

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

And

T. Chris Minshall  
Assistant Regional Counsel (3EC00)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA, 19103-2029

68. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.
69. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a CAFO begins to accrue on the date that a copy of the CAFO is mailed or hand-delivered to Respondents. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. 13.11(a).
70. In accordance with 40 C.F.R. § 13.11(b), costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue.
71. In accordance with 40 C.F.R. § 13.11(c), a late payment penalty of six percent (6%) per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than ninety (90) calendar days. In accordance with 31 C.F.R. §

901.9(d), should assessment of the penalty charge on a debt be required, it shall accrue from the first day payment is delinquent.

72. Respondents agree not to deduct for federal tax purposes the civil monetary penalty specified in this CAFO.

#### **V. SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

73. Respondents shall complete the Supplemental Environmental Projects, ("SEP"), in accordance with the Settlement Conditions Document, ("SCD"), attached herein.
74. The attached SCD and this CAFO collectively constitute a single integrated settlement agreement as contemplated by the May 1, 1998 "EPA Final Supplemental Environmental Projects Policy."
75. The effective date of the SCD is the date on which this CAFO is signed by the Regional Administrator of U.S. EPA Region III or his designee, and is filed with the Regional Hearing Clerk.
76. Failure by the Respondents to complete the SEP in accordance with the SCD may subject Respondents to a civil action seeking injunctive relief to require that the terms of the SEPs be implemented or payment of an additional penalty plus interest and enforcement/collection costs, of an amount stipulated by the terms of the SCD.

#### **VI. CERTIFICATIONS**

77. Respondents certify to Complainant by the signatures hereto, to the best of Respondents' knowledge and belief, that Respondents and the facility currently are in compliance with all relevant provisions of the CWA, for which violations are alleged in this CAFO.

#### **VII. EFFECT OF SETTLEMENT**

78. Payment of the penalty specified in paragraph 63, in the manner set forth in paragraphs 65 and 66, shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under the CWA, for the specific violations alleged in Counts I and II. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

#### **VIII. RESERVATION OF RIGHTS**

79. This CAFO resolves only the civil claims for monetary penalties for the specific violations alleged in the CAFO. EPA reserves the right to commence action against any person(s), including Respondents, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public

health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. EPA also reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

**IX. FULL AND FINAL SATISFACTION**

80. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Sections 309 and 311 of the CWA, 33 U.S.C. §§ 1319 and 1321, for the specific violations alleged in this CAFO. This CAFO constitutes the entire agreement and understanding of the parties regarding settlement of all claims pertaining to 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 CAFO.

**X. PARTIES BOUND**

81. This CAFO shall apply and be binding upon the EPA, Respondents, Respondents' officers and directors (in their official capacity) and Respondents' successors and assigns. By his or her signature below, the person signing this on behalf of Respondents acknowledges that he or she is fully authorized to enter into this CAFO and to bind the Respondents to its terms and conditions.

**XI. EFFECTIVE DATE**

82. This CAFO shall become final and effective 30 days after it is lodged with the Regional Hearing Clerk.

FOR RESPONDENTS:

J. WILLIS SMITH AND BROTHER, INC.

Oct 26, 2010  
Date

Jerry Smith  
Jerry Smith  
President

A. SMITH AND SONS SHIPYARD

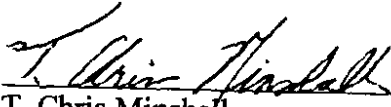
Oct 26, 2010  
Date

Jerry Smith  
Jerry Smith  
President

FOR COMPLAINANT:

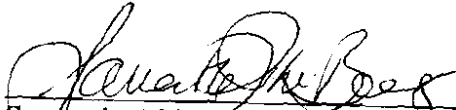
U.S. ENVIRONMENTAL PROTECTION AGENCY - REGION III

11/1/2010  
Date

  
\_\_\_\_\_  
T. Chris Minshall  
Assistant Regional Counsel

Accordingly, I hereby recommend that the Regional Administrator or his designee, the Regional Judicial Officer, issue the Final Order attached hereto.

