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

IN THE MATTER OF: Clark Construction Group, LLC 7500 Old Georgetown Road Bethesda, MD 20814 Respondent	Proceeding to Assess Class I Administrative Penalty Under **Section 309(g) of the Clean Water Act** **Docket No. CWA-03-2018-0107** **CONSENT AGREEMENT** **AND FINAL ORDER**

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT, JURISDICTIONAL AND STATUTORY AUTHORITY

1. This Consent Agreement and Final Order ("CAFO") is entered into by the Acting Director, Water Protection Division, United States Environmental Protection Agency ("EPA"), Region III ("Complainant") and Clark Construction Group, LLC. ("Clark Construction" or "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 Permits* ("Consolidated Rules"), 40 C.F.R. Part 22. The Administrator of the EPA is authorized to assess administrative penalties against persons who violate Section 301(a) of the Act, *id.* §1311(a). The Administrator has delegated this authority to the Regional Administrator of EPA Region III, who in turn has delegated this authority to the Acting Director, Water Protection Division. The parties having agreed to settlement of violations of the Clean Water Act 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. Respondent is a construction company principally located at 7500 Old Georgetown Road, Bethesda, MD 20814.

3. The EPA is authorized to issue NPDES permits for construction activities in Washington, DC.

4. Respondent's construction site was subject to the 2012 CWA National Pollutant Discharge Elimination System ("NPDES"), Construction General Permit (the "Facility Permit").

5. Complainant alleges that Respondent has failed to comply with the CWA and its NPDES permit, including a failure to comply with administrative, maintenance and reporting obligations of the Facility Permit.

6. "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.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. Section 402 of the CWA, 33 U.S.C. § 1342, establishes the NPDES program.

8. Under Section 402 of the Act, 33 U.S.C. § 1342, EPA and states with EPA-approved NPDES programs are authorized to issue permits governing the discharge of pollutants from regulated sources.

9. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from any point source by a person into a water of the United States except in compliance with a permit issued under the NPDES program pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

10. Section 502(5) of the Act, 33 U.S.C. § 1362(5) defines the term "person" as "an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body."

11. Section 502(12) of the Act, 33 U.S.C. § 1362(12) defines the term "discharge of a pollutant" and the term "discharge of pollutants" as "any addition of any pollutant to navigable waters from any point source," or "any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft."

12. Section 502(6) of the Act, 33 U.S.C. §1362(6) defines the term "pollutant" as "dredged spoil, solid waste, incinerator residue, 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."

13. Section 502(14) of the Act, 33 U.S.C. § 1362(14) defines the term "point source" as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged."

14. Section 502(7) of the Act, 33 U.S.C. §1362(7) defines the term the term "navigable waters" as "the waters of the United States, including the territorial seas." *See also* 40 C.F.R. § 122.2.

15. An NPDES Permit is required for certain construction activity, including clearing, grading and excavation occurring at the Facility. *See* 33 U.S.C. § 1342, 40 C.F.R. § 122.26(b)(14)(x)

16. The Respondent is a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2. The Respondent has been issued a registration number DCR12A176.

17. The location of the alleged violation is located at The Wharf at Southwest Waterfront, 650 Water Street SW, Washington, DC 20024 ("the Facility").

18. The Facility Permit was for an estimated disturbed area of 12 acres.

19. On or about September 9, 2016, the EPA Inspection Team inspected the Facility, EPA provided a copy of EPA's inspection report to Respondent on or about November 1, 2016.

20. On or about February 7, 2018, EPA and Respondent met to discuss the alleged violations.

21. During the February 7, 2018 meeting, EPA and Respondent had discussions and Respondent provided additional information to EPA concerning its operations and CWA compliance at the Facility.

22. Discharge of pollutants in violation of any effluent standard, prohibition or standard, including any standard contained in an NPDES permit issued under the CWA is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), which prohibits, among other things, the discharge of any pollutant in violation of a NPDES permit issued under Section 402 of the Act, 33 U.S.C. § 1342, and 40 C.F.R. Part 122.

23. Respondent's violation of the NPDES Permits constitutes violations of Section 301 of the CWA, 33 U.S.C. § 1311, and subject Respondent to penalties not to exceed $20,628 per day for each violation, up to a total penalty amount of $262,066.

24. 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 NPDES program under Section 402 of the Act, 33 U.S.C. § 1342.

III. FINDINGS OF VIOLATION

Count 1: Failure to Implement Best Management Practices

25. At the time of the inspection, the EPA Inspection Team observed a vehicle exit point within the Waterfront Park (which is part of the Wharf) that was not stabilized in violation of CGP Part 2.1.2.3(b).

26. At the time of Inspection, the EPA Inspection Team observed one soil stockpile at the Waterfront Park with a temporary sediment barrier (i.e., silt fence). A portion of the silt fence had fallen and had not been repaired in violation of GCP Part 2.1.2.4(b).

27. At the time of the inspection, the EPA Inspection Team observed evidence of wastewater which had exited from the concrete washout, flowed along the curb and gutter, and entered the curb inlet along Maine Avenue SW, in violation of GCP Parts 2.3.1.1, 2.3.2, and 2.3.3.4.

28. At the time of inspection, the EPA Inspection Team did not observe a posted notice of permit coverage in violation of GCP Part 1.5.

Count 2: Failure to Implement General Maintenance Requirements

29. At the time of the inspection, the EPA Inspection Team observed multiple curb inlet protection measures that were saturated with poured concrete and concrete wash out in violation of GCP Part 2.1.1.4(a).

30. At the time of the inspection, the EPA Inspection Team observed small concrete waste containers that were full of hardened concrete and unable to accept any new waste material in violation of CGP Part 2.3.3.3(e).

