BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

In The Matter of: District of Columbia Water and Sewer Authority 5000 Overlook Avenue, SW Washington, D.C., Respondent.	)	Proceeding to Assess Class I Penalty Under Section 309(g)(2)(A) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(A) Docket No. CWA-03-2015-0197 **CONSENT AGREEMENT AND FINAL ORDER**

I. STATUTORY AUTHORITY

1. This Consent Agreement and Final Order ("CAFO") is entered into by the Director, Water Protection Division, United States Environmental Protection Agency, Region III ("Complainant"), and District of Columbia Water and Sewer Authority ("Respondent"), pursuant to Section 309(g) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22. The authority to settle this matter has been delegated from the Administrator to the Regional Administrator and further delegated to the Division Director for the Water Protection Division. The parties have agreed to settlement of the alleged violations of the CWA by Respondent. This CAFO simultaneously commences and concludes this action pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) & (3).

2. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, any person violating the CWA is liable for an administrative penalty under Section 309(g) of the Act, in an amount not to exceed $11,000 per violation, up to a total penalty amount of $37,500.

3. 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.

4. Pursuant to Section 309(g)(1)(A) of the CWA, 33 U.S.C. § 1319(g)(1)(A), EPA has consulted with District of Columbia Department of the Environment ("DC DOE") regarding this action, and will mail a copy of this document to the appropriate DC DOE official.

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

5. Respondent has offices at 5000 Overlook Avenue, SW, Washington DC 20032.

6. At all times relevant to this CAFO, Respondent was responsible for a site in Washington, D.C. where a construction project known as the DC Clean Rivers Project, Division C – CSO 19 ("CSO 19 Project") was conducted. The CSO 19 Project was conducted on the District of Columbia sewer system and included construction of a diversion structure to divert Combined Sewer Overflows ("CSOs") from the existing Northeast Boundary Trunk Sewer for conveyance to a future tunnel system and construction of an overflow structure.

7. Respondent's CSO 19 Project consisted of an area of approximately 8.25 acres to be disturbed, located at latitude 38.55.34 north and longitude 77.29.00 west ("Site").

8. 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.

9. 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.

10. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.2 and 122.26 provide that, with some exceptions, not relevant here, storm water discharges are "point sources" subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).

11. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).

12. "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.

13. Respondent is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.

14. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA issued a NPDES General Permit for Discharges from Construction Activities effective February 16, 2012 (the "CGP"). Under the CGP, EPA is the permitting authority for the District of Columbia. The CGP authorizes discharges of storm water associated with construction activities, but only in accordance with the conditions of the CGP.

15. To obtain permit coverage, Section 1.4 of the CGP requires the applicant to submit to EPA a complete and accurate Notice of Intent ("NOI") prior to commencing construction activities.

16. On or about May 15, 2012, Respondent submitted a NOI for coverage under the CGP for the CSO 19 Project.

17. EPA determined that the CSO 19 Project was eligible for coverage under the CGP, effective June 12, 2012, and assigned Permit Tracking Number DCR 12A022 with an expiration date of February 15, 2017.

18. Pursuant to Section 7 of the CGP, Respondent prepared a Stormwater Pollution Prevention Plan ("SWPPP) for the CSO 19 Project.

19. Respondent's NOI provides that stormwater from the CSO 19 Project discharges to the Anacostia River.

20. On February 20, 2013, representatives of EPA conducted an inspection of the CSO 19 Project ("EPA Inspection").

21. On October 22, 2013, EPA prepared a final CWA Compliance Inspection Report for the CSO 19 Project ("EPA Inspection Report"). The EPA Inspection Report also included six appendices (exhibit log, photo log, document log, etc.).

22. EPA provided a copy of the EPA Inspection Report to Respondent and received Respondent's response to that report dated January 14, 2014.

