

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III
Four Penn Center – 1600 John F. Kennedy Blvd.
Philadelphia, Pennsylvania 19103-2852



In the Matter of: :
 :
Schell Outer Banks LLC, Schell Brothers LLC, and David G. Horsey & Sons, Inc. : **U.S. EPA Docket No. CWA-03-2023-0114**
 :
 : **Proceeding under Section 309(g)(2)(A) of the**
 : **Clean Water Act, 33 U.S.C. § 1319(g)(2)(A)**
Respondents. :
 :
32.59-Acre Residential Development Site :
Jimtown Road and Robinsonville Road :
City of Lewes, DE, 19958 :
 :
 :
Site. :

I. PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Schell Outer Banks LLC (Developer and Owner), Schell Brothers LLC (Parent Company) (collectively “Schell”) and David G. Horsey & Sons, Inc.(Site Contractor) (collectively “Respondents”) (collectively Respondents and Complainant are the “Parties”), pursuant to Section 309(g) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Section 309(g) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(g), authorizes the Administrator of the U.S. Environmental Protection Agency (“EPA”) to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order (jointly referred to as the “Consent Agreement and Final Order”) resolve Complainant’s civil penalty claims against Respondents under Section 309 of the CWA, 33 U.S.C. § 1319 for the violations alleged herein.
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

II. JURISDICTION

3. EPA has jurisdiction over the above-captioned matter, as described above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.50 in assessing Class I penalties under Sections 309(g).
5. Pursuant to Section 309(g)(1)(A), EPA has consulted with the State of Delaware Department of Natural Resources and Environmental Control (DNREC) regarding this action and, subsequent to the Effective Date, EPA will mail a copy of this fully executed Consent Agreement and Final Order to the appropriate DNREC representative.

III. GENERAL PROVISIONS

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

IV. STATUTORY AND REGULATORY BACKGROUND

13. Section 301(a) of the CWA, 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 CWA, 33 U.S.C. § 1342.

14. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA, or a state upon approval by 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.
15. Pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), EPA authorized DNREC to issue NPDES permits in the State of Delaware.
16. Section 402(p) of the CWA, 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 CWA, 33 U.S.C. § 1342(a).
17. "Pollutant" is defined as "dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water." 40 C.F.R. § 122.2. See also 33 U.S.C. § 1362(6).
18. "Discharge of a pollutant" means "[a]ny addition of any 'pollutant' or combination of pollutants to 'waters of the United States' from any 'point source.'" 40 C.F.R. § 122.2. See also 33 U.S.C. § 1362(12).
19. 40 C.F.R. § 122.26(b)(13) defines the term "Stormwater" as "storm water runoff, snow melt runoff, and surface runoff and drainage."
20. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), Delaware issued an NPDES Construction General Permit (DE0051268) which became Effective on March 11, 2021 (the "Permit").
21. On October 6, 2020, Schell Outer Banks LLC., filed a Notice of Intent ("NOI") for coverage prior to commencement of construction activities, and the subject site was subject to the Permit the entire time of Respondents' construction activities.
22. According to the NOI, the Site is located in the City of Lewes in Sussex County, Delaware (the "Site"). The Site is an approximately 32.59-acre residential development site located at the intersection of Jimtown Road and Robinsonville Road. The Site disturbed acreage was listed as 22.57-acres.
23. Pursuant to its authority under the CWA and the NPDES program approval, Delaware approved coverage to Respondents for discharges from the construction site under General NPDES Permit DE0051268, effective March 11, 2021, through March 10, 2026.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

24. 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.

