

II. EPA'S ALLEGATIONS OF FACT, JURISDICTIONAL ALLEGATIONS AND CONCLUSIONS OF LAW

3. Respondent has offices at 15020 Shady Grove Road, Suite 500, Rockville, Maryland 20850.
4. During times relevant to this CAFO, Respondent performed construction activities at the St. Elizabeths campus located at 2701 Martin Luther King Boulevard in Washington, DC consisting of an area of approximately 3.06 acres to be disturbed by Respondent ("Site"). Respondent was responsible for the construction and renovation of Buildings 31, 33, 34, 37, and 49 on the St. Elizabeths campus.
5. 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.
6. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.
7. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.2 and 122.26 provide that, with some exceptions, not relevant here, storm water discharges are "point sources" subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).
8. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).
9. "Discharge of a pollutant" includes "any addition of any pollutant or combination of pollutants to waters of the United States from any point source." 40 C.F.R. § 122.2.
10. Respondent is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
11. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA issued an NPDES Construction General Permit which became effective on June 30, 2008 (the "2008 CGP"). Under the 2008 CGP, EPA was the permitting authority for the District of Columbia. The 2008 CGP authorized discharges of storm water associated with construction activities, but only in accordance with the conditions of the 2008 CGP.
12. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA issued a revised CGP effective February 16, 2012 (the "2012 CGP"). Under the 2012 CGP, EPA is the permitting authority for the District of Columbia. The 2012 CGP authorizes discharges

of storm water associated with construction activities, but only in accordance with the conditions of the 2012 CGP.

13. The 2008 CGP and 2012 CGP both require(d) that in order to obtain permit coverage, an applicant must submit to EPA a complete and accurate Notice of Intent (“NOI”) for permit coverage prior to commencing construction activities. 2008 CGP at Section 2.4; 2012 CGP at Section 1.4.
14. Respondent submitted an NOI dated January 13, 2012 for permit coverage under the 2008 CGP and submitted an NOI dated April 11, 2012 for coverage under the 2012 CGP, for construction activities at the Site.
15. EPA determined that the Site was eligible for permit coverage under the 2008 CGP and the 2012 CGP, effective January 20, 2012 and April 26, 2012, respectively. EPA assigned Permit Tracking Numbers DCR10A43F with an expiration date of February 15, 2012 for coverage under the 2008 CGP and DCR12A001 with an expiration date of February 16, 2017 for permit coverage under the 2012 CGP.
16. Pursuant to Part 5 of the 2008 CGP and Part 7 of the 2012 CGP, Respondent prepared a Stormwater Pollution Prevention Plan (“SWPPP”) including an Erosion and Sediment Control Plan (“E & S Plan”) for the Site.
17. Water discharges from the Site flowed into the District of Columbia Municipal Separate Storm Sewer System (“DC MS4”) which discharges into the Anacostia River.
18. The Anacostia River is a “water of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. §§ 232.2 and 122.2.
19. On September 17, 2012, representatives of EPA conducted an inspection of the Site (“EPA Inspection”).
20. On March 21, 2013, EPA prepared a final Clean Water Act Compliance Inspection Report for the Site, including Appendices (“EPA Inspection Report”).
21. Respondent received a copy of the EPA Inspection Report and submitted a response to EPA on April 18, 2013.

Count 1: Failure to Apply for NPDES Permit

22. Section 2.4 of the 2008 CGP requires Respondent to submit to EPA a complete and accurate NOI for permit coverage prior to commencing construction activities.
23. Respondent conducted and documented self-inspections of stormwater controls at the Site starting May 20, 2011, and Respondent’s personnel stated that Respondent began land disturbance activities around August 2011.