<u>Count 1: Concrete Washout</u>

23. Section 2.3.3.4 of the CGP requires the permittee to provide an effective means of eliminating the discharge of water from the washout and cleanout of stucco, paint, concrete, form release oils, curing compounds, and other construction materials. Section 2.3.3.4.a of the CGP provides that to comply with the requirement of Section 2.3.3.4, the permittee must direct all washwater into a leak-proof container or leak-proof pit. Section 2.3.3.4 (b)(iii) of the CGP requires the permittee to remove and dispose of hardened concrete waste consistent with your handling of other construction wastes in Part 2.3.3.3.

24. On February 20, 2013, the EPA inspection team observed residue from the washout of a concrete truck on the ground in the equipment storage area which is located near entrance

2 at the northwest perimeter of the Site. The EPA inspection team also observed hardened concrete primer on the ground in the equipment storage area.

25. Respondent violated Section 2.3.3.4 of the CGP and Section 301(a) of the Act, 33 U.S.C. § 1311(a), as described in Paragraph 24, above.

Count 2: Stockpile Stabilization

26. Section 2.1.2.4.c of the CGP provides in relevant part that for any stockpiles composed, in whole or in part, of sediment or soil, the permittee must, where practicable, provide cover or appropriate temporary stabilization to avoid direct contact with precipitation or to minimize sediment discharge.

27. At times between November 1, 2012 and February 20, 2013, portions of the stockpile were not stabilized and rilling occurred.

28. Respondent violated Section 2.1.2.4 of the CGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a), as described in Paragraph 27, above.

III. GENERAL PROVISIONS

29. Respondent neither admits nor denies the Findings of Fact and Conclusions of Law set forth in Section II, above.

30. Respondent waives any defenses it might have as to jurisdiction and venue.

31. Respondent admits the jurisdictional allegations in the CAFO and agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.

32. Respondent consents to the terms of this CAFO without taking any testimony and without any adjudication of issues of fact or law herein.

33. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consents to issuance of this CAFO without adjudication.

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

35. 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.

36. 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 proposed Consent Agreement and Final Order prior to its issuance.

IV. CIVIL PENALTY

37. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the alleged violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the alleged violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA calculated a civil penalty amount of twelve thousand dollars ($12,000). Respondent consents to pay the twelve thousand dollars ($12,000) civil penalty within thirty (30) days of the effective date of this CAFO in full and final settlement of EPA's claims for the violations alleged herein.

38. Respondent shall pay the civil penalty amount of Twelve Thousand Dollars ($12,000) plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 39 and 40, below, by either cashier's check, certified check, or electronic wire transfer, in the following manner:

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

    b. All checks shall be made payable to "**United States Treasury**";

    c. All payments made by check and sent by regular mail shall be addressed to:

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

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

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

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

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

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

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

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

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

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

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

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

Contact: John Schmid, (202) 874-7026
Remittance Express (REX): (866) 234-5681

h. On-Line Payment Option:

WWW.PAY.GOV/paygov/

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

i. Additional payment guidance is available at:

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

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

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

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

and

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

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

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of the fully executed CAFO is mailed or hand-delivered to Respondents which shall be no sooner than the effective date. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

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

V. APPLICABLE LAWS

41. 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

42. This Consent Agreement and Final Order resolves only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. §§ 301 *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

43. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO, if the EPA obtains evidence that the information and/or representations of the Respondent are false. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.

VII. PARTIES BOUND

44. This CAFO shall apply to and be binding upon EPA, Respondent, and Respondent's officers, employees, agents, successors and assigns.

45. By his/her signature, the person signing this CAFO on behalf of Respondent is acknowledging that he/she is fully authorized to enter into this CAFO on behalf of Respondent and to bind Respondent to the terms and conditions of this CAFO.

VIII. ENTIRE AGREEMENT

46. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such

identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

IX. EFFECTIVE DATE

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

FOR RESPONDENT, DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY:

By: _____

Name: George S. Hawkins

Title: Chief Executive Officer and General Manager

Date: July 6, 2015

It is so Ordered:

_____/

Jon Capacasa
Director, Water Protection Division