

**FILED**

**Jul 22, 2025**

**1:08 pm**

**U.S. EPA REGION 3  
HEARING CLERK**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 3  
Philadelphia, Pennsylvania 19103**

**In the Matter of:** :  
 :  
Claxton Smith Concrete Company : **U.S. EPA Docket No. CWA-03-2025-0003DN**  
3133 Charleston Road :  
Poca, West Virginia 25159-7261 :  
 :  
 : **ADMINISTRATIVE ORDER ON CONSENT**  
 : **PURSUANT TO 33 U.S.C. § 1319(a)**  
 :  
**Respondent.** :  
 :  
Poca Facility :  
3133 Charleston Road :  
Poca, West Virginia 25159-7261 :  
 :  
**Facilities.** :

**I. STATUTORY AUTHORITY AND JURISDICTION**

1. This Administrative Order on Consent ("AOC" or "Order") is issued to Claxton Smith Concrete Company ("Respondent" or "Smith Concrete") under the authority vested in the United States Environmental Protection Agency (the "EPA") by Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a) ("CWA" or "Act"). The Administrator delegated this authority to the Regional Administrator of EPA Region 3, who further delegated it to the Director of the Enforcement and Compliance Assurance Division, EPA Region 3.
2. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), provides, among other things, that whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any permit condition or limitation implementing certain sections of the CWA, in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342, he shall issue an order requiring such person to comply with such section or requirement.
3. The EPA has jurisdiction over the above-captioned matter, as described in Paragraphs 1 and 2, above.
4. The EPA has consulted with the West Virginia Department of Environmental Protection ("WVDEP") regarding this action and, subsequent to the Effective Date, the EPA will email a copy of this fully executed AOC to the appropriate WVDEP representative.

**II. GENERAL PROVISIONS**

5. For the purposes of this proceeding only, Respondent admits to the jurisdictional allegations set forth in this AOC.
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Order.
7. The provisions of this AOC shall apply to and be binding upon Respondent and the officers, directors, employees, contractors, agents, trustees, successors, and assigns of Respondent.
8. Respondent shall bear its own costs and attorney's fees in connection with this proceeding and with the implementation or enforcement of this AOC, including any costs related to the resolution of any dispute arising from this AOC.
9. The EPA reserves the right to commence an action against any person, including Respondent, in response to any condition which the EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. The EPA reserves all existing rights and remedies available to it under the CWA, 33 U.S.C. §§ 1251-1389, the regulations promulgated thereunder, and any other federal laws or regulations for which the EPA has jurisdiction. Further, the EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which the EPA has jurisdiction, to enforce the provisions of this Order, following the Effective Date, as defined below.
10. This AOC does not constitute a waiver or modification of the terms or conditions of any permit issued to Respondent. Nothing in this Order shall relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local laws and regulations, nor shall it restrict the 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 Order does not constitute a waiver, suspension, or modification of the requirements of the Act, 33 U.S.C. §§ 1251-1389, or any regulations promulgated thereunder.
11. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this AOC, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
12. The EPA reserves all existing inspection authority otherwise available to the EPA pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, or pursuant to any other statute or law.



13. The undersigned representative of Respondent certifies that they are fully authorized by Respondent to enter into the terms and conditions of this AOC and to execute and legally bind Respondent.
14. By signing this AOC, Respondent acknowledges that this AOC may be available to the public and represents that, to the best of Respondent's knowledge and belief, this AOC does not contain any confidential business information or personally identifiable information from Respondent.
15. Respondent certifies that, to the best of its reasonable knowledge and belief, any information or representation it has supplied or made to the 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. The EPA shall have the right to institute further actions to recover appropriate relief if the EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this AOC are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that the EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors, and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.
16. Notwithstanding any other provisions of this AOC, no action or decision by the EPA, including, without limitation, decisions of the Chief, Water Branch, Enforcement & Compliance Assurance Division ("ECAD"), or Director, ECAD, EPA, Region 3, shall constitute a final agency action giving rise to any right to judicial review prior to the EPA's initiation of judicial action to compel either, or both, Respondent's compliance with, or otherwise enforce, this AOC.
17. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 1.162-21(b)(2), performance of Section V (Compliance Order) of this Order is restitution, remediation, or required to come into compliance with the law.

### **III. STATUTORY AND REGULATORY BACKGROUND**

18. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into waters of the U.S. except in compliance with, among other things, a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
19. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of the EPA may issue permits under the National Pollutant Discharge Elimination System ("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 permits. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides for the authorization of state programs to issue NPDES permits.

20. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), the State of West Virginia, through WVDEP, is authorized by the EPA to administer the NPDES program in the State of West Virginia.
21. "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).
22. "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).
23. "Storm water" is defined as "storm water runoff, snow melt runoff, and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).
24. "Storm water discharge associated with industrial activity" means "the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant" and "includes, but is not limited to, storm water discharges from...material handling sites; refuse sites; sites used for the application or disposal of process waste waters...; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products... The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph (b)(14): ... Facilities classified within Standard Industrial Classification 24,..., 29, 311, 32 (except 323)..." 40 C.F.R. § 122.26(b)(14).
25. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulation at 40 C.F.R. § 122.26(a)(1)(ii), require facilities discharging stormwater associated with industrial activity to obtain a permit. Under 40 C.F.R. § 122.26(c)(1), dischargers of stormwater associated with industrial activity must apply for an individual permit or seek coverage under a general permit.
26. Pursuant to the authority of the CWA, WVDEP reissued its NPDES Multi-Sector General Water Pollution Control Permit, Permit No. WV0111457 (the "General Permit") on September 12, 2019, with an effective date of October 12, 2019, and an expiration date of September 12, 2024. WVDEP modified the General Permit on January 26, 2021, with



an effective date of February 25, 2021. Coverage under the General Permit has been administratively extended until September 11, 2025.

27. The Poca Facility is subject to the General Permit. Coverage under the General Permit for the Poca Facility, General Permit Registration No. WVG610635, was initially issued on April 21, 1999, and the most recent registration became effective on May 31, 2021. Coverage under the General Permit for the Poca Facility has been administratively extended until September 11, 2025.
28. The General Permit authorizes a permittee to discharge stormwater into the waters of the State of West Virginia, subject to certain exceptions and to the monitoring requirements and other requirements set forth in Section A, Section B, and Appendix A of the General Permit.
29. A violation of the General Permit is also a violation of the CWA and may be subject to penalties established under that statute.
30. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), the EPA retains its authority to take enforcement action within West Virginia for NPDES permit violations.
31. By entering into this AOC, Respondent neither admits nor denies the specific factual allegations set forth herein.

**IV. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, AND CONCLUSIONS OF LAW**

32. Smith Concrete is, and at all times relevant to this AOC was, the owner and operator of the concrete manufacturing facility located at 3133 Charleston Road, Poca, West Virginia 25159 (the "Poca Facility").
33. Smith Concrete is a corporation organized and existing under the laws of the State of West Virginia and is thus a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
34. Respondent is, and at all times relevant to this AOC was, engaging in "industrial activity" at the Poca Facility, within the meaning of 40 C.F.R. § 122.26(a)(1)(ii).
35. The Poca Facility discharges, and at all times relevant to this AOC, discharged stormwater and/or authorized non-stormwater through outlets identified in its Stormwater Pollution Prevention Plan ("SWPPP") into the Pocatalico River. The Pocatalico River is a Traditional Navigable Water and a "water of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).
36. On September 18, 2023, an EPA inspection team conducted a stormwater inspection of the Poca Facility (the "Poca Inspection"). The purpose of the Inspection was to

determine Respondent's compliance with the CWA and the General Permit.

37. On February 20, 2025, the EPA sent Respondent a Notice to Show Cause letter regarding the Poca Facility.
38. Based on the Inspections and review of Respondent's additional documents and responses, the EPA has identified the following violations of the General Permit, and Section 301 of the CWA, 33 U.S.C. § 1311, described in the Paragraphs below.

**Count 1**

**Failure to Timely Submit DMRs for the Poca Facility**

39. The allegations in the preceding Paragraphs are incorporated by reference.
40. General Permit Appendix A, Section III.1 states: "Permittee's quarterly reporting start date is determined by the date coverage under the GP was issued and/or reissued. Registrations issued/reissued on the first through the fifteenths of a month will use that month to determine the quarterly reporting date. Registrations issued after the fifteenth of each month will use the next month to determine the reporting start date."
41. General Permit Appendix A, Section III.2 states, "Permittee shall submit each reporting period, a Discharge Monitoring Report (DMR) indicating in terms of concentration, the values of the constituents listed in Part A analytically determined to be in the effluent(s)... The required DMRs must be submitted electronically unless otherwise approved by the agency in writing, in which case the following applies... The required DMR should be mailed no later than 25 days following the end of the reporting period..."
42. Coverage under the General Permit for the Poca Facility was initially issued on April 21, 1999, and the most recent registration became effective on May 31, 2021. Therefore, pursuant to General Permit Appendix A, Section III.2, DMRs were required to be submitted by January 25<sup>th</sup>, April 25<sup>th</sup>, July 25<sup>th</sup> and October 25<sup>th</sup> of each year.
43. General Permit Section A, Table E.2 describes benchmark monitoring concentrations which must be measured quarterly. For total suspended solids, the benchmark monitoring concentration is 100 mg/L.

Table E.2: Benchmark Monitoring for Concrete and Gypsum Product Manufacturers

Pollutants of Concern	Benchmark Monitoring Concentration	Measurement Frequency
Total Suspended Solids	100 mg/l	Quarterly
Total Recoverable Iron	1.5 mg/l	Quarterly
pH	6.0 to 9.0 s.u.	Quarterly



44. Respondent failed to submit timely DMRs, as noted in Table 1, for the Poca Facility as required by Appendix A, Section III.1 and Appendix A, Section III.6 of the General Permit.

