

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103**



In the Matter of: :
 :
 :
TPWR Developer, LLC : **U.S. EPA Docket No. CWA-03-2024-0069**
CBG Building Company LLC :
Bowman Consulting DC, : **Proceeding under Section 309(g) of**
 : **the Clean Water Act, 33 U.S.C. § 1319(g)**

Respondents, :
 :
 :
The Parks at Walter Reed :
6900 Georgia Avenue NW :
Washington D.C., 20012 :
 :
 :
Facility. :

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3 (“Complainant”) and TPWR Developer, LLC (“TPWR”), CBG Building Company LLC (“CBG”), and Bowman Consulting DC (“Bowman”), (“Respondents”) (collectively the “Parties”), pursuant to Section 309(g) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Section 309(g) of the CWA, 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”) resolve Complainant’s civil penalty claims against Respondents under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), 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).

GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondents admit the jurisdictional allegations set forth in this Consent Agreement and Final Order.
6. Except as provided in Paragraph 5, above, Respondents neither admit nor deny the specific factual allegations set forth in this Consent Agreement.
7. Respondents agree not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.
8. For purposes of this proceeding only, each 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.
9. Respondents consent to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
10. Respondents shall bear their own costs and attorney’s fees in connection with this proceeding.
11. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. 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.

13. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of 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. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), provides for the authorization of state programs to issue NPDES permits.
14. Section 301(a) of the CWA, 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 CWA.
15. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.2 and 122.26 provide that facilities with stormwater discharges associated with industrial activity are “point sources” subject to NPDES permitting requirements under section 402(a) of the CWA, 33 U.S.C. § 1342(a).
16. The term “industrial activity” includes, among others, “construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more...” 40 C.F.R. § 122.26(b)(14)(x).
17. “Pollutant” is defined as “dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, 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).
18. “Discharge of a pollutant” means “[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).
19. “Storm water” is defined as “storm water runoff, snow melt runoff, and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).
20. “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.” 40 C.F.R. § 122.26(b)(14).

21. 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, including certain construction activity, must apply for an individual permit or seek coverage under a general permit.
22. Pursuant to the authority of the CWA, EPA authorizes storm water discharges associated with construction activities under the Construction General Permit (“CGP”).
23. The Construction General Permit is issued for up to 5-year terms and requires facilities that discharge storm water to comply with specific requirements governing storm water discharges associated with construction activities.
24. A violation of the Construction General Permit is also a violation of the CWA and may be subject to penalties established under that statute.
25. The 2017 CGP was issued by EPA, became effective February 16, 2017, and expired at midnight on February 16, 2022.
26. EPA modified the 2017 CGP, with the final modified permit taking effect on June 27, 2019.
27. The 2022 CGP was issued by EPA and became effective February 17, 2022, but was reissued on April 4, 2022 and expires at midnight on February 16, 2027.
28. On the dates set forth in the chart below, Respondents submitted Notices of Intent (“NOI”) for coverage under the 2017 CGP and 2022 CGP (“the CGPs”) for the stormwater discharges associated with their construction activities at The Parks at Walter Reed, located at 6900 Georgia Avenue NW, Washington D.C., 20012 (“Facility”). DOEE approved coverage under the following permit numbers, referred to herein as the “PWR Permits” in Table 1. These PWR Permits allow Respondents to discharge stormwater associated with construction activities from the Facility into the Washington, D.C. Municipal Separate Storm Sewer System (“MS4”), in compliance with specified conditions and limitations set forth in the PWR Permits.

Table 1: Permit Coverage for the stormwater discharges associated with construction activities at 6900 Georgia Avenue NW, Washington D.C., 20012.

