

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:

Proceeding to Assess Class I  
Administrative Penalty Under  
Section 309(g) of the Clean Water Act

Arlington County  
2100 Clarendon Boulevard  
Suite 900  
Arlington, Virginia 22201

Docket No. CWA-03-2016-0137

Respondent

**CONSENT AGREEMENT AND  
FINAL ORDER**

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**CONSENT AGREEMENT**

**I. STATUTORY AND REGULATORY BACKGROUND**

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, *id.* § 1311(a). The Administrator 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. This Consent Agreement is entered into by the Complainant and Arlington County ("Respondent"), pursuant to Section 309(g) of the CWA and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22.

3. The Consolidated Rules, at 40 C.F.R. § 22.13(b) provide in pertinent part that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). Pursuant thereto, this Consent Agreement and Final Order ("CAFO") simultaneously commences and concludes this administrative proceeding against Respondent.

4. Section 309(g)(2)(A) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(A), authorizes the assessment of administrative penalties against any person who violates any

NPDES permit condition or limitation in an amount not to exceed \$10,000 per violation, up to a total penalty amount of \$25,000.

5. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), any person who has violated any NPDES permit condition or limitation after January 12, 2009 is liable for an administrative penalty not to exceed \$16,000 per violation, up to a total penalty amount of \$37,500.

6. 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. In addition, pursuant to Section 309(g)(1), EPA has consulted with the Virginia Department of Environmental Quality (“VADEQ”) regarding this action.

7. 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.

8. 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. Section 402(b) of the Act provides for the authorization of state programs to issue NPDES permits.

9. EPA authorized the Commonwealth of Virginia to issue NPDES permits in 1975 pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b).

10. In 2009, and again in 2014, pursuant to 4 VAC 50-60 (later renumbered as 9 VAC 25-870), Virginia promulgated a General Permit for Stormwater Discharges from Construction Activities (the “General Permit”).

11. 9 VAC 25-880-50(1)(a) requires that any person proposing a new stormwater discharge from construction activities submit a complete and accurate registration statement to the Virginia Stormwater Management Program authority prior to the commencement of land disturbance.

12. 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 stormwater 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).

13. The term “industrial activity” includes, among others, “[c]onstruction 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).

14. “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.

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).

## **II. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS AND CONCLUSIONS OF LAW**

16. Respondent is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

17. At all times relevant to this CAFO, Respondent was the owner of the following sites at which construction activity occurred: Columbia Pike Wakefield – FMR; Fire Logistics Center – Arlington Trade Center; Pentagon City Multi-Modal; Jennie Dean Park; and Crystal Drive and 12<sup>th</sup> Street.

18. Columbia Pike Wakefield – FMR, Fire Logistics Center – Arlington Trade Center, and Jennie Dean Park all discharge stormwater to Four Mile Run. Four Mile Run flows into the Potomac River. The Potomac River is a “navigable water,” as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), as well as a “water of the United States,” as defined in 40 C.F.R. 122.2. Four Mile Run is therefore a “water of the United States” and a “navigable water”.

19. Pentagon City Multi-Modal and Crystal Drive and 12<sup>th</sup> Street both discharge stormwater to Roaches Run. Roaches Run flows into the Potomac River. The Potomac River is a “navigable water,” as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), as well as a “water of the United States,” as defined in 40 C.F.R. 122.2. Roaches Run is therefore a “water of the United States” and a “navigable water”.

20. The following table shows the dates on which construction activities were commenced at each site, as well as the dates that VADEQ received a registration statement from Respondent for coverage under the General Permit:

<b>Construction Site</b>	<b>Construction Start Date</b>	<b>General Permit Application Received Date</b>
Columbia Pike Wakefield - FMR	June 1, 2012	May 8, 2013
Fire Logistics Center – Arlington Trade Center	December 15, 2010	May 20, 2013
Pentagon City Multi-Modal	March 1, 2012	May 8, 2013
Jennie Dean Park	October 24, 2012	May 20, 2013
Crystal Drive and 12 <sup>th</sup> Street	May 1, 2012	May 8, 2013

21. Respondent’s failure to submit a registration statement to VADEQ for coverage under the General Permit prior to commencing construction activities at each site, as shown in the table above, is in violation of 9 VAC 25-880-50(1)(a) and Section 301 of the Act, 33 U.S.C. § 1311.