11/2/2010  
Date

  
\_\_\_\_\_  
Samantha Phillips Beers, Director  
Office of Enforcement, Compliance and  
Environmental Justice



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

IN RE:

J. WILLIS SMITH AND BROTHER, INC.  
and A. SMITH AND SONS SHIPYARD  
Respondents

Docket No. CWA-03-2009-0217

Facility Address:

6211 Pennington Avenue  
Baltimore, Maryland 21226

**FINAL ORDER**

Complainant, the Director of the Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency, Region III, and Respondents, J. Willis Smith and Brother, Inc. and A. Smith and Sons Shipyard, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based on the representations of the parties set forth in the Consent Agreement, I have determined that the penalty assessed herein is based upon a consideration of the factors set forth in Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA's 1995 *Interim Clean Water Act Settlement Penalty Policy*, the factors set forth in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), EPA's 1998 *Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act*, and the Consolidated Rules of Practice. **IT IS HEREBY ORDERED** that Respondent pay a civil penalty of **TWENTY THREE THOUSAND, SEVEN HUNDRED AND FIFTY DOLLARS (\$23,750.00)** and complete the supplemental environmental projects in accordance with the foregoing Consent Agreement. Payment shall be made in the manner set forth in the foregoing Consent Agreement. Payment shall reference Respondents' names and address as well as the EPA Docket Number of this Final Order (Docket No. CWA-03-2009-0217).

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

11/23/10  
Date

Renee Sarajian  
Renee Sarajian  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region III

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

IN RE: :  
: :  
J. WILLIS SMITH AND BROTHER, INC. : DOCKET No. CWA-03-2009-0217  
and A. SMITH AND SONS SHIPYARD :  
Respondents :  
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Facility Address: : SETTLEMENT CONDITIONS  
: DOCUMENT  
: :  
6211 Pennington Avenue :  
Baltimore, Maryland 21226 :  
: :  
: :

**I. INTRODUCTION**

- A. This Settlement Conditions Document, ("SCD"), is part of the settlement described in the attached Consent Agreement and Final Order, ("CAFO"), in the above-captioned administrative enforcement action initiated by the U.S. Environmental Protection Agency Region III, ("Complainant" or "EPA"), against J. Willis Smith and Brother, Inc. and A. Smith and Sons Shipyard, (collectively "Respondents"), pursuant to Sections 309(g)(2)(B) and 311(b)(6) of the Clean Water Act, as amended, ("CWA"), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, ("Consolidated Rules").
- B. The purpose of this SCD is to set forth the terms and conditions of the tasks Respondents agree to undertake in implementing the Supplemental Environmental Projects ("SEPs") as described herein and incorporated into the CAFO as part of the settlement of the above-captioned matter. The terms, conditions and tasks set forth in this SCD exceed the requirements of the CWA and the regulations promulgated there under.
- C. The following documents collectively constitute a single integrated settlement agreement as contemplated by the May 1, 1998 "EPA Final Supplemental Environmental Projects Policy": this SCD; the attached Consent Agreement signed by the parties; the attached

Final Order signed by the Regional Administrator of U.S. EPA Region III or his designee, (collectively referred to as the "CAFO"); and the "Letter of Remittance Upon Satisfaction of Settlement Conditions" to be issued, pursuant to Section VII of this SCD, by the Regional Administrator of U.S. EPA Region III or his designee to Respondents upon the full performance, completion and satisfaction of the terms, conditions and tasks provided in this SCD.

- D. In the attached CAFO, Respondents agree to pay a civil penalty of \$23,750.00 and to perform fully the SEPs described in Section III of this SCD, which the parties agree are intended to secure significant protection of the environment and the health and welfare of the public.
- E. The effective date of this SCD is the date on which the accompanying Final Order, signed by the Regional Administrator of U.S. EPA Region III or his designee, is filed with the Regional Hearing Clerk of U.S. EPA Region III.
- F. This SCD shall remain in effect until the Respondents have paid the aforementioned \$23,750.00 civil penalty and either (1) fully satisfied the conditions set forth in this SCD and the Regional Administrator for U.S. EPA Region III or his designee has issued a "Letter of Remittance Upon Satisfaction of Settlement Conditions" pursuant to Section VII of this SCD, or (2) the conditions set forth herein have not been fully satisfied by Respondents and full payment by Respondents of the penalty amounts provided in Section V of this SCD, have been received by EPA as directed by issuance of a written demand by the Agency.

