

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**Region III**

**1650 Arch Street**

**Philadelphia, Pennsylvania 19103-2029**

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In The Matter of	)	
	)	
WCS Construction, LLC	)	
William C. Smith & Co., and	)	
880 New Jersey Avenue, LLC,	)	Proceeding to Assess Class II Penalty
1100 New Jersey Avenue, SE	)	Under Section 309(g) of the Clean Water
Suite 1000	)	Act, 33 U.S.C. § 1319(g)
Washington, D.C. 20003,	)	
	)	
Respondents.	)	Docket No.: CWA-03-2015-0112
	)	
Property Located at:	)	
880 New Jersey Avenue, SE	)	<b>ADMINISTRATIVE PENALTY</b>
Washington, D.C. 20003	)	<b>COMPLAINT AND NOTICE OF</b>
	)	<b>OPPORTUNITY TO REQUEST</b>
	)	<b>HEARING</b>

**I. STATUTORY AUTHORITY**

1. Pursuant to Section 309(g) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency (“EPA”) is authorized to assess administrative penalties against persons who violate Section 301(a) of the Act, 33 U.S.C. § 1311(a). The Administrator of EPA has delegated this authority to the Regional Administrator of EPA, Region III, who in turn has delegated this authority to the Director, Water Protection Division (“Complainant”).
2. Pursuant to Section 309 of the Act, 33 U.S.C. § 1319, and in accordance with the enclosed *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits; Final Rule*, 40 C.F.R. Part 22 (hereinafter, Part 22 Procedural Rules), Complainant hereby proposes to assess a civil penalty in the amount of \$47,000 (Forty-seven thousand dollars) against 880 New Jersey Avenue, LLC, WCS Construction, LLC, and William C. Smith & Co. (collectively “Respondents”) for violation(s) of Section 301 of the CWA, 33 U.S.C. § 1311.

## **II. STATUTORY AND REGULATORY BACKGROUND**

3. 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.
4. Section 402 of the Act, 33 U.S.C. § 1342, 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, or may authorize states to issue such permits. The discharges are subject to specific terms and conditions as prescribed in the permit. EPA is the permitting authority for the District of Columbia.
5. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.1 and 122.26 provide that facilities with storm water discharges associated with industrial activity are “point sources” subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).
6. The term “industrial activity” includes, among others, small construction activity, defined as: “[c]onstruction 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 C.F.R. § 122.26(b)(15)(i).
7. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).
8. Owners and/or operators who discharge storm water associated with construction activities to waters of the United States must do so only in compliance with a NPDES permit.

## **III. FACTUAL AND LEGAL ALLEGATIONS**

9. Respondents 880 New Jersey Avenue, LLC, William C. Smith & Co., and WCS Construction, LLC are “persons” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
10. On all relevant dates, Respondents have owned and/or operated a construction project at 880 New Jersey Avenue, SE, in Washington, DC (the “Site”).

11. Discharges of storm water from the Site flow into the Washington, DC municipal separate storm sewer system and from there to the Anacostia River.
12. The Anacostia River is a “water of the United States” as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.
13. 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 (“2008 Construction General Permit”). The 2008 Construction General Permit, effective within the District of Columbia, authorized discharges of storm water associated with construction activities, but only in accordance with the conditions of the permit. The 2008 Construction General Permit expired February 15, 2012.
14. 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 February 16, 2012 (“2012 Construction General Permit”). The 2012 Construction General Permit, effective within the District of Columbia, authorized discharges of storm water associated with construction activities, but only in accordance with the conditions of the permit.
15. The 2008 Construction General Permit (Section 2.4) required, and the 2012 Construction General Permit (Section 1.4) requires that, for storm water discharges from construction activity to be covered, an applicant must submit to EPA a complete and accurate Notice of Intent for coverage prior to commencing construction activities. The 2012 Construction General Permit requires that, for discharges from existing projects (i.e., for purposes of this action, a project where construction commenced prior to February 16, 2012), a Notice of Intent for coverage under the 2012 Construction General Permit must be submitted no later than May 16, 2012.
16. On January 30, 2012, Respondents submitted a Notice of Intent Form (NOI) to be covered under the 2008 Construction General Permit for storm water discharges associated with small construction activity at the Site.
17. The NOI provided an estimated project start date of April 30, 2012. The NOI also stated that a Storm Water Pollution Prevention Plan (SWPPP) had been prepared in advance of the NOI’s submission. The NOI estimated that approximately 1.34 acres would be disturbed.
18. On January 30, 2012, EPA notified Respondents that coverage for discharges at the Site under the 2008 Construction General Permit would become effective February 6, 2012 and assigned an NPDES Permit No. DCR10A983.
19. On information and belief, no NOI for coverage of discharges of storm water associated with construction at the Site under the 2012 Construction General Permit was submitted until November 6, 2012.