PWR PERMIT NO. PERMITEE	AREA	NOI SUBMITTAL DATE	COVERAGE ISSUED	COVERAGE EXPIRATION DATE	CONSTRUCTION STARTED	CONSTRUCTION STATUS	COVERAGE TERMINATED
DCR1000CK TPWR Developer LLC	All land parcels	10/12/2023	10/26/2023	2/16/2027	3/19/2020	ACTIVE	N/A
DCR10007L CBG Building Company LLC	WR Town Center Plaza, 12th St, Dahlia St, Elder St, and land parcel IJ	2/25/2020	Coverage was denied on 2/26/2020		3/19/2020	ACTIVE	N/A
DCR1000AM CBG Building Company LLC		6/9/2022	6/23/2022	2/16/2027			
DCR100090 Bowman Consulting DC	Townhouses at WR, land parcels A-F & G	7/21/2021	8/4/2021	2/16/2022	9/1/2021	ACTIVE	N/A
		Resubmitted 3/21/2022	4/4/2022	2/16/2027			
DCR1000B3 CBG Building Company LLC	Parks at WR, land parcel P	8/31/2022	10/18/2022	2/16/2027	9/29/2021	COMPLETE 6/20/2023	6/21/2023
DCR1000B5 CBG Building Company LLC	Parks at WR, land parcels L, HK, M and N	9/8/2022	10/18/2022	2/16/2027	9/19/2022	INACTIVE, COVERAGE PROVIDED UNDER DCR1000CK	12/14/2023
DCR1000AZ – CBG Building Company LLC	Walter Reed 13th Street NW	8/29/2022	9/12/2022	2/16/2027	6/8/2022	ACTIVE	N/A

29. TPWR is also responsible for compliance with the CWA because TPWR is the master developer engaged in construction activity and is an “owner” and/or “operator” of the Facility, as those terms are described in federal regulations at 40 C.F.R. §§ 122.2.
30. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), EPA retains its authority to take enforcement action within Washington D.C. for NPDES permit violations.
31. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the assessment of administrative penalties against any person who violates any NPDES permit condition or limitation.

32. At all times relevant to the allegations described in this Consent Agreement, TPWR, CBG, and Bowman (“Respondents”) were corporations and as such each was a “person” as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
33. At all times relevant to this Consent Agreement, upon information and belief, Respondents TPWR and CBG were each an “owner” and/or “operator” of the Facility, as those terms are described in federal regulations at 40 C.F.R. §§ 122.2. Respondent Bowman was the engineer for the project, and was responsible for preparing the engineering and for making the applications for certain regulatory permits and approvals, including submission of the NOIs required to seek coverage under the CGPs.
34. At all relevant times relevant to this Consent Agreement, Respondents TPWR and CBG have been engaged in “construction activity” at the Facility that “discharges” “storm water” from a “point source” to the Washington D.C. MS4, as those terms are described in federal regulations at 40 C.F.R. §§ 122.2 and 122.26. The construction activity at the Facility has disturbed or will disturb approximately 60-65 acres of land.
35. Storm water from the Facility discharges into the Washington D.C. MS4, which then flows to Rock Creek and the Rock Creek Watershed. Rock Creek has perennial flow and is a tributary of the Potomac River, which is a traditionally navigable water.
36. On March 23, 2022, representatives of EPA conducted an inspection of the Facility (“Inspection”), where Respondents were conducting construction activities. The EPA Inspection Report and associated attachments were finalized on May 4, 2022.
37. Based on the Inspection, EPA has identified the following violations of the Construction General Permit, and Section 301 of the CWA, 33 U.S.C. § 1311, described in the paragraphs below.

Count I
Discharge Without a Permit

38. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
39. The 2017 CGP introduction provides:

In compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 et. seq., (hereafter CWA), as amended by the Water Quality Act of 1987, P.L. 100-4, “operators” of construction activities (defined in Appendix A) that meet the requirements of Part 1.1 of this National Pollutant Discharge Elimination System (NPDES) general permit, are

authorized to discharge pollutants in accordance with the effluent limitations and conditions set forth herein. Permit coverage is required from the “commencement of construction activities” (see Appendix A) until one of the conditions for terminating CGP coverage has been met (see Part 8.2).