## **II. SETTLEMENT CONDITIONS**

- A. Consistent with and as provided in the May 1, 1998 "Final Supplemental Environmental Projects Policy," the SEPs described herein are environmentally beneficial projects which Respondents have agreed to undertake in settlement of the above-captioned enforcement action, but which Respondents are not otherwise legally required to perform. Furthermore, the SEPs described herein are intended and designed, *inter alia*, to advance the protection of human health and the environment.
- B. Nothing in this SCD, including performance of the SEPs described herein, shall be construed as prohibiting, altering or in any way limiting EPA's authority to enforce any applicable law, regulation or requirement at Respondents' facility captioned above, or Respondents' duty to comply with such law, regulation or requirement, except as may be provided herein.

C. The total expenditure by Respondents for the SEP described in Section III of this SCD, shall not be less than \$171,000.00. Respondents estimate that their expenditures will be broken down as follows:

1. Construction of site stabilization of impervious surfaces . . . \$48,000.00
2. Construction of vegetative buffer area . . . \$14,000
3. Construction of improved storm water inlets . . . \$59,000
4. Combined additional engineering costs . . . \$45,000
5. Combined additional permitting costs . . . \$5,000

D. Any public statement made by Respondents which refers to any of the SEPs described in Section III of this SCD, shall include the following language:

This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Water Act.

E. This SCD shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute EPA approval of any measures undertaken under the terms of this Agreement.

F. Respondents hereby certify that there is no requirement to perform or develop the SEPs by any federal, state or local law, regulation or requirement, nor is there a requirement to perform or develop the SEPs by agreement, grant or as injunctive relief in any other case. Respondents further certify that they have not received, and are not presently negotiating to receive, credit in any other federal, state or local enforcement action for the performance of the SEPs.

### **III. DESCRIPTION OF SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

A. Construction of site stabilization of impervious surfaces

1. SEP Overview - Respondents shall implement the SEP in accordance with the criteria, terms, and conditions and procedures set forth herein. The SEP shall satisfy the following criteria, terms, conditions and procedures:

- a. Respondents shall stabilize all existing impervious areas of the facility used for materials storage or access utilizing a 6 inch layer of asphalt millings in order to reduce sediment mobilization;
- b. Respondents shall make upgrades to the two primary areas of ingress and egress at the facility to satisfy at a minimum the recommendations for Stabilized Construction Entrances detailed in the draft 2010 Maryland Department of the Environment ("MDE") Standards and Specifications for Soil Erosion and Sediment Control in order to reduce tracking of sediment;
- c. Respondents shall, within six (6) months of the effective date of this SCD, apply for all permits needed in order to perform the work outlined in Section III.A.1 of this SCD. These may include but are not necessarily limited to:
  - i. Storm Water, Erosion, and Sediment Control Permits from the City of Baltimore;
  - ii. Construction Permits from the City of Baltimore;
  - iii. NPDES Permits for Construction Activities from the MDE;
  - iv. Waterway Construction Permits from the MDE;
  - v. Critical Areas Permits from the Critical Areas Commission;
- d. Respondents shall, within 1 year of the effective date of this SCD, begin construction on the structures necessary to complete this SEP;
- e. Should Respondents need more time to either apply for the relevant permits needed to complete this SEP or to begin construction on the structures necessary to complete this SEP, they should include an explanation of the cause of delay and a description of actions taken to mitigate the delay in their status report(s) along with a revised schedule for EPA approval in accordance with Section IV.A of this SCD.
- f. Respondents shall retain "licensed contractors," as defined in Section III.A.2.d, in order to plan and design this SEP. Respondents shall retain "licensed contractors" to assist in obtaining permitting approval from the various required authorities.

