



**JURISDICTION**

3. The U.S. Environmental Protection Agency 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, Respondent admits the jurisdictional allegations set forth in Paragraphs 3 through 4 and 19 through 29 of this Consent Agreement and Final Order.
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
7. Respondent agrees 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, 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. Respondent consents to the assessment of the civil penalty stated herein, and to any conditions specified herein.
10. Each party shall bear its own costs and attorney's fees in connection with this proceeding.
11. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order.

**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 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States, except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.

14. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. sections 122.2 and 122.26 provide that, with some exceptions not relevant here, storm water dischargers are “point sources” subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).
15. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).
16. Storm water discharge associated with small construction activity include stormwater discharged from: “(i) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres...” 40 CFR § 122.26(b)(15).
17. Dischargers of storm water associated with small construction activity must obtain NPDES permit coverage for such discharges. 40 C.F.R. § 122.26(c).
18. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of any pollutant from a point source to the waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.
19. Upon information and belief, Respondent is a limited liability corporation working on building and civil construction in several locations, including the District of Columbia, Virginia and Maryland.
20. Respondent is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
21. At all times relevant to this Consent Agreement, Respondent was the operator of construction activities at a site known as Square 696, located at 88 K Street SE, Washington, DC (“the Site”).
22. The construction activities at the Site disturbed over one acre of land, approximately 2.5 acres.
23. At all times relevant to this Consent Agreement, storm water from the Site discharged to: a) the Anacostia River and b) the municipal separate storm sewer system, as that term is defined at 40 C.F.R. § 122.26(b)(8)(i), located in the District of Columbia (“DC MS4”) and through the DC MS4 to the Anacostia River.
24. The Anacostia River is a “navigable water”, as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7).

25. In accordance with Section 402(a) of the Act, 33 U.S.C. § 1342(a), EPA issued a NPDES General Permit for Discharges from Construction Activities (the "Permit"), which, for construction activities in the District of Columbia, became effective on February 16, 2017 and has remained effective at all times relevant to this Consent Agreement. The Permit authorizes discharges of storm water associated with construction activities, but only in accordance with the conditions of the Permit.
26. Part 1.4 (Submitting Your Notice Of Intent) of the Permit requires an applicant for coverage under the Permit to submit to EPA a complete and accurate Notice of Intent ("NOI") for coverage prior to commencing construction activities.
27. On or about November 8, 2017, Respondent submitted a NOI for coverage under the Permit for discharges from construction activity from the Site.
28. EPA determined that the Facility was eligible for coverage by the Permit, effective on November 22, 2017, under permit number NPDES ID DCR10003C.
29. Upon information and belief, construction activity at the Site began on or about April 1, 2018.
30. At all times relevant this Consent Agreement, Respondent was subject to the requirements of the Permit at the Site.
31. On June 24, 2019, representatives of EPA Region III and EPA contractors from Eastern Research Group (jointly "the Inspection Team") conducted an inspection at the Site (hereinafter, "the Inspection") to evaluate Respondent's compliance with certain portions of the Permit.

**Count I: Failure to Post Notice of Coverage Under the Permit**

32. The information and allegations in the preceding Paragraphs of this Consent Agreement are incorporated herein by reference.
33. Part 1.5 (Requirement To Post A Notice Of Your Permit Coverage) of the Permit provides:

You must post a sign or other notice of your permit coverage at a safe, publicly accessible location in close proximity to the construction site. The notice must be located so that it is visible from the public road that is nearest to the active part of the construction site, and it must use a font large enough to be readily viewed from a public right-of-way.
34. During the Inspection, EPA inspectors observed that Respondent had not posted a notice of coverage under the Permit at the Facility.
35. On June 24, 2019, Respondent's failure to post a sign or other notice of Respondent's permit coverage at a safe, publicly accessible location in close proximity to the

construction site constituted a violation of the Permit and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