### **III. GENERAL PROVISIONS**

22. For the purpose of this proceeding, Respondent admits the jurisdictional allegations set forth in this CAFO.

23. Respondent neither admits nor denies the Findings of Fact set forth in this CAFO.

24. Respondent waives any defenses it might have as to jurisdiction and venue, its right to contest the allegations through hearing or otherwise; and its right to appeal the proposed final order accompanying the Consent Agreement.

25. Respondent agrees not to contest EPA’s jurisdiction to issue and enforce this CAFO.

26. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter and consents to issuance of this CAFO without adjudication.

27. Respondent shall bear its own costs and attorney fees.

28. The provisions of this CAFO shall be binding upon Respondent, its officers, principals, directors, successors and assigns.

29. 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.

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

30. In full and final settlement of the Complainant's claims for civil penalties for the alleged violations identified herein, Respondent consents to the assessment of, and agrees to pay, in accordance with the terms set forth herein, the total administrative civil penalty of three thousand dollars (\$3,000) within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c).

31. The civil penalty amount set forth in Paragraph 30, above, 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).

32. Respondent shall pay the civil penalty amount described in Paragraph 30, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 32 through 37, 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/](http://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:

Mark Bolender  
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

33. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest on outstanding debts owed to the United States. Accordingly, Respondent's failure to make timely payment as specified herein shall result in the assessment of interest.

34. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. 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).

35. 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).

36. The penalty specified in Paragraph 30 shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

#### **V. APPLICABLE LAWS**

37. 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**

38. This CAFO 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 and 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.

39. Entry of this CAFO is a final settlement of all violations alleged in this CAFO. 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 EPA obtains evidence that the information and/or representations of the Respondent are false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, EPA may have under law or equity in such event.

#### **VII. FULL AND FINAL SATISFACTION**

40. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for the violations alleged in this consent agreement. Compliance with the requirements and provisions of this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and/or regulations administered by EPA.



### **VIII. PARTIES BOUND**

41. This CAFO shall apply to and be binding upon the EPA, Respondent and Respondent's officers, employees, agents, successors and assigns. The undersigned representative of Respondent certifies that he or 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.

### **IX. EFFECTIVE DATE**

42. Pursuant to 40 C.F.R. § 22.45(b), this CAFO shall be issued after a 40-day public notice period is concluded. This CAFO will become final and effective thirty (30) days after it is filed with the Regional Hearing Clerk, pursuant to Section 309(g)(5) of the Act, 33 U.S.C. § 1319(g)(5), or until a public comment process pursuant to 40 C.F.R. § 22.45(b) is concluded.

**X. ENTIRE AGREEMENT**

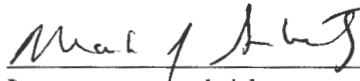
43. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

**XI. FINAL ORDER**

FOR RESPONDENT,

ARLINGTON COUNTY:

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

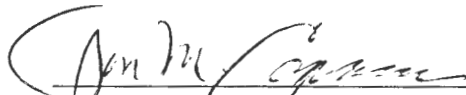
 5/19/16  
Insert name and title  
MARK J. SCHWARTZ  
COUNTY MANAGER

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION III

SO ORDERED, pursuant to 33 U.S.C. 1319(g), and 40 C.F.R. Part 22,

this \_\_\_\_\_ day of \_\_\_\_\_, 2016

Date: 8/25/2016

  
Jon M. Capacasa, Director  
Water Protection Division