2. Respondents shall use their own employees and/or "licensed contractors," as defined in Section III.A.2.d, to implement the SEP as fully described herein:
  - a. Respondents may use their own employees to complete the SEP provided their work occurs separate from their "normal work," as defined in Section III.A.2.b, for Respondents. Respondents must keep clear records indicating specific hours and tasks which their employees worked apart from their "normal work."
  - b. The term "normal work" shall mean labor performed by an employee of the Respondents that would be completed regardless of the existence of the labor provided by this SEP.
  - c. Where the SEP Completion Report includes labor not eligible for SEP credit, such costs will be deemed ineligible for SEP credit and will be taken into account when assessing penalties as outlined in Section V of this SCD;
  - d. The term "licensed contractor" shall mean an individual who is licensed by State of Maryland to perform the necessary tasks to implement the SEP in each respective jurisdiction;
  - e. Respondents shall provide EPA with the name, address, and telephone number of each "licensed contractor" it proposes to use for the SEP implementation and documentation that each "licensed contractor" satisfies the requirements described in Section III.A.3.f of this SCD. No later than thirty days after entering into a contract with any "licensed contractor" concerning performance of any of the SEP tasks, Respondents shall provide EPA with a copy of such contract;
  - f. At a minimum, each "licensed contractor" selected by Respondents to perform any task to implement the SEP shall have no less than 3 years experience in performing the tasks and have a trained and experienced staff for the performance of such tasks.
3. Respondent shall spend approximately \$ 48,000.00 in total with regard to the construction of site stabilization of impervious surfaces in addition to a portion of the engineering and permitting costs. The \$48,000.00 shall not include any expenditure made by Respondents or Respondents' "licensed contractors" to come into compliance with applicable federal, state and local laws, regulations or requirements concerning the Clean Water Act or any other federal statute.

B. Construction of a vegetative buffer area

1. SEP Overview - Respondents shall implement the SEP in accordance with the criteria, terms, and conditions and procedures set forth herein. The SEP shall satisfy the following criteria, terms, conditions and procedures:
  - a. Respondents shall install vegetative cover around the unutilized perimeter and unused areas within the grounds of the facility in order to establish a "sediment buffer" in order to reduce sediment migration and erosion;
  - b. Respondents shall permanently seed and mulch these selected areas with a seed mix appropriate for the site per the MDE ESC Manual;
  - c. Respondents shall implement tree plantings, if possible, in its construction of this vegetative buffer.
  - d. Respondents shall, within six (6) months of the effective date of this SCD, apply for the relevant permits needed in order to perform the work outlined in Section III.B.1 of this SCD. These may include but are not necessarily limited to:
    - i. Storm Water, Erosion, and Sediment Control Permits from the City of Baltimore;
    - ii. Construction Permits from the City of Baltimore;
    - iii. NPDES Permits for Construction Activities from the MDE;
    - iv. Waterway Construction Permits from the MDE;
    - v. Critical Areas Permits from the Critical Areas Commission;
  - e. Respondents shall, within 1 year of the effective date of this SCD, begin construction on the structures necessary to complete this SEP;
  - f. Should Respondents need more time to either apply for the relevant permits needed to complete this SEP or to begin construction on the structures necessary to complete this SEP, they should include an explanation of the cause of delay and a description of actions taken to mitigate the delay in their status report(s) along with a revised schedule for EPA approval in accordance with Section IV.A of this SCD.





reserved for permitting, design, and other costs on this SEP. The \$14,000.00 shall not include any expenditure made by Respondents or Respondents' "licensed contractors" to come into compliance with applicable federal, state and local laws, regulations or requirements concerning the Clean Water Act or any other federal statute.

C. Construction of improved storm water inlets

1. SEP Overview - Respondents shall implement the SEP in accordance with the criteria, terms, and conditions and procedures set forth herein. The SEP shall satisfy the following criteria, terms, conditions and procedures:
  - a. Respondents shall remove existing storm water inlets and replace them with a series of new water quality inlets and basins along the eastern edge of the property more capable of trapping sediment prior to discharge;
  - b. Respondents shall install a large concrete settling basin as a secondary storm water treatment, and will direct the effluent from the inlets into this basin so as to achieve settlement of finer particulate matter prior to discharge of storm water from the facility (a flocking agent may also be applied to aid in the settling of suspend particles as appropriate). In addition, any outlet pipe(s) shall be wrapped in a tightly woven geotextile to provide additional filtering of suspended sediments prior to discharge.
  - c. Respondents shall install a temporary sediment stockpile area, which will be surrounded by a chain link fence wrapped with a tightly woven geotextile (Super Silt) to prevent the sediments from being remobilized on the facility site. This Super Silt chain link fence will meet the standards set forth in the MDE ESC Manual.
  - d. Respondents shall, within six (6) months of the effective date of this SCD, apply for the relevant permits needed in order to perform the work outlined in Section III.C.1 of this SCD. These may include but are not necessarily limited to:
    - i. Storm Water, Erosion, and Sediment Control Permits from the City of Baltimore;
    - ii. Construction Permits from the City of Baltimore;
    - iii. NPDES Permits for Construction Activities from the MDE;