25. Each Respondent is a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
26. At all times relevant herein, Respondents have owned or operated the Site, which included conveyances that discharge to waters of the United States.
27. At all times, relevant to this Consent Agreement and Final Order, the Respondents have discharged stormwater from the construction site to Goslee Creek and Love Creek which flow to Rehoboth Bay.
28. Goslee Creek, Love Creek and Rehoboth Bay are "water[s] of the United States" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
29. On May 24, 2021, representatives of EPA Region III and Sussex County Conservation District ("Inspection Team"), conducted an inspection of the Site (the "Inspection") to assess compliance with the Permit. By email dated July 15, 2021, EPA issued the Inspection Report, dated July 15, 2021, to Schell Outer Banks, LLC.
30. On May 4, 2022, EPA sent a Notice of Potential Violations and Opportunity to Confer letter ("NOPVOC" letter) to Schell Outer Banks, LLC, summarizing certain alleged violations of the CWA and the Permit observed during the Inspection.
31. In response to the NOPVC letter Respondents entered into negotiations with EPA.
32. Section E.1 of the Permit, Sediment and Stormwater Management Plan requires an approval of a Sediment and Stormwater Management Plan ("Plans"), compliance with the approved Plans, and Section D of the Permit requires compliance with federal effluent limitations at 40 CFR § 450.21. It states: "Sediment and Stormwater Management Plan. The Plan shall cover all site activities from the date of initiation of construction activity to the date of project completion. Pollution prevention measures, in accordance with the Delaware ESC Handbook standard and specifications for Construction Site Waste Management and Spill Control, shall be incorporated into the Plan for construction activity..."
33. The Plans for the Site were approved by the Sussex Conservation District on August 23, 2019.
34. The General Notes Section of the Permit requires "All erosion and sediment control practices shall comply with the Delaware Erosion and Sediment Control Handbook, latest edition" (the "Handbook").

Count I
Failure to Properly Store Materials

35. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.

36. Part D.4.3.a of the Permit requires that “[a]ll waste materials shall be collected and stored in securely lidded dumpsters in a location that does not drain to a waterbody”
37. At the time of the Inspection, two 5-gallon buckets containing an unknown substance were stored outside with no lid or protection from precipitation and discarded construction materials strewn across the ground in various sections of the Site, in violation of Part D.4.3.a of the Permit.
38. By failing to comply with Part D.4.3.a. of the Permit, Respondents failed to comply with the terms and conditions of the Permit and, therefore, violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342. Respondents are therefore subject to assessment of penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count II
Failure to Properly Conduct Concrete Washout

39. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
40. Part D.4.4.e of the Permit requires that “[w]ashout from concrete trucks shall be disposed of in a designated concrete washout area for hardening and proper disposal.”
41. Section 3.6.2-1 of the Handbook, concerning design criteria for concrete washout area requires that “[s]igns should be placed designating the facility and throughout the construction site to direct traffic to its location.”
42. At the time of Inspection, a white staining demonstrating concrete washout was observed on the roadway draining to a protected inlet. A washout was on-site during the Inspection, but it lacked the required signage called for in the Handbook.
43. By failing to comply with Part D.4.4.e. of the Permit, Respondents failed to comply with the terms and conditions of the Permit and, therefore, violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342. Respondents are therefore subject to assessment of penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count III
Failure to Cleanup Leaks and Spills

44. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
45. Part D.4.5.k.vi. of the Permit requires that Respondents “[c]lean up all leaks. Promptly dispose of waste and spent clean up materials.”
46. At the time of Inspection, black staining was observed on the roadway that is indicative of leaking equipment that was not cleaned, in violation of Part D.4.5.k.vi

of the Permit.

47. By failing to comply with Part D.4.5.k.vi of the Permit, Respondents failed to comply with the terms and conditions of the Permit and, therefore, violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342. Respondents are therefore subject to assessment of penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count IV
Failure to Install Silt Fencing around Stockpiles

48. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
49. Part D.1.5.b. of the Permit requires the Respondents to: “Install a sediment barrier (e.g., berms, dikes, fiber rolls, compost logs, silt fences, or sandbags) along all down gradient perimeter areas.”
50. During the Inspection, EPA identified locations where silt fencing was not installed around the perimeter of certain stockpiles, in violation of Part D.1.5.b of the Permit.
51. By failing to comply with Part D.1.5.b of the Permit, Respondents failed to comply with the terms and conditions of the Permit and, therefore, violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342. Respondents are therefore subject to assessment of penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Count V
Failure to Repair Silt Fencing