20. On September 19, 2012, a compliance inspection team comprised of EPA and its duly authorized representatives inspected the Site (EPA Inspection).
21. At the time of the EPA Inspection, construction of a commercial redevelopment project consisting of more than one acre of earth disturbing activity was underway at the Site. At the time of the EPA Inspection, earth disturbance activities at the Site consisted primarily of construction of five shafts as part of a deep sewer relocation. Shaft construction involved the excavation of four (4) 40-foot diameter pits to a depth of approximately 80 feet. Soils removed from the pits were being stored in stockpiles on the Site.
22. The SWPPP presented to EPA's inspectors on-site was dated March 1, 2012 and did not pre-date the NOI as represented in the NOI.
23. Although the NOI was submitted January 30, 2012, and EPA authorized coverage under the 2008 Construction General Permit as of February 6, 2012, on information and belief, commencement of initial groundbreaking and construction actually occurred January 5, 2012.
24. The 2008 Construction General Permit (Section 5.11.B) requires posting of the NOI, location of SWPPP and appropriate contacts at the main entrance. The 2012 Construction General Permit (Section 1.5) required posting of the NPDES Permit No. and appropriate contacts in a conspicuous location visible and readable from the nearest public road. Such information was not posted at the Site at the time of EPA's inspection on September 19, 2012.
25. The 2008 Construction General Permit (Section 3.1.A.3) requires silt fence, vegetated buffer strips, or equivalent controls should be installed at all downslope boundaries. The 2012 Construction General Permit (Section 2.1.2.2) requires sediment controls to be installed along those perimeter areas of the Site that will receive storm water runoff from earth disturbing activities. The permit also requires that sediment be removed before it has accumulated to one-half of the above-ground height of any perimeter control. The SWPPP (Section 2.7) states that silt fence and super silt fence will be installed at the beginning of each project. At the time of EPA's inspection on September 19, 2012, supersilt fence had been installed, but was damaged in two locations. Along the western perimeter adjacent to New Jersey Avenue, SE, 98 linear feet of filter fabric was not fastened to the chain link fence. An additional 25 linear feet of super silt fence was down adjacent to the rumble strips near Shaft No. 5, and an additional 98 linear feet of super silt fence was missing near the site entrance from New Jersey Avenue, SE. The missing and/or damaged silt fence created a potential point where construction-related storm water could exit the facility and enter the MS4 system and then travel to the Anacostia River.
26. Section 3.1.B of the the 2008 Construction General Permit and Section 2.1.2.3 of the 2012 Construction General Permit require the permittee must to minimize track-out of sediment from vehicles exiting the construction site onto off-site streets and other

paved areas. The SWPPP (Section 2.9) states that the entrance shall prevent tracking or flow of mud offsite. EPA inspectors observed that the stone in each track out area was filled with sediment and therefore no longer performing the function of minimizing track out of sediment off the facility.

