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

Mr. Rashad M. Young, City Administrator
John A Wilson Building
1350 Pennsylvania Avenue, NW, Suite 513,
Washington, DC 20004

Mr. Jeffrey Seltzer, Associate Director
Water Quality Division
District Department of Energy and the Environment
1200 First St NE
Washington, DC 20002

Dear Sirs:

Enclosed is a file-stamped copy of the Consent Agreement and Final Order settling alleged violations of the Clean Water Act by the District of Columbia that relate to discharges of stormwater. Thank you for working with us to resolve this matter.

Sincerely,

Nina Rivera
Office of Regional Counsel (3RC20)

cc: Kristen DeWire, DOEE General Counsel Office

Enclosures

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

In the Matter of:	Proceeding to Assess Class II Administrative Penalty Under Section 309(g) of the Clean Water Act
Government of the District of Columbia,	Docket No. CWA-03-2018-0020
Respondent.	**CONSENT AGREEMENT AND FINAL ORDER**

CONSENT AGREEMENT

I. STATUTORY AND REGULATORY BACKGROUND

1. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency ("EPA") is authorized to assess administrative penalties against persons who violate Section 301(a) of the Act, *id.* § 1311(a). The Administrator has delegated this authority to the Regional Administrator of EPA Region III, who in turn has delegated this authority to the Director, Water Protection Division ("Complainant").

2. This Consent Agreement is entered into by the Complainant and the District of Columbia ("Respondent" or "District"), pursuant to Section 309(g) of the CWA and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22.

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

4. Section 309(g)(2)(B) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(B), authorizes the assessment of administrative penalties against any person who violates any National Pollutant Discharge Elimination System ("NPDES") permit condition or limitation in an amount not to exceed $10,000 per day for each day of violation, up to a total penalty amount of $125,000.

5. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), any person who has violated any NPDES permit condition or limitation after January 12, 2009, is liable for an administrative penalty not to exceed $16,000 per day for each day of violation, up to a total penalty amount of $177,500 for violations that occurred between January 12, 2009, and December 6, 2013. (Part 19 also specifies the maximum penalties applicable to other time periods.)

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

7. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States, except in compliance with a permit issued pursuant to the NPDES program under Section 402 of the Act, 33 U.S.C. § 1342.

8. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States, to ensure compliance with the requirements of the CWA. The discharges are subject to specific terms and conditions, as prescribed in the permit. *See also* 33 U.S.C. § 1311.

9. An NPDES permit is required for discharges of pollutants from a municipal separate storm sewer system serving a population of 100,000 or more. Section 402(p)(2)(C) of the Act, 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.

10. "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.

11. "Municipal separate storm sewer system" ("MS4") is defined at 40 C.F.R. § 122.26(b)(8).

12. "Storm water" means "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).

13. "Waters of the United States" means those waters that are defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.

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

14. The District is a "municipality" within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).

15. The District is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

16. At all times relevant to this Order, Respondent has owned and/or operated a MS4.

17. Respondent's MS4 is located within the jurisdictional boundaries of the District.

18. The District encompasses a total area of approximately 43,712 acres. At least half of that area drains into the MS4.

19. The MS4 discharges into the Potomac River, the Anacostia River, and Rock Creek, and to tributaries of these waters.

20. The MS4 discharges into waters of the Unites States.

21. According to the U.S. Census Bureau, as of 2014, the District's population was approximately 658,000 people.

22. EPA issued to Respondent an NPDES MS4 Discharge Permit No. DC0000221, that became effective on January 22, 2012 (the "MS4 Permit").

23. The MS4 Permit identifies Respondent as the permittee, with the District Department of the Environment ("DDOE") as the agency responsible for managing the activities to comply with the MS4 Permit. This agency is now known as the Department of Energy and Environment ("DOEE").

24. The MS4 Permit requires the permittee to submit a report every year (the "Annual Report"). The Annual Report must address each permit requirement, including a review of program implementation and compliance. The District has submitted Annual Reports every year, as required by the MS4 Permit.

25. The MS4 Permit requires the District to comply with all the conditions of the permit.

26. On May 6 through 8, 2013, an EPA compliance inspection team inspected Respondent's MS4 program (the "MS4 Inspection"). The team visited a number of facilities owned by the

District as well as private facilities subject to stormwater regulation. As part of the MS4 Inspection, EPA requested documents relevant to the implementation of the MS4 Permit. EPA made the requests before and shortly after the MS4 Inspection.