40. The 2022 CGP introduction provides:

In compliance with the provisions of the Clean Water Act, 33 U.S.C. §1251 et. seq., (hereafter CWA), as amended by the Water Quality Act of 1987, P.L. 100-4, “operators” of construction activities (defined in Appendix A) that meet the requirements of Part 1.1 of this National Pollutant Discharge Elimination System (NPDES) Construction General Permit (CGP), are authorized to discharge pollutants in accordance with the effluent limitations and conditions set forth herein. Permit coverage is required from the “commencement of construction activities” (see Appendix A) until one of the conditions for terminating CGP coverage has been met (see Part 8.2).

41. Part 1.4 of the CGPs, pertaining to “Submitting Your Notice of Intent (NOI),” requires:

All “operators” (as defined in Appendix A) associated with your construction site, who meet the Part 1.1 eligibility requirements, and who seek coverage under this permit, must submit to EPA a complete and accurate NOI in accordance with the deadlines in Table 1 prior to commencing construction activities.

42. Based on the United States Department of Agriculture Natural Resources Conservation Service Technical Release 55 titled “Urban Hydrology for Small Watersheds,” for an area that is 85% impervious with a corresponding Soil Conservation Service Runoff Curve Number of 89, runoff will be generated in rain events greater than approximately 0.25 inches of rain.

43. According to the National Oceanic and Atmospheric Administration’s (“NOAA”) National Centers for Environmental Information, precipitation at the NOAA Station named WASHINGTON 5.1 NW, DC US US1DCDC0014 (Latitude/Longitude: 38.958091°, - 77.08173°), located approximately 4.3 miles from the Facility exceeded 0.25” on 226 days between March 19, 2020 and October 26, 2023 as summarized in Table 2 below.

Table 2: Precipitation summary for NOAA Station US1DCDC0014 from March 19, 2020 (start of construction) through October 26, 2023 (date all parcels of land are permitted to discharge stormwater).

Month	Year	Sum of Precipitation (inches)	Total Days Over 0.25 inches Precipitation
March 19 - March 31	2020	1.89	3
April	2020	4.68	5
May	2020	5.47	5
June	2020	8.78	7
July	2020	7.98	6
August	2020	13.2	11
September	2020	7.44	6
October	2020	6.46	6
November	2020	5.7	4
December	2020	7.79	6
January	2021	2.06	3
February	2021	4.13	7
March	2021	4.28	7
April	2021	2.37	3
May	2021	6.61	4
June	2021	7.28	6
July	2021	1.79	3
August	2021	15.94	8
September	2021	5.53	3
October	2021	7.08	4
November	2021	0.26	0
December	2021	3.39	7
January	2022	2.61	3
February	2022	1.91	3
March	2022	4.4	4
April	2022	5.74	4
May	2022	8.96	8
June	2022	13.54	6
July	2022	5.77	6
August	2022	6.69	6
September	2022	5.61	8
October	2022	4.34	5
November	2022	6.75	5

December	2022	5.89	7
January	2023	1.53	2
February	2023	1.81	3
March	2023	5.35	6
April	2023	2.81	3
May	2023	10.53	13
June	2023	4.8	5
July	2023	8.85	6
August	2023	1.52	2
September	2023	8.85	6
October 1 - October 26	2023	0.93	1
TOTAL		249.3	226

44. Upon information and belief, construction activity at the Facility was occurring as of March 19, 2020.
45. Respondent TPWR did not have permit coverage under the CGP from March 19, 2020 through October 26, 2023 for construction activities at the Facility. An NOI was submitted by Respondent TPWR on October 12, 2023 and Permit No. DCR1000CK was issued October 26, 2023. There were unauthorized discharges of stormwater on at least 226 days during the timeframe when Respondent TPWR did not have permit coverage under the CGP for the Facility, based on precipitation data collected at NOAA’s Station named WASHINGTON 5.1 NW, DC US US1DCDC0014 (Latitude/Longitude: 38.958091°, -77.08173°), located approximately 4.3 miles from the Facility.
46. Respondent TPWR’s discharge of stormwater without NPDES permit coverage, as detailed above, constituted a violation of Section 301 of the CWA, 33 U.S.C. § 1311.
47. Construction at the WR Town Center Plaza, 12th St, Dahlia St, Elder St, and land parcel IJ (9.54 acres) was not covered under the CGP from March 19, 2020 through June 23, 2022. An NOI was submitted by Respondent Bowman on February 25, 2020, but Permit No. DCR10007L was denied by EPA on February 26, 2020. Respondent Bowman did not reapply for permit coverage again until June 9, 2022 and Permit No. DCR1000AM was issued on June 23, 2022. There were unauthorized discharges of stormwater on at least 210 days during the timeframe when there was no permit coverage at these parcels, based on precipitation data collected at NOAA’s Station named WASHINGTON 5.1 NW, DC US US1DCDC0014 (Latitude/Longitude: 38.958091°, -77.08173°), located approximately 4.3 miles from the Facility.