Count 3: Failure to Implement SWPPP Requirements

31. At the time of the inspection, there were no corrective action reports available for the EPA Inspection Team to review in violation of CGP Parts 4.1.7.3. and 5.4.4.

32. At the time of the inspection, there was no "Subcontractor Certification SWPPP Form" for a subcontractor that was performing concrete work in violation of CGP Part 7.2.4.

IV. CONSENT AGREEMENT AND FINAL ORDER

33. In order to resolve the violations described above, and to provide a legal framework for the payment of a penalty, EPA and Respondent enter into this CAFO. Respondent consents to issuance of this CAFO and agrees to undertake all actions required by its terms and conditions. Respondent consents to the assessment of the civil penalty herein.

34. Respondent neither admits nor denies the factual allegations, conclusions of law, and alleged violations contained in Sections II and III of this CAFO. Respondent admits the jurisdictional allegations contained in Section I, Preliminary Statement, Jurisdictional and Statutory Authority, and elsewhere in this CAFO, and waives any defenses it might have as to jurisdiction and venue. Respondent agrees not to contest EPA's jurisdiction to issue this CAFO and not to contest EPA's jurisdiction to enforce the terms of this CAFO.

35. Respondent hereby expressly waives its right to a hearing, pursuant to Section 309(g)(2)(A), 33 U.S.C. § 1319(g)(2)(A), on any issue of law or fact in this matter and consents to

issuance of this CAFO without adjudication, and waives its right to appeal this final order pursuant to Section 309(g)(8)(A), 33 U.S.C. § 1319(g)(8)(A).

36. This CAFO addresses and settles all civil and administrative claims for CWA violations identified in this CAFO.

37. Each party to this action shall pay its own costs and attorney fees.

38. The provisions of this CAFO shall be binding upon EPA and the Respondent, (including its officers, principals, directors, successors and assigns).

39. 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.

40. Pursuant to Section 309(g)(4) of the Act, 33 U.S.C. § 1319 (g)(4), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the CAFO before issuing the Final Order.

41. Based on the foregoing FINDINGS, and having taken into account the factors listed in Section 309(d) of the CWA, 33 U.S.C. § 1319(d), including but not limited to, the nature, circumstances, extent and gravity of the violation, the Respondent's knowledge, culpability and history of violations, the economic benefit to Respondent, the ability of Respondent to pay the penalty, and other such matters as justice may require, the administrative record; and under the authority of Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), EPA:

HEREBY ORDERS AND RESPONDENT HEREBY CONSENTS:

42. Within thirty (30) days of the effective date of this ORDER, Respondent shall pay a civil penalty of nineteen thousand dollars ($19,000.00) for the violations cited herein. This does not constitute a demand as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412. Penalty payment shall be made according to the following specifications:

a. The payment shall reference Respondent's name, address and docket number, be made in U.S. dollars by money order, cashier's or certified check made payable to the "Treasurer, United States of America", wire transfer, ACH, or on line, and delivered as follows:

i. If by money order, cashier's or certified check sent by U.S. postal service mail:

U.S. Environmental Protection
Agency Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197 9000
Contact: Bryson Lehman 513-487-2123

ii. If by money order, cashier's or certified check sent by private commercial overnight delivery service:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza
Mail Station SL MO C2 GL
St. Louis, MO 63101
Contact: 314-418-1028

iii. 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

iv. If by electronic wire transfer:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 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"

v. If by ACH (also known as REX or remittance express):

US Treasury REX/Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Formart Transaction Code 22 Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX,
1-866-234-5681

vi. On Line Payment Option:

WWW.PAY.GOV/PAYGOV

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

vii. Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

b. A copy of the check or money order or other proof of payment submitted in fulfillment of the penalty payment requirements of this order shall be sent to the following:

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

and

Ms. Bonnie A. Pugh (3RC20)
Senior Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

c. A transmittal message identifying the case name and docket number identified about shall accompany the remittance and copies of the check or transfer instrument.

43. Failure to pay the penalty assessed by this ORDER after its effective date subjects the Respondent to a collection action under Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). The validity, amount and appropriateness of the penalty are not subject to review in a collection proceeding. *See* 15 U.S.C. § 2615(a)(4)(A). Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest on unpaid penalties, and a charge to cover the cost of processing and handling a delinquent claim. Interest will begin to accrue on this civil penalty if it is not paid within fifteen days of the date due. Interest will be assessed at the rate of the United States Treasury tax and loan rate. 40 C.F.R. § 13.11. In addition, a quarterly nonpayment penalty charge may be assessed on any delinquent debt pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9). In addition, EPA will assess a $15.00 administrative handling charge for the administrative handling charge for administrative costs for the first 30-day period after the payment is due and an additional $15.00 for each subsequent 30 days the penalty remains due.

V. GENERAL PROVISIONS

44. This CAFO shall not relieve Respondents 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. This CAFO does not constitute a waiver, suspension or modification of the requirements of the CWA.

49. This CAFO resolves only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present 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 there under, 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.

50. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondent's violation of any applicable provision of law.

51. The penalty described above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

52. This CAFO is conditioned upon the accuracy of the Respondent's representations to EPA. EPA reserves the right to institute a new and/or separate action should Respondents fail to comply with the terms of this CAFO. That 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.

53. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

54. 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.

VI. EFFECTIVE DATE

55. This CAFO will be issued after a forty (40) day comment period, execution by an authorized representative of the EPA and filing with the regional hearing clerk. It will become final and effective thirty (30) days after issuance.

FOR RESPONDENT Clark Construction Company LLC:

By: _____

Name: MATTHEW T. HAAS

Title: VICE PRESIDENT

SO ORDERED

this 23rd day of August, 2018.

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Dominique Lueckenhoff, Acting Director
Water Protection Division
US EPA Region 3