- iv. Waterway Construction Permits from the MDE;
  - v. Critical Areas Permits from the Critical Areas Commission;
  - e. Respondents shall, within 1 year of the effective date of this SCD, begin construction on the structures necessary to complete this SEP;
  - f. Should Respondents need more time to either apply for the relevant permits needed to complete this SEP or to begin construction on the structures necessary to complete this SEP, they should include an explanation of the cause for delay and a description of actions taken to mitigate the delay in their status report(s) along with a revised schedule for EPA approval in accordance with Section IV.A of this SCD.
  - g. Respondents shall retain "licensed contractors," as defined in Section III.C.2.d, in order to plan and design this SEP. Respondents shall retain "licensed contractors" to assist in obtaining permitting approval from the various required authorities.
2. Respondents shall use their own employees or else only "licensed contractors," as defined in Section III.C.2.d, to implement the SEP as fully described herein:
- a. Respondents shall not use their own employees to complete the SEP unless their work occurs separate from their "normal work," as defined in Section III.C.2.b, for Respondents. Respondents must keep clear records indicating specific hours and tasks which their employees worked apart from their "normal work."
  - b. The term "normal work" shall mean labor performed by an employee of the Respondents that would be completed regardless of the existence of the labor provided by this SEP.
  - c. Where the SEP Completion Report includes labor not eligible for SEP credit, such costs will be deemed ineligible for SEP credit and will be taken into account when assessing penalties as outlined in Section V of this SCD;
  - d. The term "licensed contractor" shall mean an individual who is licensed by State of Maryland to perform the necessary tasks to implement the SEP in each respective jurisdiction;

- e. Respondents shall provide EPA with the name, address, and telephone number of each "licensed contractor" it proposes to use for the SEP implementation and documentation that each "licensed contractor" satisfies the requirements described in Section III.C.2.f of this SCD. No later than thirty days after entering into a contract with any "licensed contractor" concerning performance of any of the SEP tasks, Respondents shall provide EPA with a copy of such contract;
  - f. At a minimum, each "licensed contractor" selected by Respondents to perform any task to implement the SEP shall have no less than 3 years experience in performing the tasks and have a trained and experienced staff for the performance of such tasks.
3. Respondent shall spend approximately \$ 59,000.00 in total with regard to the construction of improved storm water inlets in addition to a portion of the \$56,000.00 reserved for permitting, design, and other costs on this SEP. The \$59,000.00 shall not include any expenditure made by Respondents or Respondents' "licensed contractors" to come into compliance with applicable federal, state and local laws, regulations or requirements concerning the Clean Water Act or any other federal statute.

#### **IV. REPORTS, DOCUMENTATION AND NOTIFICATION**

##### **A. Status Reports**

1. Beginning on the 15<sup>th</sup> day of the 3<sup>rd</sup> full calendar month after the effective date of the CAFO and this SCD, and every three (3) months thereafter, Respondents shall submit to EPA status reports regarding their performance of the SEPs. Such status reports shall continue to be submitted for the SEPs until the SEPs Completion Report is approved by EPA in accordance with Sections IV.B and IV.C of this SCD.
2. Each status report shall contain the following information for all of the SEPs: a) a description of the work completed; b) a revised schedule, if necessary, and a description of all remaining activities scheduled for the following reporting period; c) a description of any problems and/or delays recently encountered or anticipated to occur in the future; d) a description of any actions taken to prevent or mitigate such problems and (if applicable) a proposed modified completion schedule; and (e) a copy of any and all documents and reports developed by Respondents or Respondents' contractors pertaining to the performance of the completed tasks listed in Section III of this SCD.