27. In July 2014, EPA finalized an inspection report documenting the inspection of the District's MS4 program.

28. Respondent received a copy of EPA's inspection report on or about July 18, 2014. The District responded to EPA's inspection report on or about October 16, 2014 ("District's October Response").

29. Based upon the MS4 Inspection, review of the documents provided in response to EPA's request, review of the relevant District MS4 Annual Reports, and review of the District's October Response, EPA has identified the following violations of the MS4 Permit and the CWA.

Count I: Failure to adequately maintain an electronic inventory of stormwater control practices that includes information on the maintenance verification

30. Section 4.2.2 of the MS4 Permit requires the District to develop mechanisms to ensure maintenance of stormwater controls on private property. To insure maintenance, the permittee must include a long-term verification process of operation and maintenance, which may include inspections, owner/operator certification, or other mechanism.

31. The MS4 Permit also requires that the District maintain an electronic inventory of stormwater control practices that includes information on the mechanism used to verify maintenance.

32. As of the dates of the MS4 Inspection, the District had an electronic inventory listing stormwater control practices on private property in the District.

33. However, when asked by EPA inspectors about randomly selected private property parcels, the District could not locate particular stormwater control practices on some of the private property in the District's databases or records, or otherwise show how the District was tracking particular control practices on those parcels.

34. Respondent's failure to maintain complete and current information on all stormwater control practices in the electronic inventory resulted in a failure to adequately monitor and ensure maintenance of retention practices on private property, in violation of the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count II: Failure to practice good housekeeping in all municipal facilities

35. Section 4.3.7 of the MS4 Permit requires the District to incorporate good housekeeping components at all municipal facilities, including implementing maintenance standards at all municipal facilities, implementing an inspection schedule of not less than one inspection per facility per year, implementing recordkeeping and tracking of inspections and maintenance at all municipal facilities, and ensuring proper operation of treatment management practices and maintenance of such practices as necessary.

36. As of the date of the MS4 inspection, the District had not implemented an inspection and maintenance program that included and tracked yearly inspection of all municipal facilities.

37. On or about May 6, 2013, EPA inspected a District Department of General Services vehicle maintenance facility located at 4 DC Village Lane, SW. The inspection team observed, among other maintenance concerns, catch basins without oil-water separators, catch basins clogged with sediment, fuel storage containers without secondary storage containment, and salt spreading machinery stored outside without cover. This facility drains into the District's MS4.

38. On or about May 6, 2013, EPA inspected a District Department of Public Works ("DPW") waste transfer station facility located at 3200 Benning Road, NE. The inspection team observed, among other maintenance concerns, numerous stormwater inlets filled with sediment and debris, and an overgrown vegetated swale. The team requested maintenance records for this facility but the District was not able to provide any. This facility drains into the District's MS4.

39. On or about May 6, 2013, EPA inspected a District Department of Transportation ("DDOT") street maintenance facility located at 1403 W Street, NE. The inspection team observed, among other maintenance concerns, fluid spills around machinery, as well as asphalt spilled on the ground. The team also observed a stormwater management control structure filled with sediment, litter and organic contaminants. This facility drains into the District's MS4.

40. On or about May 6, 2013, EPA inspected a District DDOT vehicle maintenance and salt storage facility located at 414 Farragut NE. The inspection team observed, among other maintenance concerns: an open drain valve in the secondary containment of the brine tank; a salt tank without secondary containment, with salt around it on the ground; salt staining visible around the storm sewer inlet; and other chemical containers stored without secondary containment. The facility also had three sand filters that were improperly below grade and one had a broken concrete apron. Inspections conducted by DOEE (then DDOE) at this facility in 2010, 2011 and 2012 had identified the same maintenance problems with the sand filters. This facility drains into the District's MS4.

41. On or about May 6, 2013, EPA inspected the District DPW Fort Totten waste transfer station located at 4900 Bates Road, NE. The inspection team observed trash and debris

accumulated near the storm sewer inlets. The Vortechs® filtering systems in the inlets were filled with trash and debris. Documents on the maintenance of the filtering systems failed to show that the systems had received maintenance in several years. This facility drains into the District's MS4.

42. On or about May 7, 2013, EPA accompanied DOEE personnel during an inspection of stormwater control practices at the District's Department of Parks and Recreation Langdon Park Playground, located at 2901 20th Street, NE. One of the stormwater control practices, a bioretention cell, was overgrown with invasive trees. This facility drains into the District's MS4.