48. Respondent CBG's discharge of stormwater without NPDES permit coverage, as detailed above, constituted a violation of Section 301 of the CWA, 33 U.S.C. § 1311.
49. Construction at the Townhouses at WR, and land parcels A-F & G was not covered under the CGP from February 16, 2022 through April 4, 2022. Permit No. DCR100090 was issued on August 4, 2021 and expired on February 16, 2022. The Respondent, Bowman, did not reapply for coverage until March 21, 2022. Coverage under Permit No. DCR100090 was reissued on April 4, 2022. There were unauthorized discharges of stormwater on at least 6 days during the timeframe when there was no permit coverage at these parcels, based on precipitation data collected at NOAA's Station named WASHINGTON 5.1 NW, DC US US1DCDC0014 (Latitude/Longitude: 38.958091°, -77.08173°), located approximately 4.3 miles from the Facility.
50. Respondent CBG's discharge of stormwater without NPDES permit coverage, as detailed above, constituted a violation of Section 301 of the CWA, 33 U.S.C. § 1311.
51. Construction at land parcel P was not covered under the CGP from September 29, 2021 through October 18, 2022. An NOI was submitted by Respondent TPWR on August 31, 2022. Permit No. DCR1000B3 was issued October 18, 2022. There were unauthorized discharges of stormwater on at least 60 days during the timeframe when there was no permit coverage at this parcel, based on precipitation data collected at NOAA's Station named WASHINGTON 5.1 NW, DC US US1DCDC0014 (Latitude/Longitude: 38.958091°, -77.08173°), located approximately 4.3 miles from the Facility.
52. Respondent CBG's discharge of stormwater without NPDES permit coverage, as detailed above, constituted a violation of Section 301 of the CWA, 33 U.S.C. § 1311.
53. Respondent Bowman's failure to submit an NOI that was approved, as detailed above, resulted in violations of Section 301 of the CWA, 33 U.S.C. § 1311.
54. By discharging stormwater without NPDES permit coverage, Respondents TPWR, CBG, and Bowman violated Section 301 of the CWA, 33 U.S.C. § 1311, and are subject to the assessment of penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

CIVIL PENALTY

55. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondents consent to the assessment of a civil penalty in the amount of TWENTY-SEVEN THOUSAND DOLLARS (\$27,000.00), which Respondents shall be jointly and severally liable to pay in accordance with the terms set forth below.

56. The civil penalty is based upon EPA’s consideration of a number of factors, including the penalty criteria (“statutory factors”) set forth in Section 309(g) of the CWA, 33 U.S.C. § 1319(g), including, the following: the nature, circumstances, extent and gravity of the violation(s), and the violator’s ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings 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 EPA’s Interim Clean Water Act Settlement Penalty Policy dated March 1, 1995, which reflects the statutory factors set forth in Section 309(g) of the CWA and 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 EPA’s civil penalty policies to account for inflation.
57. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier’s check, certified check, or electronic wire transfer, in the following manner:
- a. All payments by Respondents shall include reference to Respondents’ names and address, and the Docket Number of this action, *i.e.*, CWA-03-2024-0069;
 - b. All checks shall be made payable to the “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
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000
 - d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>
 - e. A copy of each Respondent’s check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously **by email** to:

Natalie Katz
Senior Assistant Regional Counsel
katz.natalie@epa.gov

and

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

58. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
59. Payment of the civil penalty is due and payable immediately upon the effective date of this Consent Agreement and Final Order. Receipt by each 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 that Respondent in accordance with 40 C.F.R. § 13.9(a).
60. INTEREST: Interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the effective date of this Consent Agreement and Final Order. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the effective date of this Consent Agreement and Final Order. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).
61. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). If payment is not received within 30 calendar days of the effective date of this Consent Agreement, EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
62. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

63. Respondents agree not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.
64. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service (“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 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.” 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 EPA with sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:
 - a. Each 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. Each 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. Each Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at Henderson.Jessica@epa.gov, within 30 days after the Final Order ratifying this Agreement is filed, and EPA recommends encrypting IRS Form W-9 email correspondence; and
 - d. In the event that a 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 EPA’s Cincinnati Finance Center of this fact, via email, within 30 days after the 30 days after the Effective Date of this Order per Paragraph 84; and

- ii. provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

65. In response to the alleged violations of the CWA and in settlement of this matter, although not required by the CWA or any other federal, state or local law, Respondents agree to implement a supplemental environmental project ("SEP"), as described below in Paragraph 66.
66. Respondents shall complete the Hay's Spring Amphipod Habitat Conservation Project, consisting of:
 - a. Closure and restoration of significant social trails in the vicinity of the gullies and washes where the Hay's Spring Amphipod spring habitats are located;
 - b. Restricting public access by fencing and vegetating social trail entrances;
 - c. Raking and de-compacting heavily trafficked trails; and
 - d. Planting trees and plants native to Rock Creek Park within the disturbed social trail footprint to provide stabilization and tree cover.
67. Respondents shall spend no less than FORTY THOUSAND DOLLARS (\$40,000.00) on implementing the SEP. Respondents shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.
68. Respondents shall complete the SEP by November 30, 2024.
69. Use of SEP Implementer and Identification of SEP Recipient
 - a. SEP Implementer - Respondents may use a contractor/consultant to implement the SEP.
 - b. SEP Recipient - Respondents have selected the National Park Service and the Rock Creek Conservancy to receive the SEP.
 - c. EPA had no role in the selection of any SEP implementer, SEP recipient, or specific equipment identified in the SEP, nor shall this Consent Agreement be construed to constitute EPA approval or endorsement of any SEP implementer, SEP recipient, or specific equipment identified in this Consent Agreement.
70. The SEP is consistent with applicable EPA policy and guidelines, specifically EPA's 2015 Update to the 1998 Supplemental Environmental Projects Policy, (March 10, 2015). The

SEP advances at least one of the objectives of the CWA and the Endangered Species Act by improving water quality in Rock Creek and preserving the habitat of the Hays Spring Amphipod, Washington D.C.'s only endangered species. The SEP is not inconsistent with any provision of the CWA. The SEP relates to the alleged violations, and is designed to address the overall risk to public health and/or the environment potentially affected by the alleged violations, by reducing the pollutants in stormwater discharges to Rock Creek.

71. Each Respondent certifies the truth and accuracy of each of the following:
 - a. That all cost information provided to the EPA in connection with the EPA's approval of the SEP is complete and accurate and that the Respondents in good faith estimate that the cost to implement the SEP is \$40,000;
 - b. That, as of the date of executing this Consent Agreement, Respondents are not required to perform or develop the SEP by any federal, state, or local law or regulation and are not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
 - c. That the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Consent Agreement;
 - d. That Respondent has not received and will not have received credit for the SEP in any other enforcement action;
 - e. That Respondent will not receive reimbursement for any portion of the SEP from another person or entity;
 - f. That for federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP; and
 - g. That Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 66.

72. Any public statement, oral or written, in print, film, or other media, made by Respondents or a representative of a Respondent making reference to the SEP under this Consent Agreement from the date of its execution of this Consent Agreement 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 federal laws."