Table 1: DMR Submittals at the Poca Facility for Monitoring Periods December 2021 through June 2024

Outlet <sup>1</sup> Number	Monitoring Period End Date	DMR Due Date	DMR Submittal Date
001, 002, 003	12/31/2021	1/25/2022	5/11/2022
002, 003	12/31/2022	1/25/2023	Not Submitted
001, 003	3/31/2023	4/25/2023	Not Submitted
002, 003	6/30/2023	7/25/2023	Not Submitted
001, 002, 003	9/30/2023	10/25/2023	12/5/2023
001, 002, 003	6/30/2024	7/25/2024	Not Submitted

45. Based on the above assertions and allegations, the EPA concludes Respondent's failure to submit timely DMRs for the Poca Facility as required by Appendix A, Section III.1 and III.2 of the General Permit is a violation of the General Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and is a violation of Section 301 of the Act, 33 U.S.C. § 1311.

### Count 2

#### Failure to Retain Records for the Poca Facility

46. The allegations in the preceding Paragraphs are incorporated by reference.
47. General Permit Appendix A, Section III.6, states: "The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application

<sup>1</sup> West Virginia uses the term "outlet," but the Poca SWPPP refers to the outlets as "outfalls." Throughout this order, "outlet" is used for consistency and is inserted where the SWPPP uses "outfall," including when the SWPPP uses a capitalized name for an outlet (such as "Outfall 001").

for the permit, for a period of at least three (3) years from the date of the sample, measurement, report or application.”

48. At the Poca Inspection, Poca Facility representatives were unable to provide the previous 3 years of records, including copies of DMRs and chains of custody for DMR samples. The Poca Facility Representative stated that he did not have any of these records stored onsite electronically or in hardcopy.
49. Therefore, on at least the date of the Poca Inspection, Respondent failed to retain required records of monitoring information for the Poca Facility as required by Appendix A, Section III.6 of the General Permit.
50. Based on the above assertions and allegations, the EPA concludes Respondent’s failure to retain required records as required by Appendix A, Section III.6 of the General Permit is a violation of the General Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and is a violation of Section 301 of the Act, 33 U.S.C. § 1311.

### **Count 3**

#### **Failure to Develop and Modify the SWPPP, Including the Site Map, for the Poca Facility**

51. The allegations in the preceding Paragraphs are incorporated by reference.
52. General Permit Section A, “Monitoring Requirements,” states: “Furthermore, permittees must obtain approval of their SWPPP and install and implement all controls and measures contained in their SWPPPs and must modify the SWPPP in accordance with Section B.17.C [sic] when conditions warrant.”
53. General Permit Section B.17.A.1.a.1 requires the SWPPP to include a map showing “each drainage and discharge structure.”
54. General Permit Section B.17.A.2.a.3 requires the SWPPP to “include a preventive maintenance program that involves inspection and maintenance of stormwater pollution prevention devices... as well as inspecting and testing plant equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.”
55. General Permit Section A, Table E.2 requires Benchmark Monitoring for Concrete and Gypsum Product Manufacturers to conduct quarterly benchmark monitoring samples and quarterly visual examinations samples, as shown in Paragraph 43, above.
56. At the Poca Inspection, Poca Facility representatives stated that the SWPPP for the Poca Facility (the “Poca SWPPP”) had not been updated since 2019. They indicated that several operations had changed since the last time the Poca SWPPP was modified.



57. At the Poca Inspection, the EPA inspection team observed stormwater activities at the Poca Facility that were not outlined in the Poca SWPPP or site map. Examples of discrepancies include:
- a. Several berms had been constructed to channel stormwater discharge toward the outlets, and this was not described in the Poca SWPPP.
  - b. Sediment basins were being emptied at different frequencies than were outlined in the Poca SWPPP.
  - c. The Poca SWPPP indicates that stormwater monitoring is to take place twice per year, but the General Permit in Section A table E.2 indicates that samples are required once per quarter. Facility representatives stated that they were sampling once per quarter.
  - d. There were two unmapped locations on the property that had the potential for stormwater discharges. The first was off the road that separated the north and south-fenced areas at the Poca Facility (Smith Lane). There appeared to be a depression in the road that would channel water toward the unmapped discharge point. The discharge led toward a set of railroad tracks, which extended downhill toward the Pocatolico River. The second location was positioned toward the entrance of the Poca Facility, where extra concrete is poured to make concrete blocks. The pouring area was also not described in the Poca SWPPP, but stormwater was collecting in a drainage area next to where the concrete was poured and where the concrete blocks were stored. There was a grate at the end of the drainage, and Poca Facility representatives were unsure where the grate drained to. The grate was located directly across from the Pocatolico River.
58. At the Poca Inspection, the Poca SWPPP did not include a preventive maintenance program that involves inspection and maintenance of stormwater pollution prevention devices or inspection and testing of plant equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.
59. On the date of the Poca Inspection, Respondent's Poca SWPPP had not been modified in accordance with Section B.17.C [sic] when conditions warrant, as required by Section A, "Monitoring Requirements."
60. On the date of the Poca Inspection, Respondent's Poca SWPPP failed to include a map showing "each drainage and discharge structure," as required by Section B.17.A.1.a.1 of the General Permit.