**Count II: Failure to Complete Corrective Action Reports**

36. The information and allegations in the preceding Paragraphs of this Consent Agreement are incorporated herein by reference.
37. Part 5.1 (Conditions Triggering Corrective Action) of the Permit requires that the permittee take corrective action to repair or replace stormwater controls in need of maintenance or to install controls which were not installed or installed incorrectly.
38. Part. 5.4 (Corrective Action Report) of the Permit requires that the permittee complete a report for each corrective action identifying the condition requiring action and documenting the actions to address the condition. The permittee must keep a copy of the corrective at the site or easily accessible so that they can be available during an on-site inspection. The permittee must retain all corrective action reports for at least three years after the end of permit coverage.
39. At the time of the Inspection, Respondent did not have any corrective action reports on Site.
40. After the Inspection, Respondent provided a corrective action report for conditions requiring corrective action which were identified at the site during the June 24, 2019 inspections, but did not provide any other corrective action reports.
41. After the Inspection, Respondent also provided several inspection reports from March through June 2019 which identified conditions requiring corrective action, but did not provide corrective action reports addressing those conditions.
42. From at least March 3, 2019 until June 24, 2019, Respondent failed to complete and retain correction action reports, in violation of Part 5.4 of the Permit and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

**Count III: Failure to Keep a SWPPP as Required by the Permit**

43. The information and allegations in the preceding Paragraphs of this Consent Agreement are incorporated herein by reference.
44. Part 7 (Stormwater Pollution Prevention Plan) of the Permit requires the permittee to develop and keep up-to-date a storm water pollution prevention plan (“SWPPP”).
45. Part 7.3 (On-Site Availability of the Your SWPPP) requires that the permittee keep a current copy of the SWPPP at the site or easily accessible so that it can be made available at the time of an on-site inspection

46. The Permit requires that SWPPP must include, among others: (a) documentation that personnel had received training as required in Part 6 of the Permit (Part 7.2.8); and (b) a signed certification as required in Appendix I.11 of the Permit (Part 7.2.10).
47. Part 7.4.1 (SWPPP Modifications) of the Permit requires the permittee to modify the SWPPP whenever the permittee makes changes in the construction plans or the stormwater controls. The permittee must maintain records of the dates of the SWPPP modification and the name of the person authorizing the change. Part 7.4.2 of the Permit.
48. At the time of the Inspection, the Site's SWPPP did not contain any records of employee training.
49. After the Inspection, on July 8, 2019, Respondent provided training records for employees who were responsible for stormwater compliance at the Site.
50. At the time of the Inspection, the Site's SWPPP did not include a signed certification as required by the Permit.
51. After the Inspection, Respondent sent a copy of the signed certification dated July 8, 2019.
52. At the time of the Inspection, the Inspection team observed that erosion and sedimentation controls on the Site differed from the erosion and sedimentation controls specified in the SWPPP.
53. At the time of the Inspection, the Site's SWPPP did not include any amendment or modifications to stormwater controls at the Site.
54. At the time of the Inspection, the SWPPP included a copy of the general permit for discharges from construction activities which EPA issued in 2012 and which expired in 2017, instead of the applicable 2017 Permit.
55. From at least April 1, 2018 until at least June 24, 2019, Respondent failed to keep an up-to-date SWPPP consistent with the requirements of the Permit.
56. Respondent's failure to keep an up-to-date SWPPP consistent with the requirements of the Permit constituted a violation of the Permit and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

**Count IV: Failure to Properly Maintain Stormwater Control**

57. The information and allegations in the preceding Paragraphs of this Consent Agreement are incorporated herein by reference.
58. Part 2.1.4 of the Permit requires the permittee to maintain all stormwater controls and to ensure that the stormwater controls remain in effective operating condition.

59. During the Inspection, the EPA inspectors observed two inlet protections that needed maintenance, as sediment had accumulated around the inlet and there were gaps between the protection and the inlet.
60. On or about June 24, 2019, Respondent failed to properly maintain a stormwater control consisting of inlet protection in violation of Part 1.5 of the Permit and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