73. SEP Reports.
 - a. Respondents shall submit a SEP Completion Report to EPA within 30 days of completion of the SEP. The SEP Completion Report shall contain the following information, with supporting documentation:
 - i. A detailed description of the SEP as implemented;

- ii. A description of any operating problems encountered and the solutions thereto;
 - iii. Itemized costs;
 - iv. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement; and
 - v. A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).
 - vi. A site map showing what was completed, including a planting plan.
- b. Status Report. If Respondents have not completed the SEP by August 1, 2024, Respondents shall submit a Status Report by August 31, 2024 documenting the milestones completed as of August 1, 2024.
- c. Respondents agree that failure to submit the SEP Completion Report or a Status Report, required by subsection b., above, shall be deemed a violation of this Consent Agreement and Respondents shall become liable for stipulated penalties pursuant to Paragraph 75, below.
- d. Respondents shall submit all notices and reports required by this Consent Agreement to Angela Weisel (weisel.angela@epa.gov) and Natalie Katz (katz.natalie@epa.gov).
- e. In itemizing its costs in the SEP Completion Report, Respondents shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP completion report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, “acceptable documentation” includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.
- f. All Reports submitted to EPA should be accompanied by the following certification signed by a responsible officer, as defined by 40 C.F.R. § 122.22:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties

for submitting false information, including the possibility of fines and imprisonment.

74. EPA acceptance of SEP Report.

- a. After receipt of the SEP Completion Report described in Paragraph 73, above, EPA will notify the Respondents, in writing, regarding:
 - i. Any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondents to correct any deficiencies; or
 - ii. Indicate that EPA concludes that the project has been completed satisfactorily; or
 - iii. Determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 75 herein.
- b. If EPA elects to exercise option (i) above, i.e., if the SEP Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, Respondents may object in writing to the notification of deficiency given pursuant to this Paragraph within ten (10) days of receipt of such notification. EPA and Respondents shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondents, which decision shall be final and binding upon Respondent. Respondents agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CAFO.

75. Stipulated Penalties

- a. Except as provided in Subparagraphs (b) and (c) below, if Respondents fail to satisfactorily complete the requirements regarding the SEP specified in Paragraph 66 by the deadline in Paragraph 68, Respondents agree to pay, in addition to the civil penalty in Paragraph 55, the following per day per violation stipulated penalty for each day the Respondents are late meeting the applicable SEP requirement:
 - i. \$250 per day for days 1 – 30,
 - ii. \$300 per day for days 31 – 60,
 - iii. \$500 per day until the SEP is completed.The determination of whether the SEP has been satisfactorily completed shall be in the sole discretion of EPA.
- b. If Respondents fail to timely submit any SEP reports, such as those referred to in Paragraph 73, in accordance with the timelines set forth in this CAFO,

Respondents agree to the following per day stipulated penalty for each day after the report was due until Respondents submit the report in its entirety:

- i. \$100 per day for days 1 – 30,
 - ii. \$150 per day for days 31 – 60,
 - iii. \$300 per day until the report is submitted.
- c. If Respondents do not spend the minimum \$40,000 on the SEP set forth in Paragraph 67 above, Respondents shall pay a stipulated penalty to the United States in the amount of 150% of the difference between \$40,000 and the amount Respondents have spent on the SEP.
- d. EPA retains the right to waive or reduce a stipulated penalty at its sole discretion.
- e. Respondents shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 57 above. Interest and late charges shall be paid as stated in Paragraphs 60 and 62.
76. The schedule for implementing this SEP may be modified or amended upon the written agreement of all parties. The Regional Judicial Officer need not approve written agreements between the parties modifying the SEP schedules. The Division Director shall have the authority to extend the deadlines for good cause.

GENERAL SETTLEMENT CONDITIONS

77. By signing this Consent Agreement, Respondents acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondents' knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondents.
78. Respondents certify that any information or representation they have supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondents to the EPA regarding matters relevant to this Consent Agreement and Final Order, **including information about each Respondent's ability to pay a penalty**, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Each

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.

79. The Parties consent to service of the Final Order by e-mail at the following valid e-mail addresses: katz.natalie@epa.gov (for Complainant), and Andy.Crane@hines.com (for Respondents).