B. SEPs Completion Report

1. Respondents shall provide to EPA a SEPs Completion Report no later than 24 months from the effective date of the CAFO and this SCD. The SEPs Completion Report shall contain the following:
  - a. A detailed description of the SEPs as implemented describing how the SEPs have fulfilled all of the requirements described herein and in Section III of this SCD;
  - b. A copy of any and all documents and reports developed by Respondents or Respondents' contractors not previously submitted to EPA as part of the requirements in Section IV.A of this SCD;
  - c. An itemization of costs incurred in implementing the SEPs. Where the SEPs Completion Report includes costs not eligible for SEP credit, such costs must be clearly identified in the SEP Completion Report as ineligible for SEP credit. For purposes of this paragraph, "acceptable documentation" for itemizing "SEP eligible costs" includes invoices, purchase orders, canceled checks, or other documentation that specifically identifies and itemizes the eligible costs of the goods for which payment is being made by Respondents;
  - d. Certification, in accordance with Section VIII of this SCD, that the SEPs have been fully implemented in accordance with the provisions of this SCD;
  - e. Certification, in accordance with Section VIII of this SCD, that, as of the date of the SEPs Completion Report, Respondents were not required to perform or develop the SEPs by any federal, state, or local law or regulation, nor were Respondents required to perform or develop the SEPs by agreement, grant, or as injunctive relief award in any other action in any forum; and
  - f. A general description of the environmental and public health benefits resulting from the implementation of the SEPs.
2. Respondents shall maintain for inspection by EPA the original records pertaining to the costs incurred and expenditures made for implementing the SEPs, such as purchase orders, receipts, and/or canceled checks, for a period of one year following EPA's issuance of a "Letter of Remittance Upon Satisfaction of Settlement Conditions" as provided by Section VII of this SCD. Respondents

shall also maintain non-financial records, such as work orders and work reports, documenting the actual implementation of the SEPs for a period of one year following EPA's issuance of a Letter of Remittance Upon Satisfaction of Settlement Conditions, as provided by Section VII of this SCD.

C. EPA Review of the SEPs Completion Report

1. Following EPA's receipt from Respondents of the SEPs Completion Report, EPA will:
  - a. Issue a written notification to Respondents accepting the SEPs Completion Report; or
  - b. Issue a written notification to Respondents rejecting the SEPs Completion Report, identifying the deficiencies in the SEPs Completion Report and granting Respondents thirty (30) days from receipt of such notice to correct any deficiencies. In the event Respondents fail to correct the identified deficiencies within the time allowed, EPA will issue a written notice of disapproval and may seek additional penalties in accordance with Section V of this SCD.
2. If EPA issues a written notice of disapproval rejecting the SEPs Completion Report, EPA shall grant Respondents the opportunity to object in writing to such notification of disapproval within twenty (20) days of receipt of EPA's notification. EPA and Respondents shall have an additional thirty (30) days from the date of receipt by EPA of the Respondents' objection to resolve and reach an agreement on the matter in dispute. If an agreement cannot be reached within thirty (30) days, EPA shall provide to Respondents a written statement of its decision including the rationale for that decision.
3. In the event EPA determines after the expiration of the aforesaid thirty (30) day period, that the SEPs have not been completed as specified in Section III of this SCD, or has issued a written notice of disapproval for which a timely objection has not been filed by Respondents as provided in Section IV.C.2 of this SCD, additional penalties shall be due and payable by Respondents to EPA in accordance with Section V of this SCD. The submission of an unacceptable SEP Completion Report shall be the equivalent of the failure to perform the SEPs for purposes of the additional penalty provisions set forth in Section V of this SCD, except that the calculation of any such additional penalties shall not run during the thirty (30) day period set forth herein, but shall instead run from the date on which Respondents receive EPA's statement of decision pursuant to Section IV.C.2 of this SCD, or, in the event that Respondents have not filed a timely objection to an

EPA notice of disapproval, the date following the day of expiration of the 30-day Dispute Resolution period.