43. Respondent's failure to implement the required good housekeeping practices, to ensure the proper operation of treatment management practices, and to implement a yearly inspection schedule, violates the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count III: Failure to adequately implement and document training program

44. Section 4.3.10 of the MS4 Permit requires the District to implement on-going training for specified employees, as well as for an employee whose function may impact the stormwater program implementation. The training program must address, among other things, the requirements of the District's MS4 permit, maintenance standards, inspection procedures, and ways to perform the municipal work that minimize impacts to the receiving waters. The training program must include at a minimum yearly refresher or follow-up training.

45. During the May 2013 inspection, the EPA inspection team requested training documentation and attendance lists for stormwater training. The District asserted that it had conducted the required training, but no training documentation or attendance lists were provided for training that occurred prior to the inspection.

46. Respondent's failure to adequately implement and document the required ongoing training program for District employees violates the MS4 Permit and Section 301 of the Act, 33 U.S.C. §1311.

Count IV: Failure to include all required data for critical sources in the District's commercial and institutional databases

47. Section 4.4.1.1 of the MS4 Permit requires the District to maintain an inventory or database of all facilities within its jurisdiction that are critical sources of stormwater pollution in commercial and institutional areas. Critical sources include, among others, industrial activities, as defined in 40 C.F.R. §122.26(b)(14), and construction sites exceeding one acre. Section 4.4.1.2 specifies the information that must be included for each critical source. The critical sources inventory must be updated at least annually, as provided in Section 4.4.1.3 of the MS4 Permit.

48. As of May 2013, the District maintained separate databases, that, when considered together, included most, but not all, of facilities identifiable as critical sources carrying out industrial activities, as defined in 40 C.F.R. § 122.26(b)(14).

49. Within the totality of the records of the databases, one or more of the required data fields that Permit Section 4.4.1.2 requires was missing or the data were out of date.

50. Respondent's failure to maintain an inventory of critical sources as specified in the MS4 Permit is a violation of the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

III. GENERAL PROVISIONS

51. For the purpose of this proceeding, and to the extent required by 40 CFR 22.18(b)(2), Respondent admits the jurisdictional allegations set forth in this Consent Agreement.

52. As permitted by 40 CFR 22.18(b)(2), Respondent neither admits nor denies the Allegations of Fact set forth in this Consent Agreement.

53. Respondent neither admits nor denies the Conclusions of Law set forth in this Consent Agreement.

54. Respondent waives any defenses it might have as to jurisdiction and venue, its right to contest the allegations through hearing or otherwise, and its right to appeal the CAFO.

55. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.

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

57. Each party shall bear its own costs and attorney fees.

58. The undersigned representative of the Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.

59. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.

IV. CIVIL PENALTY

60. In full and final settlement of the Complainant's claims for civil penalties for the alleged violations identified herein, Respondent consents to the assessment of, and agrees to pay, in accordance with the terms set forth herein, the total administrative civil penalty of $35,000 within thirty (30) days of the effective date of this CAFO, pursuant to 40 C.F.R. § 22.31(c).

61. Respondent also consents to the performance of the Supplemental Environmental Project, as set forth below.

62. The civil penalty amount set forth above is based on a number of factors, including the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require, pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g).

63. Respondent shall pay the civil penalty amount described in this Part, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with this Part, 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 Consent Agreement.

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

Nina Rivera
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

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

65. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

V. SUPPLEMENTAL ENVIRONMENTAL PROJECT

66. The following Supplemental Environmental Project ("SEP") is consistent with applicable EPA policy and guidelines, specifically EPA's Supplemental Environmental Projects Policy, 2015 Update, found on EPA's website at https://www.epa.gov/sites/production/files/2015-04/documents/sepupdatedpolicy15.pdf (last visited on January 30, 2017).

67. Respondent shall complete a SEP as follows:

a. Respondent will replace at least 2,000 square feet of impervious surface using a combination of pervious pavement technology and planting of vegetation.

b. Respondent will install the SEP at the NW corner of Florida Avenue and 2nd Street NW in the Bloomingdale neighborhood in the District of Columbia, in an area that drains to the combined sewer system of the District in the Anacostia sewershed. The District will implement a mechanism to ensure maintenance of the pervious surface and plantings.

c. If, for reasons beyond the control of the District, the District cannot install the SEP at this location, the District will select a substantially comparable location in an area of the District that drains to the combined sewer system in the Anacostia sewershed. The District will provide EPA notification in writing of the new location for the SEP, the reasons why the District was not able to install the SEP in the location indicated in subparagraph b, and a revised itemized estimate of the cost of installing the SEP in the new location. EPA will notify the District in writing whether the new location is acceptable.

d. Except as provided in paragraphs 73 and 74, Respondent will complete the installation of the SEP no later than a year (52 weeks) from the effective date of the Final Order.