52. The information and allegations in the preceding paragraphs of this Consent Agreement are incorporated herein by reference.
53. Section 3.1.2-2 of the Handbook, concerning design criteria for silt fences requires that “[r]epairs should be made immediately.”
54. Detail DE-ESC-3.1.2.1 of the Sediment and Stormwater Management Plan states “[m]aintenance shall be performed as needed...”
55. Section 3.1.2-1 Detail Sheet of the Handbook and Detail 3.1.2.1 of the Sediment and Stormwater Management Plan, requires silt fence to “[e]mbed fabric minimum 8” vertically into ground.”
56. As noted above, the Handbook and the Sediment and Stormwater Management Plan are incorporated into the Permit.
57. The Inspection identified that silt fencing was undermined, ripped, down, improperly removed and required cleanout. There was also a section of silt fencing where the fabric was not touching the ground allowing flows offsite and into a wetland, all in violation of the above referenced section of the Handbook

and Sediment and Stormwater Management Plan.

58. By failing to comply with the Handbook and the Sediment and Stormwater Management Plan, which were incorporated into the Permit, Respondents failed to comply with the terms and conditions of the Permit and, therefore, violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342. Respondents are therefore subject to assessment of penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

VI. CIVIL PENALTY

59. In settlement of Complainant's claims for civil penalties for the violations alleged in this Consent Agreement, Respondents consent to the assessment of a civil penalty in the amount of seventeen thousand dollars (\$17,000), which Respondents shall be liable to pay in accordance with the terms set forth below.
60. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 309(g), 33 U.S.C. § 1319(g), including, the following: the seriousness of the violation or violations; the economic benefit (if any) resulting from the violation; any history of such violations; any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's Interim Clean Water Act Settlement Penalty Policy dated March 1, 1995, and EPA's Supplemental Guidance to the Interim Clean Water Act Settlement Policy for Violations of Construction Stormwater Requirements, dated February 5, 2008 which reflects the statutory penalty criteria and factors set forth at Section 309(g), 33U.S.C. § 1319(g), and the appropriate Adjustment of Civil Monetary Penalties for Inflation, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.
61. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check, or electronic wire transfer, in the following manner:
 - a. All payments by Respondents shall include reference to Respondents' name and address, and the Docket Number of this action, *i.e.*, CWA-03-2023-0114;
 - b. All checks shall be made payable to the "United States Treasury";
 - c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000

- d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>

- e. A copy of Respondents' check or other documentation of payment of the penalty using the method selected by Respondents for payment shall be sent simultaneously **by email** to:

Douglas Frankenthaler
Assistant Regional Counsel
frankenthaler.douglas@epa.gov

and

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

62. 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, Respondents' 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.
63. Payment of the civil penalty is due and payable immediately upon the effective date of this Consent Agreement and Final Order. Receipt by Respondents or Respondents' legal counsel of such copy of the fully executed CAFO, 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 in accordance with 40 C.F.R. §13.9(a).
64. 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).

65. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). If payment is not received within 30 calendar days of the effective date of this Consent Agreement, EPA will 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.
66. 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).
67. Respondents agree not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.
68. The Parties consent to service of the Final Order by e-mail at the following valid e-mail addresses: Frankenthaler.douglas@epa.gov (for Complainant), and whetzel@rlf.com, micha@rlf.com and bobbydgh@aol.com (for Respondents).

VII. GENERAL SETTLEMENT CONDITIONS

69. By signing this Consent Agreement, Respondents acknowledge 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 Respondents.
70. Each Respondent certifies that, to its knowledge, 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 Respondents to the EPA regarding matters relevant to this Consent Agreement and Final Order, including information about Respondents' ability to pay a penalty, are in any material respect, false or inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Each Respondent and its officers, directors, and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

VIII. CERTIFICATION OF COMPLIANCE

71. Respondents certify to EPA, upon personal investigation and to the best of its knowledge and belief that each is currently in compliance with regard to the violations alleged in

this Consent Agreement.

IX. OTHER APPLICABLE LAWS

72. Nothing in this Consent Agreement and Final Order shall relieve each 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.