D. Notification and Reporting

1. Except as otherwise specified herein, whenever this SCD requires notice or submission of reports, information, or documents, such notice or submission shall be provided to the following contacts via certified mail, return receipt requested, first class mail, overnight mail (Express or priority), hand-delivery or any reliable commercial delivery service:

For EPA:

Garth Connor (3EC10)  
Office of Enforcement, Compliance and Environmental Justice  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA, 19103-2029

For Respondents:

J. Willis Smith and Brother, Inc.  
A. Smith and Sons Shipyard  
6211 Pennington Avenue  
Baltimore, Maryland 21226

2. Either party may substitute another contact to receive notice on its behalf or change the address to which notices are to be sent by sending written notification of the substitution or change to the other party.

V. **FAILURE TO COMPLETE SATISFACTORILY THE SEPS/FAILURE TO SPEND AGREED UPON AMOUNTS/DELAY IN PERFORMANCE**

- A. Respondents estimate they will spend approximately \$48,000.00 to complete the site stabilization SEP, \$14,000.00 to complete the vegetative cover SEP, \$59,000.00 to complete the storm water inlets SEP, and \$50,000.00 on permitting, design and other costs associated with all of the aforementioned SEPs. Respondents may increase or reduce the expenditures for any of the SEPs but the total expenditure by Respondents for the entire project shall not be less than \$171,000.00. In the event that Respondents fail to comply with any of the terms or provisions of this SCD relating to the performance of the SEPs as described in Sections III and IV of this SCD or if the actual expenditure for the SEPs does not equal or exceed \$171,000.00, Respondents shall be liable for additional penalties of up to, but not exceeding, \$71,250.00, as provided below:

1. If the SEPs have not been satisfactorily completed and documented pursuant to Sections III and IV of this SCD, Respondents shall pay a stipulated penalty to the United States in the amount of \$71,250.00.
  2. If the SEPs have been satisfactorily completed and documented pursuant to Sections III and IV of this SCD and the Respondents certify that at least 90% of the amount of money which was required to be spent was expended on the SEPs (90% of \$171,000.00 is \$153,900.00), Respondents shall not pay any additional penalty.
  3. If the SEPs have been satisfactorily completed and documented pursuant to Sections III and IV of this SCD but the Respondents spend less than 90% of the amount of money required to be spent on the SEPs, Respondents shall pay a stipulated penalty to the United States in the amount of \$7,125.00.
- B. If Respondents fail to complete the SEPs or submit the SEPs Completion Report, within 24 months after the effective date of this SCD, or within the additional time constraints granted by EPA under Section IV of this SCD, Respondents shall pay an additional penalty of \$500 for each day beyond the deadline established for completion and submission of the SEPs Completion Report that the SEPs remain uncompleted and/or the SEPs Completion Report remains outstanding. Except as provided in Section V.D of this SCD, such penalty shall continue to accrue until the completion of the SEPs and the submission of the SEPs Completion Report.
- C. In exercising its discretion or making determinations under this SCD, EPA shall be reasonable considering all of the relevant circumstances. However, all determinations required to be made by EPA under this SCD, including the determination of whether the SEPs have been completed satisfactorily, shall be in the sole discretion of EPA. Notwithstanding any other provisions of this SCD, no action or decision by EPA pursuant to this SCD shall constitute final agency action giving rise to any right to judicial review prior to EPA's initiation of judicial action to compel compliance with this SCD or the accompanying CAFO.
- D. Except as specified in Section IV.C.3 of this SCD, additional penalties as set forth in Section V.B of this SCD shall begin to accrue on the first day of non-compliance with the specified deadline and shall continue to accrue through the final day of the completion of the activity, or until the limits stated in Section V.A of this SCD are reached. In no event shall the total of all additional monetary penalties exceed \$71,250. Respondents shall pay any additional penalties within thirty (30) days of receipt of a written demand from EPA for such penalties. The method of payment for any additional penalties as provided herein shall be in accordance with the requirements for the payment of the civil penalty addressed in the attached CAFO.