68. Respondent's total expenditure for the SEP shall be not less than $35,000.

69. Respondent certifies that:

a. All cost information provided to EPA in connection with the EPA's approval of the SEP is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is no less than $35,000.

b. As of the date of its signature on this CAFO, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation, and is not required to perform or develop the SEP by any agreement, grant or as injunctive relief in any other action in any other forum.

c. The SEP is not a project that Respondent was planning to construct, perform, or implement, other than in settlement of the claims resolved in this CAFO.

d. Respondent has not received and will not receive credit for the SEP activities in any other enforcement action in any form.

e. Respondent will not receive reimbursement for any portion of the SEP from another person or entity.

f. Respondent is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described here.

g. Respondent will inquire of any SEP recipient and/or implementer whether either is party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP, to insure that no SEP recipient or implementer is a party to such transaction.

70. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP under this CAFO from the date of its execution shall include the following language: "This project was undertaken in connection with the settlement of an administrative enforcement action taken by the U.S. Environmental Protection Agency to enforce federal laws."

71. Respondent agrees that EPA may inspect the location at which the SEP is implemented at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein and as required by this CAFO.

72. EPA may request copies of any materials related to the SEP, at any time, upon reasonable advance notice to Respondent, to confirm that the SEP is being, or has been, performed in accordance with this CAFO. Respondent shall provide requested information to EPA within 14 days of a reasonable request.

73. If any event occurs which causes or may cause delays in the completion of the SEP required under this CAFO, Respondent shall notify EPA in writing not more than 14 calendar days after the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the

delay, the measures taken and to be taken by Respondent to minimize the delay, and the timetable by which those measures shall be implemented. The burden of proving that a delay is caused by circumstances entirely beyond the control of Respondent which could not be overcome by due diligence shall rest with the Respondent. Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this Paragraph shall render the excuse of the following Paragraph void as to the particular circumstances involved, and shall constitute a waiver of Respondent's related right to seek an extension of the time for performance of its obligation under this CAFO.

74. If the delay or anticipated delay in compliance with this CAFO has been or will be caused by circumstances entirely beyond the control of Respondent which could not be overcome by due diligence, the time for performance of the SEP may be extended for a period no longer than the delay resulting from such circumstances. In such event the Parties shall stipulate to such extension of time.

75. In the event that EPA does not agree that the delay in completing the SEP has been or will be caused by circumstances entirely beyond the control of Respondent which could not be overcome by due diligence, EPA will notify Respondent in writing of its decision and the delay in the completion of the SEP shall not be excused.

76. Report Deadline: Within 8 weeks of completion of the SEP work, Respondent shall provide a final, written completion report ("SEP Completion Report") to EPA staff.

77. Respondent shall send the SEP Completion Report to:

Andrew Dinsmore (or his designee)
NPDES Enforcement Branch
Mail Code (3WP42)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Email: Dinsmore.Andrew@epa.gov

and to

Nina Rivera (or her designee)
Mail Code (3RC20)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Email: Rivera.nina@epa.gov

78. The SEP Completion Report shall provide:

a. Notice to EPA of SEP completion;

b. A detailed description of the SEP as implemented, including photographs of the completed work;

c. Itemized costs incurred and amounts expended; and

d. A description of the environmental and public health benefits resulting from implementation of the SEP.

79. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other types of documentation that specifically identify and itemize the individual costs of the goods and/or services for which payment is being made. A canceled draft does not constitute acceptable documentation unless such draft specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made.

80. Respondent's management-level DOEE official shall sign the SEP Completion Report and certify under penalty of law that the information contained therein is true, accurate, and not misleading, by including and signing the following statement:

> I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including fines and imprisonment.

81. Respondent agrees that failure to submit the SEP Completion Report as required shall be deemed a violation of this CAFO.

82. Upon receipt of the SEP Completion Report, EPA staff shall notify Respondent in writing that, based on the SEP Completion Report and other available information, the EPA has concluded that:

a. the SEP has been satisfactorily completed;

b. the SEP Completion Report is deficient; or

c. the SEP has not been satisfactorily completed, and that EPA will seek stipulated penalties.