27. Section 2.1.2.4 of the 2012 Construction General Permit requires that stockpiles be stabilized and protected from contact with storm water runoff. On September 19, 2012, EPA inspectors observed a large (approximately 180 feet long, 60 feet wide), unstabilized soil stockpile at the site. On information and belief, that stockpile had existed since April 2012. This stockpile was not covered and was not protected from wet weather events and wind erosion. Smaller stockpiles, including one near the construction of Shaft No. 4 also were observed. On information and belief, these smaller stockpiles were not covered or protected from wet weather events or wind erosion.
28. The SWPPP (Section 2.6) states that storm drain inlet protection will be installed at the beginning of the project and should be inspected immediately after each rainfall and daily during prolonged rainfall and that repairs should be made immediately and sediment deposits removed after each storm event. The 2012 Construction General Permit (Section 2.1.2.9) requires protection of storm drain inlets. On September 19, 2012, EPA inspectors observed straw bales placed along the security fence at the unused entrance at I Street and 2<sup>nd</sup> Street, SE in an area of concentrated flow. Another straw bale was placed in front of the storm drain inlet at the corner of 2<sup>nd</sup> Street and I Street. The straw bales were not effective in preventing sediment from reaching the storm drain inlet.
29. According to Section 2.1.3.4 of the 2012 Construction General Permit, ground water or accumulated storm water may not be discharged unless first managed by appropriate controls, including but not limited to, sediment basins, sediment traps, etc. The SWPPP (Section 2.3) states that dewatering of each boring pit will be placed as necessary during each manhole installation and directed to the existing retention pond. On September 19, 2012, EPA inspectors observed a shallow depression in the north end of the soil stockpile area being used to collect groundwater being pumped from Shaft No. 5. The depression was not designed according to specifications for sediment basins outlined in Section 2.1.3.2 of the 2012 Construction General Permit.
30. Section 2.3.3.4 of the 2012 Construction General Permit requires that there must be an effective means of eliminating discharge of water from the washout and cleanout of stucco paint, concrete, etc. Section 3.3 of the SWPPP states that stabilized construction entrance with wash rack will be constructed and designated at the beginning of construction. Section 3.1 of the SWPPP provides for appropriate disposal of construction waste. On information and belief, the permittee washed out concrete trucks onto the ground near the wash rack without using a designated concrete washout pit. In addition, on September 19, 2012, EPA inspectors observed hardened concrete piles at the washout location that were not being removed, recycled and/or disposed of with other construction waste.

31. On information and belief, storm water inspections were not conducted as required by Part 4 of the 2008 Construction General Permit, Sections 4.1.2 and 4.1.7 of the 2012 Construction General Permit or Sections 2.1, 2.6, 2.7, 2.8, 2.9, 3.1, 3.2, and 3.4 of the SWPPP.
32. On information and belief, corrective action reports as required by Section 4.H.9 of the 2008 Construction General Permit and Section 5.4 of the 2012 Construction General Permit were not properly filled out.
33. The SWPPP has not been modified to reflect changes in personnel and storm water control measures as required by Section 5.10 of the 2008 Construction General Permit and Sections 7.2.1 and 7.4 of the 2012 Construction General Permit.

### **III. FINDINGS OF VIOLATIONS**

#### **Discharge without a Permit**

34. The allegations in Paragraphs 1-33 are incorporated as if repeated and reasserted.
35. Between January 5, 2012 and February 6, 2012, Respondents discharged storm water associated with construction activity without authorization and has violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).
36. Between May 16, 2012 and November 6, 2012, Respondents discharged storm water associated with construction activity without authorization and has violated Section 301(a) of the Act, 33 U.S.C. § 1311(a). Alternatively, between February 6, 2012 and September 19, 2012, Respondents discharged storm water associated with construction activity and failed to comply with its NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

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

37. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461, and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective January 12, 2009), violations that are assessed penalties under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), subject the violator to civil penalties in an amount not to exceed \$ 16,000 per day of violation, in an amount not to exceed \$177,500 per proceeding for violations that occurred between January 12, 2009 and December 6, 2013, and \$187,500 per proceeding for violations that occurred after December 6, 2013.
38. Based upon the foregoing allegations, and pursuant to the authority of Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and in accordance with the Part

22 Procedural Rules, Complainant hereby proposes to issue a Final Order Assessing Administrative Penalties to the Respondents in the amount of \$47,000 (Forty-seven thousand dollars) for the violations alleged herein. This does not constitute a “demand” as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

39. The proposed penalty was determined after taking into account the nature, circumstances, extent and gravity of the violation, Respondents’ prior compliance history, ability to pay the penalty, the degree of culpability for the cited violations, and any economic benefit or savings to Respondents because of the violations. 33 U.S.C. § 1319(g)(3). In addition, to the extent that facts or circumstances unknown to Complainant or EPA at the time of issuance of this Complaint become known after issuance of this Complaint, such facts or circumstances may also be considered as a basis for adjusting the proposed administrative penalty.
40. EPA may issue the Final Order Assessing Administrative Penalties after a thirty (30) day comment period unless Respondents either respond to the allegations in the Complaint and request a hearing according to the terms of Section V, below, or pays the civil penalty in accordance with Section VI herein (Quick Resolution).
41. If warranted, EPA may adjust the proposed civil penalty assessed in this Complaint. In so doing, the Agency will consider a number of factors in making this adjustment, including Respondents’ ability to pay. However, the burden of raising the issue of an inability to pay and demonstrating this fact rests with the Respondent.
42. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, shall affect Respondents’ continuing obligation to comply with the Clean Water Act, any other Federal or State laws, and/or with any separate Compliance Order issued under Section 309 of the Act, 33 U.S.C. § 1319, for the violations alleged herein.