61. On the date of the Poca Inspection, Respondent's Poca SWPPP failed to "include a preventive maintenance program that involves inspection and maintenance of stormwater pollution prevention devices... as well as inspecting and testing plant equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters," as required by Section B.17.A.2.a.3 of the General Permit.
62. Based on the above assertions and allegations, the EPA concludes Respondent's failure to modify the Poca SWPPP in accordance with Section B.17.C [sic] when conditions warrant as required by Section A, "Monitoring Requirements," of the General Permit, including failure to include a site map as required by Section B.17.A.1.a.1 of the General Permit, and failure to include a preventive maintenance program as required by Section B.17.A.2.a.3 of the General Permit is a violation of the General Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and is a violation of Section 301 of the Act, 33 U.S.C. § 1311.

**Count 4**

**Failure to Mitigate Discharge at the Poca Facility**

63. The allegations in the preceding Paragraphs are incorporated by reference.
64. General Permit Appendix A, Section I.3 states: "The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit, which has a reasonable likelihood of adversely affecting human health or the environment."
65. At the Poca Inspection, the EPA inspection team observed raw material used for concrete mixing stored in a semi-roofed area, and the raw material had migrated out of the roofed portion, leaving a large amount of raw material not covered by a roof. The raw material was located upgradient of the outlets at the Poca Facility. Additionally, raw material had spilled and was on the ground surrounding the loading zone where trucks drive through.
66. At the Poca Inspection, the EPA inspection team observed the truck wash basin where concrete delivery trucks are cleaned prior to leaving the Poca Facility lacked best management practices ("BMPs") to prevent the contents from flowing into the yard, and water containing chemicals such as acid and neutralizer was leaking out of the basin. The water appeared to be flowing down grade toward Outlet 001. There was a milky-white liquid present in the water that was flowing toward the outlet, and Poca Facility representatives were unsure what the liquid was.
67. At the Poca Facility, the EPA inspection team observed a berm made of unconsolidated gravel material that was channeling runoff from the truck wash area directly to Outlet 001. A Poca Facility representative stated that he had made the berm to prevent the mixing of acid and truck wash debris with stormwater flowing toward the outlet, but the



water was flowing around the side of the berm and directly toward Outlet 001 at the time of the Poca Inspection.

68. At the Poca Inspection, the EPA inspection team observed a tank of “acid neutralizer and vehicle wash” used for cleaning the concrete delivery trucks as they leave the Poca Facility did not have secondary containment. The tank was positioned directly next to a wash basin where acid and neutralizer chemicals drain after the trucks are washed.
69. At the Poca Inspection, the EPA inspection team observed open oil and chemical containers that were placed under a dilapidated lean-to structure that was positioned several meters uphill from the Pocatulco River. The hill drained toward the Pocatulco River. There were cracks and holes in the structure, and the area inside the structure appeared to be wet from the previous day’s rain event.
70. At the Poca Inspection, the EPA inspection team observed multiple full storage totes and drums full of “moisture reducer” chemicals that were being stored outside. A Poca Facility representative stated that he had constructed a containment structure around the chemical storage area out of concrete blocks, but the containment was not leak-proof. There were also several empty totes being stored in this area, and a Poca Facility representative stated that the totes would not be removed by their contractor until they had 12 empty totes to haul away.
71. At the Poca Inspection, the EPA inspection team observed that multiple abandoned vehicles were leaking oil and hydraulic fluid onto the ground. Most of the vehicles were in uncovered areas of the yard. One vehicle was parked in the covered truck maintenance area, but the fluid beneath the truck appeared to flow toward the stormwater drainage that was directing flows toward the perimeter of the property.
72. The EPA inspection team’s observations in Paragraphs 65-71 indicated that on the date of the Poca Inspection, Respondent did not take all reasonable steps to minimize or prevent any discharge which has a reasonable likelihood of adversely affecting human health or the environment, as required by General Permit Appendix A, Section I.3. Discharge in violation of the General Permit was likely to occur if stormwater flowed over the leaking and exposed fluids or the gravel and raw materials described in Paragraphs 65-71.
73. On at least the date of the Poca Inspection, Respondent failed to mitigate discharge at the Poca Facility as required by Appendix A, Section I.3 of the General Permit.
74. Based on the above assertions and allegations, the EPA concludes Respondent’s failure to mitigate discharge at the Poca Facility as required by Appendix A, Section I.3 of the General Permit is a violation of the General Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and is a violation of Section 301 of the Act, 33 U.S.C. § 1311.