24. Respondent did not submit a Notice of Intent (“NOI”) for permit coverage under the 2008 CGP until January 13, 2012, at least seven months after beginning construction at the Site.
25. Respondent did not obtain coverage under the 2008 CGP for the Site until January 20, 2012.
26. Respondent’s failure to submit its NOI prior to commencing construction activities at the Site was a violation of Section 2.4 of the 2008 CGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 2: Failure to Post Notice of NPDES Permit Coverage

27. Section 1.5 of the 2012 CGP requires, among other things, that Respondent post a sign or other notice conspicuously at a safe, publicly accessible location in close proximity to the project site. At a minimum, the notice must include the NPDES Permit tracking number and site contact information.
28. At the time of EPA’s inspection on September 17, 2012, the NPDES Permit tracking number and site contact information was not posted at any of the three entrances to the Site, including Gate 2, which was Respondent’s official construction entrance.
29. Respondent’s failure to comply with the notice posting requirement at the Site, as described above, is a violation Section 1.5 of the 2012 CGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 3: Failure to Install and/or Maintain Perimeter Controls

30. Section 2.1.2.2.a of the Permit requires Respondent to install sediment controls along those perimeter areas that receive stormwater from earth disturbing activities.
31. Section 2.1.1.4 of the 2012 CGP requires Respondent to ensure that all erosion and sediment controls required in this Part remain in effective operating condition during permit coverage and are protected from activities that would reduce their effectiveness.
32. At the time of EPA’s inspection on September 17, 2012, approximately 28 feet of silt fence near the southeast corner of Building 37 next to Redwood Drive was down at the Site. One fence post was lying nearly horizontal on the ground. A second fence post appeared broken and the weathering of the fence post indicated that the break was not recent. A third fence post was still standing, but the filter cloth was not anchored properly and showed fraying.
33. At the time of EPA’s inspection on September 17, 2012, approximately 23 feet of silt fence near the southeast corner of Building 37 next to Redwood Drive at the Site was not entrenched properly to meet the minimum depth in ground as required by Respondent’s Erosion and Sediment Control Plan (“E & S Plan”). The filter cloth was not properly attached to the top of one of the fence posts in this section of silt fence.

34. At the time of EPA's inspection on September 17, 2012, a section of silt fence at the Site near the south side of Building 37 next to Redwood Drive was worn to the point that the filter cloth was in threads along both the top and the bottom of the silt fence. Stormwater flowing off of the Site was able to flow through these worn areas and the filter cloth was no longer able to prevent discharges of sediment from the Site.
35. At the time of EPA's inspection on September 17, 2012, approximately 14 feet of silt fence at the Site was not installed along the south side of Building 37 next to Redwood Drive as required by the E&S Plan.
36. At the time of EPA's inspection on September 17, 2012, approximately 10 feet of silt fence at the Site near the southwest corner of Building 37 next to Redwood Drive was not properly attached to the top of two of the fence posts in this section. The filter cloth was partially on the ground and was not being properly maintained to function effectively.
37. At the time of EPA's inspection on September 17, 2012, approximately 250 feet of silt fence at the Site was not installed along the west and north sides of Building 37 as required by the E & S Plan.
38. Respondent's failure to install and/or maintain perimeter controls at the Site, as described above, was a violation of Sections 2.1.1.4 of the 2012 CGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 4: Failure to Maintain Stockpile

39. Section 2.1.2.4 of the 2012 CGP provides in relevant part that for any stockpiles composed, in whole or in part, of sediment or soil, Respondent must, among other requirements, protect stockpiles from contact with stormwater using temporary perimeter sediment barrier and where practicable, provide cover or appropriate temporary stabilization to avoid direct contact with precipitation or to minimize sediment discharge.
40. At the time of EPA's inspection, EPA inspectors observed a partially covered sand stockpile generated by Respondent near Inlet 199E at the Site. The cover was torn and only covering the bottom portion of the stockpile.
41. Respondent's failure to maintain the stockpile at the Site, as described in paragraph 39 above, is a violation of Section 2.1.2.4 of the 2012 CGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 5: Failure to Conduct and/or Document Inspections

42. Section 4.1.2 of the 2012 CGP, requires that Respondent at a minimum, conduct a site inspection at least once every seven calendar days, or once every 14 calendar days and within 24 hours of the occurrence of a storm event of 0.25 inches or greater.
43. Section 4.1.7.1 of the 2012 CGP requires Respondent to complete an inspection report within 24 hours of completing any site inspection.