**Count V: Failure to Properly Implement Pollution Prevention Controls**

61. The information and allegations in the preceding Paragraphs of this Consent Agreement are incorporated herein by reference.
62. Part 2.3 of the Permit requires the permittee to implement pollution prevention controls to minimize the discharge of pollutants in stormwater.
63. The Permit requires that the permittee keep building materials and products under cover or in a similar effective means designed to minimize discharges of pollutants. Part 2.3.3.a of the Permit.
64. The Permit requires that the permittee store oil, fuel, petroleum products and other chemicals in water-tight containers under cover or in a similar effective means designed to minimize discharges of pollutants. Part 2.3.3.c of the Permit.
65. The Permit requires that the permittee contain construction and domestic wastes in waste containers that are kept closed except during use, and that the permittee clean any overflow of waste immediately. Part 2.3.3.e of the Permit.
66. During the Inspection, the EPA inspectors observed construction debris and waste laying uncovered on the ground.
67. During the Inspection, the EPA inspectors observed small portable gasoline tanks on the ground without any cover or other means to minimize the discharge of pollutants.
68. During the Inspection, the EPA inspectors observed an oil drum adjacent to an inlet without any cover or other means to minimize the discharge of pollutants.
69. On or about June 24, 2019, Respondent failed to properly implement pollution control measures to minimize the discharge of pollutants in violation of Part 2.3 of the Permit and Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

**CIVIL PENALTY**

70. In full settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement and Final Order, Respondent consents to the assessment of a civil

penalty in the amount of Twenty-Six Thousand dollars (\$26,000) which Respondent shall be liable to pay in accordance with the terms set forth below.

71. The civil penalty is based on a number of factors, including the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require, pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g).
72. 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 Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, CWA-03-2021-0002;
- 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 979077  
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 Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously via email to:

Nina Rivera  
Sr. Assistant Regional Counsel  
U.S. EPA, Region III (3RC40)  
1650 Arch Street  
Philadelphia, PA 19103-2029  
Rivera.Nina@epa.gov

73. 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.

74. Payment of the civil penalty is due and payable immediately upon the effective date of this Consent Agreement and Final Order, as defined in Paragraph 85, below. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed as of the effective date of this Consent Agreement and Final Order by Respondent in accordance with 40 C.F.R. § 13.9(a).
75. 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).
76. 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). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case Management*, Chapter 9, EPA will 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.
77. 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).
78. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

#### **GENERAL SETTLEMENT CONDITIONS**

79. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.
80. Respondent certifies that any information or representation it has 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 Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

### **CERTIFICATION OF COMPLIANCE**

81. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, and based on interviews with the personnel at the Site responsible for compliance, that it currently is in compliance at the Site with regard to the violations alleged in this Consent Agreement.

### **OTHER APPLICABLE LAWS**

82. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict 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, or any regulations promulgated thereunder.

### **RESERVATION OF RIGHTS**

83. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. 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**

84. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent

Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

**EFFECTIVE DATE**

85. 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**

86. 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: Clark Construction Group, LLC

Date: 2/17/21

By: David Tacchetti  
David Tacchetti  
Senior Vice President

**For the Complainant:**

After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, 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.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Karen Melvin  
Director, Enforcement and Compliance Division  
U.S. EPA – Region III  
Complainant

**Attorney for Complainant:**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Nina Rivera  
Sr. Assistant Regional Counsel  
U.S. EPA – Region III

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

In the Matter of:	:	
	:	
Clark Construction Group, LLC	:	U.S. EPA Docket No. CWA-03-2021-0002
7500 Old Georgetown Road	:	
Bethesda, MD 20814	:	Proceeding under Section 309(g)
	:	of the Clean Water Act
Respondent.	:	
	:	
Square 696	:	
88 K Street SE	:	
Washington, DC	:	
	:	
Facility.	:	
	:	

**FINAL ORDER**

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondent, Clark Construction Group, LLC, 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 Sections 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 the statutory factors set forth in Section 309(d) of the Clean Water Act ("CWA"), 33 U.S.C. § 1329(d).

**NOW, THEREFORE, PURSUANT TO** Section 309(g) of the CWA, 33 U.S.C. §1329(g), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of **TWENTY-SIX THOUSAND DOLLARS (\$26,000)**, in accordance with the payment provisions set forth in the Consent Agreement, 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 this Final Order is filed with the Regional Hearing Clerk, pursuant to 33 U.S.C. §1319(g)(5).

Date: \_\_\_\_\_

By: \_\_\_\_\_

Joseph J. Lisa  
Regional Judicial and Presiding Officer  
U.S. EPA Region III