**Count 5**

**Failure to Properly Operate and Maintain the Poca Facility**

75. The allegations in the preceding Paragraphs are incorporated by reference.
76. General Permit Appendix A, Section II.1 states: "The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit."
77. At the Poca Inspection, the EPA inspection team observed the truck washout area at the Poca Facility, which is used to clean the concrete off the trucks after their return from a delivery, contained a sediment basin that was inundated with solids. It appeared that approximately 60 percent of the larger basin's capacity was unusable due to a buildup of concrete. Poca Facility representatives stated that they were unable to remove the solids from the basin because there was already a buildup of solids in the area that they normally deposit solids in.
78. At the Poca Inspection, the EPA inspection team observed a pile of sediment approximately 30 feet high in the solids storage area, and Poca Facility representatives stated that they could no longer deposit solids there until some were hauled away for landfill deposit. As a result of the solids backlog, Poca Facility representatives had placed solids directly next to the sediment basin. The sediment basin was positioned approximately 10 meters upstream of Outlet 003, and it appeared that stormwater had run over the surface of the filled sediment basin to Outlet 003.
79. At the Poca Inspection, Poca Facility representatives stated to the EPA inspection team that the sediment basins regularly overflowed during rain events. They also indicated that a water recycling pump and tank were normally used to prevent the basins from overflowing, but that the system was out of service. Poca Facility representatives did not know when the pump and tank would be put back online to remove water from the basins.
80. At the Poca Inspection, the EPA inspection team observed the concrete settling basins located directly upstream of Outlets 001 and 003 were inundated with dirt and debris, and the concrete settling basins had been partially dug out prior to the inspection. Poca Facility representatives stated that during rain events, samples were often scooped from the inundated settling basins because there was not enough flow for the water to flow over the overflow to the outlets.
81. At the Poca Inspection, the EPA inspection team observed two concrete settling basins in sequence directly upstream of Outlet 002 that were connected by pipes positioned near the top of the basins. The second basin (positioned closest to the Pocatolico River) was filled with cattails and debris at the time of the Poca Inspection.



82. The EPA inspection team's observations in Paragraphs 77-81 indicated that on the date of the Poca Inspection, Respondent did not properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit, as required by General Permit Appendix A, Section II.1. These observations indicate that the settlement basins and the solids storage area were not operational or properly maintained.
83. On at least the date of the Poca Inspection, Respondent failed to properly operate and maintain the Poca Facility as required by Appendix A, Section II.1 of the General Permit.
84. Based on the above assertions and allegations, the EPA concludes Respondent's failure to properly operate and maintain the Poca Facility as required by Appendix A, Section II.1 of the General Permit is a violation of the General Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and is a violation of Section 301 of the Act, 33 U.S.C. § 1311.

**Count 6**

**Failure to Maintain Good Housekeeping at the Poca Facility**

85. The allegations in the preceding Paragraphs are incorporated by reference.
86. General Permit Section B.17.A.2.a.4 requires Respondent to develop in its SWPPP a description of good housekeeping practices, and to implement those practices, maintaining a clean, orderly facility.
87. The Poca SWPPP Section 3.2 states: "The plant management encourages good housekeeping practices throughout the plant by proper maintenance of equipment and monthly inspections."
88. While the Poca SWPPP encourages good housekeeping practices, it does not specifically describe examples of which good housekeeping practices are to be conducted at the Poca Facility.
89. At the time of the Poca Inspection, the EPA inspection team observed piles of trash and scrap metal around the property that were uncovered and uncontained.
90. At the time of the Poca Inspection, the EPA inspection team found a large pile of cardboard that was soaked in oil, sitting in an uncovered area.
91. At the time of the Poca Inspection, the EPA inspection team observed the monthly routine inspection sheets did not contain much detail, and many of the observations that were made by the EPA inspection team were not present in the monthly inspection logs. Almost all of the inspection sheets were marked as "Excellent" for structure condition, and "No" for trash in area, erosion, and nearby activities that could impact

stormwater quality. The sheet for September 2023 was marked as "Yes" for trash in area, as well as for nearby activities that could impact stormwater quality. There was no record of any routine maintenance that had occurred as a result of these inspections.

92. At the time of the Poca Inspection, the EPA inspection team observed concrete material tracked- out onto Smith Lane, down-gradient of several large piles of used concrete rubble/dust. The material was being stored on the northeastern corner of the property until the concrete material could be crushed and recycled. There were no BMPs in place to prevent the runoff (e.g., silt barriers, berms, etc.).
93. The EPA inspection team's observations in Paragraphs 89-92 indicated that on the date of the Poca Inspection, Respondent had not developed in its SWPPP a description of good housekeeping practices and had not implemented such practices by maintaining a clean, orderly facility, as required by General Permit Section B.17.A.2.a.4. The description of good housekeeping practices in the Poca SWPPP were vague, and the observations of disorder described in Paragraphs 89- 92 indicated that Respondent was not practicing good housekeeping at the Poca Facility.
94. On at least the date of the Poca Inspection, Respondent failed to develop a description of good housekeeping practices in its SWPPP and failed to maintain good housekeeping at the Poca Facility as required by Section B.17.A.2.a.4 of the General Permit.
95. Based on the above assertions and allegations, the EPA concludes Respondent's failure to develop a description of good housekeeping practices in its SWPPP and failure to practice good housekeeping at the Poca Facility as required by Section B.17.A.2.a.4 of the General Permit is a violation of the General Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and is a violation of Section 301 of the Act, 33 U.S.C. § 1311.