44. Respondent failed to conduct and/or document inspections at the Site at the required frequencies during the months between May 2011 and September 2012.
45. Respondent's failure to conduct and/or document Site inspections, as described above, in accordance with the 2012 CGP was a violation of Section, 4.1.2 and 4.1.7 of the 2012 CGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 6: Failure to Install and/or Maintain Inlet Protection in Effective Operating Condition

46. Section 2.1.1.4.a of the 2012 CGP requires Respondent to ensure that all erosion and sediment controls required in this Part remain in effective operating condition during permit coverage and are protected from activities that would reduce their effectiveness.
47. At the time of EPA's inspection on September 17, 2012, at inlet 146L sediment was inside the inlet structure, and the inlet grate was wrapped with filter fabric that was covered in sediment at the Site.
48. At the time of EPA's inspection on September 17, 2012, at inlet 146C at the Site, the inlet grate was wrapped in filter fabric, but the filter fabric was covered in sediment and had worn away in some places.
49. At the time of EPA's inspection on September 17, 2012, at inlet 812A at the Site, filter fabric was around the inlet, but sediment was inside the inlet structure because the filter fabric had a hole and was too far away from the inlet.
50. At the time of EPA's inspection on September 17, 2012, at inlet 812B at the Site, filter fabric was placed around the inlet and the inlet grate was wrapped in filter fabric, but sediment was on the filter fabric and the filter fabric had several holes
51. As described above, Respondent's failure to ensure that all erosion and sediment controls at the Site, including inlet protection, remain in an effective operating condition was a violation of Section 2.1.1.4.a the 2012 CGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Count 7: Failure to Maintain Construction Entrance in Effective Operating Condition

52. Section 2.1.1.4.a of the 2012 CGP requires Respondent to ensure that all erosion and sediment controls required in this Part remain in effective operating condition during permit coverage and are protected from activities that would reduce their effectiveness.
53. Section 2.1.2.3.c of the 2012 CGP requires Respondent to use appropriate stabilization techniques at all points that exit onto paved roads so that sediment removal occurs prior to vehicle exit.
54. Section 7.1.1 of the 2012 CGP requires all operators associated with a construction project to be covered under the 2012 CGP to develop a SWPPP.

55. Section 7.2.10.1 of the 2012 CGP provides that the SWPPP must describe all stormwater control measures that are or will be installed and maintained at the site to meet the requirements of Part 2 of the 2012 CGP and the SWPPP must document information of the type of stormwater control measure to be installed and maintained.
56. Respondent's E & S Plan included as part of its SWPPP, describes the stormwater control measures to be implemented at the Site as required by Section 7 of the 2012 CGP which provides that crushed aggregate or reclaimed or recycled concrete equivalent shall be placed at least six inches deep over the length and width of the entrance.
57. At the time of EPA's inspection on September 17, 2012, sections of the construction entrance at Exit 2 at the Site had no crushed aggregate, or less than six inches of aggregate, and sediment had been tracked out onto Pine Street from Exit 2.
58. Respondent's failure, as described above, to ensure that all erosion and sediment controls, including the construction entrance at Exit 2 at the Site, remain in effective operating condition was a violation of Section 2.1.1.4.a of the 2012 CGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

III. GENERAL PROVISIONS

59. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law set forth in Section II, above.
60. Respondent waives any defenses it might have as to jurisdiction and venue.
61. Respondent admits the jurisdictional allegations in the CAFO and agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.
62. Respondent consents to the terms of this CAFO without taking any testimony and without any adjudication of issues of fact or law herein.
63. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consents to issuance of this CAFO without adjudication.
64. Respondent and Complainant shall each bear their own costs and attorney fees.
65. The provisions of this CAFO shall be binding upon the parties, including, but not limited to, Respondent, its officers, principals, directors, successors and assigns.
66. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.