#### **V. SETTLEMENT CONFERENCE**

43. EPA encourages settlement of proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the CWA. Whether or not a hearing is requested, the Respondents may request a settlement conference to discuss the allegations of the Complaint and the amount of the proposed civil penalty. However, a request for a settlement conference does not relieve the Respondents of the responsibility to file a timely Answer to the Complaint.
44. If you wish to arrange a settlement conference or if you have any questions related to this proceeding, please contact the attorney assigned to this case, as indicated in Section VI, following your receipt of this Complaint.
45. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a

Final Order signed by the Regional Administrator or his designee. The execution of such a Consent Agreement shall constitute a waiver of Respondents' right to contest the allegations of the Complaint or to appeal the Final Order accompanying the Consent Agreement.

**VI. ANSWER TO COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST HEARING**

46. Pursuant to Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), Respondents may request a hearing on the proposed civil penalty within thirty (30) days of receiving this Complaint in accordance with the procedures contained in 40 C.F.R. Part 22. At the hearing, Respondents may contest any material fact contained in Section III, above ("Findings of Violations") and the appropriateness of the penalty amount proposed in Section IV ("Proposed Civil Penalty").
47. If Respondents request a hearing on this proposed penalty assessment, members of the public to whom EPA is obligated to give notice of this proposed action and a reasonable opportunity to comment pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), who have commented upon the proposed penalty assessment, will have an opportunity, pursuant to Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment.
48. If Respondents do not request a hearing, EPA will issue a Final Order Assessing Administrative Penalties, and only members of the public who submit timely comments on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon. 33 U.S.C. § 1319(g)(4)(C). EPA will grant the petition and will hold a hearing if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.
49. If Respondents wish to avoid being found in default, Respondents must file a written Answer to this Complaint and any request for hearing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region III, within thirty (30) days of service of this Complaint.
50. Any Answer must clearly and directly admit, deny, and/or explain each of the factual allegations contained in the Complaint with respect to which the Respondents have any knowledge, or clearly and directly state that the Respondents have no knowledge as to particular factual allegations in the Complaint. Where Respondents have no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The Answer shall also indicate the following:
  - a. Specific factual and legal circumstances or arguments which are alleged to constitute any grounds of defense;



- b. Specific facts that Respondents dispute;
- c. Respondents' basis for opposing the proposed penalty; and
- d. Whether Respondents request a hearing.

**Failure to admit, deny or explain any of the factual allegations in the Complaint constitutes admission of the such allegations.**

51. Any Answer to this Complaint, and any Request for Hearing, must be filed within thirty (30) days of receiving this Complaint with the following:

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

52. Copies of the Answer and any Request for Hearing, along with any and all other documents filed in this action, shall also be sent to the following:

Stefania D. Shamet, Esq.  
Senior Assistant Regional Counsel (3RC20)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Ms. Shamet may be reached by telephone at (215) 814-2682 and by facsimile at (215) 814-2603.

53. Failure to file an Answer within thirty (30) days of service of this Complaint may result in issuance of a default order against Respondents. Default by the Respondents constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondents' right to contest such factual allegations. Upon issuance of a default order, the civil penalty proposed herein shall become due and payable without further proceedings thirty (30) days after the default becomes final. Respondents' failure to pay the entire penalty assessed by the default order by its due date will result in a civil action to collect the assessed penalty, plus interest, attorney's fees, costs, and an additional quarterly nonpayment penalty pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9). In addition, a default penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.
54. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will begin to accrue on any

unpaid amount if it is not paid within thirty (30) calendar days of Respondent's receipt of notice of filing of an approved copy of an Order assessing Administrative Penalties with the Regional Hearing Clerk. Interest will be assessed at a rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts, based on either actual or average cost incurred, will be charged on all debts. 40 C.F.R. § 13.11(b). In addition, a penalty will be assessed on any portion of the debt that remains delinquent more than ninety (90) calendar days after payment is due. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge of the debt be required, it will be assessed as of the first day payment is due pursuant to 4. C.F.R. § 102.13(e). Furthermore, pursuant to EPA Resources Management Directives System, Chapter 9, EPA will assess a \$15.00 handling charge for administrative costs on unpaid penalties for the first 30-day period after a payment is due and an additional \$15.00 for each subsequent 30 days the penalty remains unpaid.