#### **V. COMPLIANCE ORDER**

THEREFORE, based on the foregoing, Respondent is hereby ORDERED, pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), to conduct, and consents to conduct, the following activities:

96. Respondent shall take all actions necessary to comply with the General Permit (or subsequent permits or permit modifications, including permit compliance schedules, issued by WVDEP) at the Poca Facility.
97. SWPPP Update. Within 90 days of the Effective Date of this AOC, Respondent shall provide to the EPA an updated SWPPP for the Poca Facility for the EPA's review and approval. The Poca SWPPP shall be updated in accordance with the General Permit to address the concerns in Counts 2, 3 and 6 of this Order, including, at a minimum, the following:



- a. Modifying the Poca SWPPP to include requirements and standard operating procedures for retaining records of monitoring information for at least 3 years;
  - b. Modifying the Poca SWPPP based on current stormwater control practices and activities at the Poca Facility, according to the requirements of the General Permit;
  - c. Updating the site map, according to the requirements of the General Permit;
  - d. Modifying the Poca SWPPP to include language that more specifically explains what good housekeeping entails, according to the requirements of the General Permit; and
  - e. Including an updated preventative maintenance program according to the requirements of the General Permit, including provisions to prevent materials from building up in the containment area; provisions requiring inspection and maintenance of stormwater pollution prevention devices; provisions requiring inspection and testing of plant equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters; and provisions requiring any corrective actions following inspections.
98. Corrective Action Plan. Within 30 days of the Effective Date of this AOC, Respondent shall provide to the EPA for review a Corrective Action Plan ("CAP"). All actions detailed in the CAP shall be completed no later than 2 years after the Effective Date of this AOC and shall include, at a minimum, the following:
- a. Implementing standard operating procedures at the Poca Facility for DMR sampling, and submitting evidence to the EPA that the appropriate staff members have been trained on the DMR system, to address concerns in Count 1 of this Order and according to the requirements of the General Permit;
  - b. Mitigating the discharge at the Poca Facility to address the concerns in Count 4 of this Order and according to the requirements of the General Permit, including the following:
    - i. Cleaning all spilled materials, adding inspections of these materials to the Poca Facility's self-inspections, and developing standard operating procedures to prevent future spills;
    - ii. Cleaning and maintaining the truck wash basin, including:
      - A. Draining and dredging the solids from the basin;
      - B. Deepening the basin to hold more liquid, or developing and implementing a standard operating procedure for draining the basin regularly;
      - C. Developing and implementing a standard operating procedure to ensure that no unused stockpiles are left uncovered for more than 14 days;
      - D. Removing all stockpiled solids and developing standard operating procedures for regular removal of the solids or constructing secondary containment to hold the solids;

- iii. Placing acid neutralizer and vehicle wash under cover or in secondary containment;
  - iv. During self-inspections, ensuring that all fluids onsite are contained and have secondary containment;
  - v. Repairing the lean-to structure that houses open chemical containers so that there are no cracks or openings;
  - vi. Reinforcing the outdoor chemical tote storage area so that it is leak-proof;
  - vii. During self-inspections, checking for leaks from onsite vehicles; and
  - viii. Repairing all onsite vehicles or placing containment underneath these vehicles to capture any leaking liquids.
- c. Properly operating and maintaining the Poca Facility to address the concerns in Count 5 of this Order and according to the requirements of the General Permit, including the following:
- i. Implementing standard operating procedures for and conducting self-inspections at the Poca Facility that include examining any potential sources of pollution, according to the requirements of the General Permit. Addressing any corrective actions that incur from self-inspections;
  - ii. Developing and implementing a standard operating procedure to ensure proper maintenance of the truck wash basin, including the regular removal of solids from the truck wash basin and depositing those solids in a designated solids storage area;
  - iii. Dredging the truck wash basin and properly disposing of the waste;
  - iv. Repairing the water recycling pumps used to prevent the sedimentation basins from overflowing, keeping spare parts for the pump onsite, and conducting regular inspection and maintenance of the pumps;
  - v. Removing all debris from the sedimentation basins; and
  - vi. Removing the vegetation in basin #2.
- d. Implementing best management practices for the concrete rubble piles at the Poca Facility, including developing standard operating procedures to ensure regular inspection and maintenance of the best management practices, to address the concerns in Count 6 of this Order and according to the requirements of the General Permit.
- e. Implementing good housekeeping practices at the Poca Facility, including developing standard operating procedures to clean up and prevent the accumulation of trash and scrap metal around the Poca Facility, to address the concerns in Count 6 of this Order and according to the requirements of the General Permit.