## **VI. FORCE MAJEURE**

- A. If any event occurs which causes or may cause a delay in the completion of the SEPs as required under this SCD, Respondents shall notify EPA in writing within 15 days of said event or within 15 days of the date on which Respondents knew or reasonably should have known of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondents to prevent or minimize the delay, and the timetable by which those measures will be implemented. Respondents shall exercise due diligence to avoid or minimize any such delay. Failure by Respondents to comply with the notice requirements of this Section shall render this Section void and of no effect as to the particular incident involved and constitute a waiver of the Respondents' right to request an extension of its obligation under this SCD based on such incident.
- B. If the parties agree that the delay or anticipated delay in complying with this SCD has been or will be caused by circumstances entirely beyond the control of Respondents which could not or cannot be overcome by due diligence (i.e., a "force majeure"), the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate in writing to such extension of time.
- C. In the event that EPA does not agree that a delay in achieving compliance with the requirements of this SCD has been or will be caused by a force majeure, EPA, in its sole discretion, will notify Respondents in writing of its decision. Such a delay shall not be the basis for any extension of time for the performance of Respondents' obligations under this SCD and Respondents may be subject to the payment of additional penalties for such a delay.
- D. The burden of proving that any delay is caused by a force majeure shall rest with Respondents. Increased costs or expenses associated with the implementation of actions required by this SCD shall not, in any event, be a basis for changes in this SCD or extensions of time, hereunder.

**VII. SATISFACTION OF SETTLEMENT CONDITIONS**

- A. A determination of compliance with the conditions set forth herein will be based upon, *inter alia*, copies of records and reports submitted by Respondents to EPA under this SCD and any inspections of the work performed under the SEPs that EPA reasonably determines are necessary to evaluate compliance.
- B. If EPA determines that Respondents have complied fully with the conditions set forth herein, EPA, through the Regional Administrator of U.S. EPA Region III, or his designee, shall promptly issue a Letter of Remittance Upon Satisfaction of Settlement Conditions, which shall state that Respondents have performed fully the conditions set forth in this SCD and paid all penalty amounts due pursuant to the terms of this SCD and the CAFO.

**VIII. CERTIFICATION REQUIREMENT**

Any notice, report, certification, data presentation or other document submitted by Respondents pursuant to this SCD that discusses, describes, demonstrates or supports any finding, or makes any representation concerning either Respondents' compliance or non-compliance with any requirement(s) of this SCD, shall be certified by the Respondents as follows:

I certify that the information contained in or accompanying this [type of submission] is true, accurate and complete. As to [the/those] identified portions of this [type of submission] for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that this [type of submission] and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person/persons who manage the system, or the person/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 fines and imprisonment for knowing violations.

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**IX. INSPECTION**

EPA or authorized representatives of EPA may, at reasonable times during business hours and after giving Respondents reasonable notice, enter Respondents' facility to inspect documents, equipment and structures related to compliance with the terms of this SCD. This right of entry is in addition to, and in no way limits, any other rights that EPA may have under any law or regulation.

**X. CLAIM OF CONFIDENTIALITY**

Pursuant to 40 C.F.R. § 2.203, Respondents may submit a claim of confidentiality for any document or information submitted under this SCD or under the attached CAFO. Failure to make a confidentiality claim at the time the document is submitted shall constitute a waiver of such claim. Respondents shall not assert a claim of confidentiality with respect to any sampling, monitoring or analytical data.

FOR RESPONDENTS:

J. WILLIS SMITH AND BROTHER, INC.

Oct 26, 2010  
Date

Jerry Smith  
Jerry Smith  
President

A. SMITH AND SONS SHIPYARD

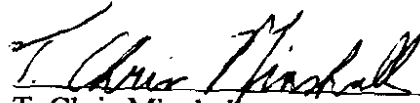
Oct 26, 2010  
Date

Jerry Smith  
Jerry Smith  
President


FOR COMPLAINANT:

U.S. ENVIRONMENTAL PROTECTION AGENCY - REGION III

11/1/2010  
Date

  
\_\_\_\_\_  
T. Chris Minshall  
Assistant Regional Counsel

11/2/2010  
Date

  
\_\_\_\_\_  
Samantha Phillips Beers, Director  
Office of Enforcement, Compliance and  
Environmental Justice