## **VI. QUICK RESOLUTION**

55. If Respondent does not contest the findings and assessments set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18 and this paragraph. No such payment may be made until ten (10) days after the close of the public comment period provided for under 40 C.F.R. § 22.45. If Respondent elects to resolve this action by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18, no answer need be filed, provided that Respondent files, within thirty (30) days after service of the Complaint, a statement pursuant to 40 C.F.R. § 22.18(a)(2) agreeing to pay the proposed penalty in full. Upon receipt of such a statement from Respondent, but no sooner than ten (10) days after close of the public comment period and subject to any comments received, Complainant will cause a final order to be issued. 40 C.F.R. 22.18(a)(3); 22.31. If Respondent files a statement pursuant to 40 C.F.R. § 22.18(a)(2), Respondent shall pay the penalty no sooner than ten (10) days after the close of the public comment period and no later than sixty (60) days after receipt of the Complaint.
56. If Respondents wishes to file a statement pursuant to 40 C.F.R. § 22.18(a)(2), agreeing to pay the proposed penalty in full, such statement shall be filed with the following:

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

and a copy shall be provided to:

Stefania D. Shamet, Esq.  
Senior Assistant Regional Counsel (3RC20)  
U.S. EPA, Region III

1650 Arch Street  
Philadelphia, PA 19103-2029

Payment of the penalty shall be made by one of the following methods below.  
Payment by Respondents shall reference Respondents' name and address, and the  
EPA Docket Number of this Complaint.

Payment by check to "United States Treasury"

- a. If sent via first-class mail, to:  
U.S. Environmental Protection Agency  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000
  
- b. If sent via Federal Express or common carrier:  
U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
314-418-1028

Via ACH (Automated Clearing House) for receiving U.S. currency, sent to:

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking  
Finance Center Contacts:  
1) Jesse White: 301-887-6548  
2) John Schmid: 202-874-7026  
3) REX (Remittance Express) 866-234-5681

Via wire transfer, sent to:

Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Attn: "D 68010727 Environmental Protection Agency"

At the same time payment is made, copies of the check and/or proof of payment via wire transfer or ACH shall be mailed to:

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

and to:

Stefania D. Shamet, Esq. (3RC20)  
Senior Assistant Regional Counsel  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029.

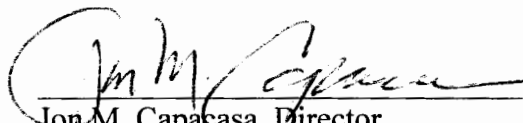
Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing in this matter.

**VII. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS**

57. The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region III Office of Regional Counsel, the Region III Water Protection Division, the Office of the EPA Assistant Administrator for the Office of Water, and the EPA Assistant Administrator for Enforcement and Compliance Assurance. From the date of this Complaint until the final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Part 22 Procedural Rules prohibit any unilateral discussion or *ex parte* communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer after issuance of a Complaint.

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

3/24/15



Jon M. Capacasa, Director  
Water Protection Division  
U.S. Environmental Protection  
Agency, Region III

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused the foregoing Administrative Penalty Complaint and Notice of Opportunity to Request a Hearing in *In re WCS Construction, LLC, William C. Smith & Company, and 880 New Jersey Avenue, LLC* Docket No. CWA-03-2015-0112 to be served in the following manner:

By Hand (Original and one copy):

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region III 3RC00  
1650 Arch Street  
Philadelphia, PA, 19103

By United Parcel Service:

Mr. Bradley Fennell  
Registered Agent for:  
880 New Jersey Avenue, LLC, WCS Construction, LLC  
& William C. Smith & Co.  
1100 New Jersey Avenue, SE  
Suite 1000  
Washington, DC 20003

Dated: 3-30-15

  
Stefania D. Shamet