99. After review of the CAP:



- a. The EPA will in writing (i) accept the submission; (ii) accept the submission upon specified conditions; (iii) accept part of the submission and request resubmission of the remainder; or (iv) request a new submission.
  - b. If the submission is accepted, Respondent shall take all actions required by the CAP, in accordance with the schedule and requirements of the CAP, as approved. If the CAP is conditionally accepted or accepted only in part, Respondent shall, upon written documentation by the EPA, take all actions required by the accepted parts of the CAP.
100. If the CAP is disapproved in whole or in part, Respondent shall, within 15 days of receipt from the EPA of notice of deficiencies or by such other time as the parties agree to in writing, correct all deficiencies and resubmit the CAP or any deficient portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission is accepted in whole or in part, Respondent shall proceed in accordance with the preceding Paragraph.
101. List of CAP deadlines for action. No later than 10 days from the EPA's approval of the CAP, the Respondent shall submit to the EPA for review a list of deadlines for actions included in the CAP. The list shall be submitted in an electronic format (e.g., unlocked spreadsheet or similar format agreed to by the parties). Within 10 days of modifications of any deadline under the CAP, Respondent shall provide an updated list reflecting changes to the future schedule.
102. Quarterly Reports and Required Notices. Respondent shall submit (a) a notice to EPA within 30 days of completing a scheduled event in the CAP, and (b) progress reports every 90 days, until all work required by the CAP has been completed. Respondent shall submit the reports in accordance with Section VII (Procedures for Submissions), below. Respondent shall submit these reports starting 90 days from the CAP's approval and continuing until completion of the CAP, and shall include in those reports, at a minimum, the following:
  - a. Activities completed during the reporting period.
  - b. Dates by which the activities were completed.
  - c. Any barriers to the timely completion of activities encountered.
  - d. Activities currently in progress.
103. Submittal of DMRs and Self-Inspections. For a 24-month period after the Effective Date of this AOC, Respondent shall electronically submit to EPA the following on a semi-annual basis for the Poca Facility:

- a. Completed self-inspection forms as part of the preventative maintenance program developed with General Permit Section B.17.A.2.a.3, including, at a minimum, any corrective actions taken pursuant to self-inspections.
- b. Copies of submitted and completed DMRs.
- c. Respondent shall submit these documents in accordance with Section VII (Procedures for Submissions), below.
- d. Respondent shall submit these documents beginning on the 15<sup>th</sup> day of the subsequent month following the six-month period: January 15<sup>th</sup> for the July – December monitoring period and July 15<sup>th</sup> for the January – June monitoring period.

#### **VI. TAX REPORTING**

104. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, the EPA is required to send to the Internal Revenue Service (“IRS”) annually, a completed IRS Form 1098-F (“Fines, Penalties, and Other Amounts”) with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that the EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor’s violation of any law or the investigation or inquiry into the payor’s potential violation of any law, **including** amounts paid for “restitution or remediation of property” or to come “into compliance with a law.” The EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide the EPA with sufficient information to enable it to fulfill these obligations, the EPA herein requires, and Respondent herein agrees, that:
- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
  - b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
  - c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at [henderson.jessica@epa.gov](mailto:henderson.jessica@epa.gov), within 30 days after the Final Order ratifying this Consent Agreement is filed, and the EPA recommends encrypting IRS Form W-9 email correspondence; and



- d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the effective date, then Respondent, using the same email address identified in the preceding Sub-Paragraph, shall further:
- i. notify EPA's Cincinnati Finance Center of this fact, via email, within 30 days after the 30 days after the Effective Date of the Final Order per Section XI (Effective Date); and
  - ii. provide EPA's Cincinnati Finance Center with Respondent's TIN, via email, within five (5) days of Respondent's issuance and receipt of the TIN.

**VII. PROCEDURES FOR SUBMISSIONS**

105. All documents required to be submitted by this Order and any Request for Termination shall be accompanied by a certification signed by a responsible officer, as defined in 40 C.F.R. § 122.22(a), that reads as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

106. Unless otherwise directed in writing, Respondent shall submit any submission or written communication, including any accompanying data, relating to this AOC via email to:

Angela Weisel  
[weisel.angela@epa.gov](mailto:weisel.angela@epa.gov)  
NPDES Enforcement  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 3

AND

R3\_ORC\_mailbox@epa.gov

Any information submitted electronically shall be submitted in a widely recognized electronic format.

107. Respondent may assert a business confidentiality claim covering part or all the information which this AOC requires it to submit to the EPA, but only to the extent and only in the manner described in Part 2 Subpart B of Title 40 of the C.F.R. The EPA will disclose information submitted under a confidentiality claim only as provided in Part 2 Subpart B of Title 40 of the C.F.R. If, at the time any information is submitted to the EPA, Respondent submitting such information ~~on~~ does not assert a confidentiality claim, the EPA may make the submitted information available to the public without further notice to Respondent.