X. RESERVATION OF RIGHTS

73. This Consent Agreement and Final Order resolves only EPA’s claim for civil penalties for the specific violations, alleged against Respondents in this Consent Agreement and Final Order. EPA reserves the right to commence action against any person, including each 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.

XI. EXECUTION/PARTIES BOUND

74. This Consent Agreement and Final Order shall apply to and be binding upon the EPA, the Respondents and the officers, directors, employees, contractors, successors, agents and assigns of Respondents. By his or her signature below, the person who signs this Consent Agreement on behalf of each Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind the Respondent to the terms and conditions of this Consent Agreement and Final Order.

XII. EFFECTIVE DATE

75. 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.

XIII. ENTIRE AGREEMENT

70. 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 Respondents

Schell Brothers, LLC

Date: 8/21/2023

By: 
Jon Horner, Esq.
General Counsel

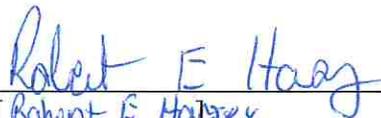
Schell Outer Banks, LLC

Date: 8/21/2023

By: 
Jon Horner, Esq.
General Counsel

David G. Horsey & Sons, Inc.

Date: 8/17/2023

By: 
[Robert E Horsey
owner]

For the Complainant:

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

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

Attorney for Complainant:

By: _____
[Digital Signature and Date]
Douglas Frankenthaler
Assistant Regional Counsel
U.S. EPA – Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III
Four Penn Center – 1600 John F. Kennedy Blvd.
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Respondents. :
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32.59-Acre Residential Development Site :
Jimtown Road and Robinsonville Road :
City of Lewes, DE, 19958 :
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Site. :

FINAL ORDER

Complainant, the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III, and Respondents, Schell Outer Banks LLC (Developer and Owner), Schell Brothers LLC (Parent Company) (collectively “Schell”) and David G. Horsey & Sons, Inc. (Site Contractor) (collectively “Respondents”), have executed a document entitled “Consent Agreement,” which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, EPA’s *Interim Clean Water Act Settlement Penalty Policy*, March 1, 1995, and EPA’s Supplemental Guidance to the Interim Clean Water Act Settlement Policy for Violations of Construction Stormwater Requirements, dated February 5, 2008 and the statutory factors set forth in Section 309(g)(3) of the Clean Water Act, 33 U.S.C. § 1319(g)(3).

NOW, THEREFORE, PURSUANT TO Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondents pay a civil penalty in the amount of **SEVENTEEN THOUSAND DOLLARS (\$17,000.00)**, in accordance with the payment provisions set forth in the Consent Agreement and in 40 C.F.R. § 22.31(c), and comply with the terms and conditions of the Consent Agreement.

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent’s obligation to comply with all applicable provisions of the Clean Water Act and the regulations promulgated thereunder.

The Effective Date of the attached Consent Agreement and this Final Order is thirty (30) days after the date on which this Final Order is signed by the Regional Administrator or his delegate, the Regional Judicial Officer, and filed with the Regional Hearing Clerk.

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

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CERTIFICATE OF SERVICE

I certify that the foregoing *Consent Agreement and Final Order* was filed with the EPA Region III Regional Hearing Clerk on the date that has been electronically stamped on the *Consent Agreement and Final Order*. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email to:

Robert Whetzel
Richards, Layton and Finger
One Rodney Square, 920 North King Street
Wilmington, DE 19801
whetzel@rlf.com.com

Philip Micha
Richards, Layton and Finger
One Rodney Square, 920 North King Street
Wilmington, DE 19801
micha@rlf.com

Copies served via email to:

Douglas Frankenthaler
Assistant Regional Counsel
U.S. EPA, Region III
frankenthaler.douglas@epa.gov

Peter Gold
Environmental Inspector
U.S. EPA, Region III
gold.peter@epa.gov

By: _____
[Digital Signature and Date]

In Re: Schell Outer Banks

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Regional Hearing Clerk
U.S. EPA – Region III