CERTIFICATION OF COMPLIANCE

80. Each Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

81. Nothing in this Consent Agreement and Final Order shall relieve Respondents of their obligations to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state, or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension, or modification of the requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

82. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondents in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including any Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under the 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

83. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondents and the officers, directors, employees, contractors, successors, agents, and

assigns of each Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of a Respondent is acknowledging that he or she is fully authorized by that Respondent to execute this Consent Agreement and to legally bind that Respondent to the terms and conditions of this Consent Agreement and Final Order.

EFFECTIVE DATE

84. Pursuant to 40 C.F.R. § 22.45(b), this Consent Agreement and Final Order shall be issued only after a 40-day public notice and comment period is concluded. This Consent Agreement and Final Order will become final and effective thirty (30) days after having been signed by the Regional Administrator or his delegate, the Regional Judicial Officer, and filed with the Regional Hearing Clerk.

ENTIRE AGREEMENT

85. 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: TPWR Developer, LLC

Date: _____

By: _____

Name: Katie Wiacek

Title: Managing Director

In the Matter of: TPWR Developer, LLC et al.

EPA Docket No. CWA-03-2024-0069

For Respondent: CBG Building Company LLC

Date: _____

By: _____

Name: Thomas Rumley

Title: Vice President

In the Matter of: TPWR Developer, LLC et al.

EPA Docket No. CWA-03-2024-0069

For Respondent: Bowman Consulting DC

Date: _____

By: _____

Name: Ryan Brannan

Title: Principal

For the Complainant:

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned 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 his/her designee, the Regional Judicial Officer, issue the attached Final Order.

By: _____
[Digital Signature and Date]
Karen Melvin, Director
Enforcement and Compliance Assurance Division
U.S. EPA – Region 3
Complainant

Attorney for Complainant:

By: _____
[Digital Signature and Date]
Natalie L. Katz
Senior Assistant Regional Counsel
U.S. EPA – Region 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103



In the Matter of: :
: :
TPWR Developer, LLC : U.S. EPA Docket No. CWA-03-2024-0069
CBG Building Company LLC :
Bowman Consulting DC, : Proceeding under Section 309(g) of the
: Clean Water Act, 33 U.S.C. § 1319(g)
Respondents, :
: :
The Parks at Walter Reed :
6900 Georgia Avenue NW :
Washington D.C., 20012, :
: :
Facility. :
:

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region 3, and Respondents, TPWR Developer, LLC, CBG Building Company LLC, and Bowman Consulting DC, 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 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA's *Interim Clean Water Act Settlement Penalty Policy*, March 1, 1995, and the statutory factors set forth in Section 309(g)(3) of the Clean Water Act, 22 U.S.C. § 1319(g)(3).

NOW, THEREFORE, PURSUANT TO Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondents pay a civil penalty in the amount of **TWENTY-SEVEN THOUSAND DOLLARS (\$27,000.00)**, 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 signed by the Regional Administrator or his delegate, the Regional Judicial Officer, and filed with the Regional Hearing Clerk.

By: _____
[Digital Signature and Date]
Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA – Region 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103-2029

TPWR Developer, LLC :
CBG Building Company LLC :
Bowman Consulting DC, : U.S. EPA Docket No. CWA-03-2024-0069
 :
Respondents, : Proceeding under Section 309(g) of the
 : Clean Water Act, 33 U.S.C. § 1319(g)
The Parks at Walter Reed :
6900 Georgia Avenue NW :
Washington D.C., 20012, :
 :
Facility. :
 :
 :

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:

Katie Wiacek
Managing Director
TPWR Developer LLC
555 13th Street NW, Suite 400W
Washington, DC 20004
Katie.Wiacek@hines.com

Thomas Rumley
Vice President
CBG Building Company LLC
4401 Fairfax Drive, Suite 800
Arlington, VA 22203
Tommy.Rumley@cbgbc.com

Ryan Brannan
Principal
Bowman Consulting DC
888 17th Street NW, Suite 510
Washington, D.C. 20006
rbrannan@bowman.com

Copies served via email to:

Natalie Katz
Sr. Assistant Regional Counsel
U.S. EPA, Region 3
katz.natalie@epa.gov

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

By: _____
[*Digital Signature and Date*]
Regional Hearing Clerk
U.S. EPA – Region 3