83. If EPA provides notification in accordance with subparagraph "b." above that the SEP Completion Report is deficient, EPA shall provide an explanation of the deficiencies and grant Respondent 28 days to correct those deficiencies.

84. Respondent may object in writing to the notification of deficiency within 14 calendar days of receipt of such notification. EPA and Respondent shall have an additional 28 calendar days from the receipt by EPA of the objection to reach agreement on necessary corrective action. If agreement cannot be reached within this period, the Director of the Water Protection Division for EPA, Region III, shall provide to Respondent a written statement of his or her decision on the adequacy of the completion of the SEP, which shall be a final Agency action, binding upon Respondent.

85. Stipulated penalties: In the event that Respondent fails to comply with a term or condition of this CAFO relating to the performance of the SEP, including the submission of the SEP Completion Report, and/or to the extent that the actual expenditures for the SEP do not equal or exceed $35,000, Respondent agrees that it shall be liable for the following:

a. Failed to timely and satisfactorily complete the SEP in accordance with this CAFO, except as provided below in subparagraph "b.": $40,000.

b. Failed to timely and satisfactorily complete the SEP, but EPA determines that Respondent (1) made good faith and timely efforts to complete the project and (2) has certified with supporting documentation that it spent at least $31,500 on the SEP: No stipulated penalty.

c. Timely and satisfactorily completed the SEP but failed to spend at least $31,500: the difference between the amount spent and $35,000.

d. Timely and satisfactorily completed and spent over $31,500: No stipulated penalty.

e. Failed to timely submit the SEP Completion Report: $500 for each day after the SEP Completion Report was originally due until the day it is submitted.

86. The determination of whether the SEP has been completed in accordance with this CAFO, and whether the Respondent has made a good faith, timely effort to complete the SEP shall be in the sole discretion of EPA. EPA may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under the CAFO.

87. Respondent shall pay stipulated penalties not more than 14 calendar days after receipt of written demand by EPA for such penalties, as provided above. Interest and late charges shall be paid as set forth above in this CAFO.

88. For this Part "writing" or "written" or "in writing" includes electronic format, including email with confirmation that the message was received and read. The term denotes a tangible or electronic record of a communication or representation, including (a) handwriting, (b) typewriting, (c) printing, (d) photostat, (e) fax, (f) photograph, (g) word processing, spreadsheet or database computer output or upload, and (g) e-mail. An electronic writing file may include any of the following formats: docx, .wpd, .xlsx, .pdf, .html, or database format readable by MS Access. A "signed" writing includes an electronic symbol or process attached to, or logically associated with, a writing. An electronic signature is a writing executed or adopted by a person with the intent to sign the writing, and may include an electronic code or alphanumeric string, a statement stating that it constitutes a signature, or image of a manual signature.

V. APPLICABLE LAWS

89. 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, other than the violations alleged herein. 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

90. This CAFO resolves only the civil claims for the specific violations alleged herein. EPA reserves the right to commence an action against any person, including Respondent, in response to any condition that 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 the filing of the CAFO with the Regional Hearing Clerk.

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

VII. FULL AND FINAL SATISFACTION

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

VIII. PARTIES BOUND

93. This CAFO shall apply to and be binding upon the EPA, Respondent and Respondent's officers, employees, agents, successors and assigns. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.

IX. EFFECTIVE DATE

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

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X. ENTIRE AGREEMENT

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

FOR Respondent, THE DISTRICT OF COLUMBIA:

AGREED TO:

For the District of Columbia

Date: 04/06/2018

RASHAD M. YOUNG
City Administrator

FOR Complainant THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: JUN 1 2 2018

Catharine McManus,
Acting Director
Water Protection Division

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of:	
Government of the District of Columbia,	**EPA Docket No. CWA-03-2018-0020**
Respondent.	**FINAL ORDER**
	Proceeding under Section 309(g) of the Clean Water Act

FINAL ORDER

Complainant, the Director of the Water Protection Division, U.S. Environmental Protection Agency, Region III, and Respondent, the Government of the District of Columbia, 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*, the statutory factors set forth in Section 309(d) of the Clean Water Act ("CWA"), 33 U.S.C. § 309(d).

NOW, THEREFORE, PURSUANT TO Section 309 of the CWA, 33 U.S.C. Section 309(g), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of ***THIRTY-FIVE THOUSAND DOLLARS ($35,000.00)***, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.