67. 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 and Final Order prior to its issuance.

IV. CIVIL PENALTY

68. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the alleged violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the alleged 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), EPA HEREBY ORDERS AND Respondent HEREBY CONSENTS to pay a civil penalty in the amount of Thirty-Seven Thousand Five Hundred Dollars (\$37,500) within thirty (30) days of the effective date of this CAFO in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.

69. Respondent shall pay the civil penalty amount of Thirty-Seven Thousand Five Hundred Dollars (\$37,500) plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 70 and 71, below, by either cashier's check, certified check, or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action;
- 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 to:

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

Primary Contact: Craig Steffen, (513) 487-2091
Secondary Contact: Molly Williams, (513) 487-2076

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

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Primary Contact: Craig Steffen, (513) 487-2091
Secondary Contact: Molly Williams, (513) 487-2076

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 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”

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

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: John Schmid, (202) 874-7026

Remittance Express (REX): (866) 234-5681

h. On-Line Payment Option:

WWW.PAY.GOV/paygov/

Enter **sfo 1.1** in the search field. Open and complete the form.

i. Additional payment guidance is available at:

<http://www2.epa.gov/financial/makepayment>

j. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CAFO.

A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

Judith Hykel
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC20)
1650 Arch Street
Philadelphia, PA 19103-2029

and

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

70. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

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 or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of the fully executed CAFO is mailed or hand-delivered to Respondents which shall be no sooner than the effective date. However, EPA will not seek to recover interest on any amount of the 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).

The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which 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).

71. The penalty specified above represents civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

V. APPLICABLE LAWS

72. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251 *et seq.*, or any regulations promulgated thereunder.

VI. RESERVATION OF RIGHTS

73. This Consent Agreement and Final Order resolves only the civil claims for the specific violations alleged herein. 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. 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. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. §§ 301 *et seq.*, 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.
74. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO, if the EPA obtains evidence that the information and/or representations of the Respondent are false. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.

VII. PARTIES BOUND

75. This CAFO shall apply to and be binding upon the EPA and Respondent. The undersigned representative of Respondent certifies that he/she is fully authorized by the

party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

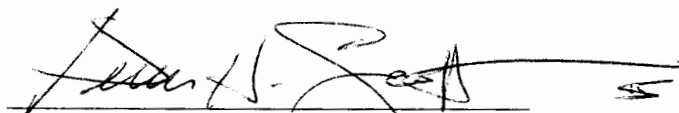
VIII. ENTIRE AGREEMENT

76. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

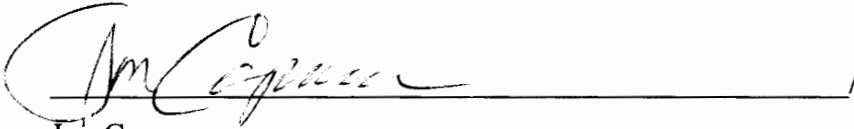
IX. EFFECTIVE DATE

77. Pursuant to 40 C.F.R. § 22.45, this CAFO shall be issued after a 40-day public notice period has concluded. This CAFO will become final thirty (30) days after issuance, 33 U.S.C. § 1319(g)(4), and will become effective on that same date, 40 C.F.R. § 22.31(b).

FOR RESPONDENT, GRUNLEY CONSTRUCTION COMPANY, INC.

By: 
Name: Bill Scott (CHR)
Title: Senior Vice President
Date: 4/22/15

It is so Ordered:

A handwritten signature in cursive script, appearing to read "Jon Capacasa", is written over a horizontal line.

Jon Capacasa
Director, Water Protection Division