**VIII. CERTIFICATION OF COMPLIANCE AND REQUEST FOR TERMINATION OF AOC**

108. Upon completion of all items required by this AOC, and a determination of completeness of each item, and after at least two years of implementation of the AOC, Respondent shall submit to the EPA a Certification of Compliance and Request for Termination of this AOC. Such certification and request shall include:
- a. A certification that Respondent complied with this Order for the term of this AOC; and
  - b. All necessary documentation, including photo documentation, as appropriate, to support a finding that Respondent has complied with Section V (Compliance Order) of this AOC.
109. If, following review of any Certification of Compliance and Request for Termination of this Order, the EPA determines that any requirement has not been completed and implemented in accordance with this Order, the EPA will notify Respondents in writing, provide a written summary of deficiencies, and require Respondents to modify their actions as appropriate to correct such deficiencies. If so required, the EPA may also require Respondents to submit a revised Certification of Compliance and Request for Termination of this Order.
110. If, following review of any Certification of Compliance and Request for Termination of this AOC, the EPA agrees that Respondent has adequately complied with all requirements of this Order, then the EPA will provide written notification of termination of this AOC.
111. The EPA, at all times, reserves the right to unilaterally terminate this Order in its discretion.



**IX. AOC MODIFICATIONS**

112. Any request to modify the terms of, or parties to, this AOC shall be submitted, in writing, by Respondent to the EPA and shall be subject to review and approval by the EPA, in its sole and unreviewable discretion. Respondent's submission of a written request for modification of this AOC shall not relieve Respondent of any obligation under this AOC and shall have no effect on the EPA's statutory or regulatory authority to enforce the terms of this AOC, in its sole and unreviewable discretion.

**X. CHANGE OF OWNERSHIP OR OPERATION OF THE POCA FACILITY**

113. Until or unless this AOC is modified or terminated, in accordance with the terms of this Order, Respondent shall remain responsible for compliance with the terms of this AOC following any transfer of ownership or operation of the Poca Facility.
114. At least 90 days prior to any transfer of ownership or operation of the Poca Facility, Respondent shall submit a written notification to the EPA of any such anticipated change in ownership or operation which shall include, at a minimum, a detailed summary of the anticipated change in ownership or operation, contact information for the proposed new owner or operator of the Poca Facility, and a schedule for such anticipated change.
115. Respondent shall condition any sale or transfer of ownership or operation of the Poca Facility, in whole or in part, upon the execution by such Prospective Third-Party Purchaser, or Transferee, of an agreement, which creates an obligation that shall survive the closing of such sale or transfer of the Poca Facility, whereby such Prospective Third-Party Purchaser or Transferee agrees to comply with and be bound by the terms of this AOC.

**XI. EFFECTIVE DATE**

116. This AOC shall become effective upon Respondent's receipt of a fully executed copy of this AOC.

**FOR RESPONDENT CLAXTON SMITH CONCRETE COMPANY**

Date: 6/26/2025 By:

A large black rectangular box redacting the signature of Patsy Smith.

Patsy Smith, President  
Claxton Smith Concrete Company



**SO ORDERED:**

**FOR U.S. ENVIRONMENTAL PROTECTION AGENCY**

By: **ANDREA  
BAIN**  Digitally signed by  
ANDREA BAIN  
Date: 2025.07.15  
07:57:27 -04'00'

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*[Digital Signature and Date]*  
Andrea Bain, Acting Division Director  
Enforcement and Compliance Assurance Division  
U.S. EPA, Region 3

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 3  
Philadelphia, Pennsylvania 19103**

<b>In the Matter of:</b>	:	
	:	
Claxton Smith Concrete Company	:	<b>U.S. EPA Docket No. CWA-03-2025-0003DN</b>
3133 Charleston Road	:	
Poca, West Virginia 25159-7261	:	
	:	<b>ADMINISTRATIVE ORDER ON CONSENT</b>
<b>Respondent.</b>	:	<b>PURSUANT TO 33 U.S.C. § 1319(a)</b>
	:	
Poca Facility	:	
3133 Charleston Road	:	
Poca, West Virginia 25159-7261	:	
	:	
<b>Facility.</b>	:	

**CERTIFICATE OF SERVICE**

I certify that the foregoing Administrative Order on Consent was filed with the EPA Region 3 Regional Hearing Clerk on the date that has been electronically stamped on the Administrative Order on Consent. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing Administrative Order on Consent to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email to:

Jeff Smith  
VP – Chief Operations  
Claxton Smith Concrete Company  
3133 Charleston Road  
Poca, West Virginia 25159-7261  
[smithpoca@aol.com](mailto:smithpoca@aol.com)

Roger G. Hanshaw  
Bowles Rice LLP  
600 Quarrier Street  
Charleston, West Virginia 25301  
[rhanshaw@bowlesrice.com](mailto:rhanshaw@bowlesrice.com)

Angela Weisel  
Life Scientist  
U.S. EPA, Region 3  
[weisel.angela@epa.gov](mailto:weisel.angela@epa.gov)

Lauren Curry  
Assistant Regional Counsel  
U.S. EPA, Region 3  
[curry.lauren@epa.gov](mailto:curry.lauren@epa.gov)



By: BEVIN  
ESPOSITO  Digitally signed by BEVIN ESPOSITO  
Date: 2025.07.22 13:10:11 -04'00'

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*[Digital Signature and Date]*  
Regional Hearing Clerk  
U.S. EPA, Region 3