

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

In the Matter of:

Turner Construction Company
375 Hudson Street
New York, NY 10014

and

Tompkins Builders, Inc.
1110 Vermont Avenue N.W., Suite 200
Washington, DC 20005

Respondents

Proceeding under Section 309(g)(2)(B)
of the Clean Water Act

EPA Docket No. CWA-03-2012-0170

CONSENT AGREEMENT

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

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I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY

1. This Consent Agreement is entered into by the Director, Water Protection Division, United States Environmental Protection Agency, Region III ("Complainant"), and Respondents, Turner Construction Company and Tompkins Builders, Inc. ("Respondents"), pursuant to Section 309(g) of the Clean Water Act, 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 to the Regional Administrator pursuant to delegation no. 2-52-A (9/1/05). The parties have agreed to settlement of alleged violations of the Clean Water Act by Respondents. 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) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), 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 \$16,000 per day for each day of violation, up to a total penalty amount of \$177,500.

II. EPA'S FACTUAL ALLEGATIONS

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into waters of the United States except in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and 40 C.F.R. Part 122, or other specific authorization.

4. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.1 and 122.26 provide that facilities with stormwater discharges associated with industrial activity are "point sources" subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).

5. The term "industrial activity" includes, among others, "[c]onstruction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more[.]" 40 C.F.R. § 122.26(b)(14)(x).

6. Operators who discharge stormwater associated with industrial activities to waters of the United States are required to seek NPDES permit coverage and to comply with the permit. 40 C.F.R. § 122.26(c).

7. The Commonwealth of Virginia has been approved by EPA to administer the NPDES program in the Commonwealth of Virginia. Pursuant to the authority of the Act, and the NPDES program approval, and the Virginia Stormwater Management Act, Virginia issued the Virginia General Permit for Discharges of Stormwater from Construction Activities ("VA Permit"), with an effective date of July 1, 2004. The VA Permit expired on June 30, 2009.

8. The VA Permit authorized discharges of stormwater associated with construction activities to waters of the United States (including discharges to, or through municipal separate storm sewer systems), but only in accordance with the conditions of the permit and the Storm Water Pollution Prevention Plan ("SWPPP") required by the VA permit.

9. Paragraph II(B)(1) of the VA Permit stated that "The SWPPP shall be retained, along with a copy of this permit at the construction site from the date of commencement of construction activity to the date of final stabilization."

10. Paragraph II(D)(2)(a)(1) of the VA Permit required that the SWPPP include provisions to preserve existing vegetation where attainable, including such practices such as tree protection.

11. Paragraph II(D)(2)(b)(1) of the VA Permit stated that "All control measures must be properly selected, installed and maintained...."

12. Paragraph II(D)(3)(a) of the VA Permit stated that "[i]f site inspections ... identify

[Best Management Practices] that are not operating effectively, maintenance shall be performed before the next anticipated storm event, or as soon as practicable to maintain the continued effectiveness of stormwater controls.”

13. Paragraph II(D)(4)(a) of the VA Permit stated that “Inspections shall be conducted at least once every 14 calendar days and within 48 hours of the end of any runoff producing storm event.”

14. The State of Maryland has been approved by EPA to administer the NPDES program in Maryland. Pursuant to the authority of the Act, the NPDES program approval, Title 9 of the Environment Article of the Code of Maryland, and regulations promulgated thereunder, the Maryland Department of the Environment (MDE) issued General permit for Stormwater Associated with Construction Activity, General NPDES Permit No. MDR10 (“MD Permit”). The effective date of the MD Permit was March 31, 2008 and it expired on December 31, 2008.

15. The MD Permit authorized discharges of stormwater associated with construction activities to waters of the United States (including discharges to, or through municipal separate storm sewer systems), but only in accordance with the conditions of the permit and the erosion and sediment control plan (“ESCP”) required by the MD Permit.

16. Paragraph IV(B)(2) of the MD Permit required that the site covered by the permit be inspected weekly and after rainfall events. Paragraph IV(B)(3) required written reports of such inspections that must include an assessment of the erosion and sedimentation controls in the site and a description of any maintenance performed.

17. Paragraph V(F) of the MD Permit required that all systems of treatment and control be properly maintained.

18. Turner Construction Company (“Turner”) and Tompkins Builders, Inc. (“Tompkins”) are “persons” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2. Tompkins is a wholly owned subsidiary of Turner.

EPA’s Allegations Regarding Sustainment Center of Excellence

19. At all times relevant to this case, upon information and belief, Tompkins was the operator of a construction site known as Sustainment Center of Excellence (“SCOE”) located in Fort Lee, Virginia.

20. Tompkins was engaged at all relevant times in construction activity at SCOE that discharged stormwater from a point source to Bailey Creek which flows to the James River, which is a “water of the United States” as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

21. The construction activity at the site disturbed approximately 8 acres of land.

22. On July 21, 2004, Virginia determined that the construction activity at SCOE was eligible for coverage under the VA Permit, Registration No. VAR100270.

23. The SWPPP for SCOE required weekly inspections, except in areas that have been stabilized.

24. Self-inspection reports submitted to EPA by Turner in response to a request for information issued under Section 308 of the CWA, 33 U.S.C. § 1318, indicate that at least one weekly inspection was not conducted in 2007.

25. On or about February 7, 2008, tree protection fencing was removed even though the construction was ongoing and the site was not stabilized. Tree protection was not re-installed until on or about March 25, 2008. Tree protection was again removed on or about May 26, 2008 and not reinstalled. On or about June 23, 2008, tree protection was no longer required.

EPA's Allegations Regarding Langley Air Force Base Hospital Addition

26. At all times relevant to this case, upon information and belief, Tompkins was the operator of a construction site known as Langley Air Force Base Hospital Addition ("Langley") located in Hampton, Virginia.

27. Tompkins was engaged at all relevant times in construction activity at Langley that discharged stormwater from a point source to Browns Creek and the Chesapeake Bay. The Chesapeake Bay is a "water of the United States" as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

28. The construction activity at Langley disturbed approximately 15 acres of land.

29. On September, 17, 2007, Virginia determined that the construction activity at Langley was eligible for coverage under the VA Permit, Registration No. DCR01-08-100348.

30. Self-inspection reports submitted to EPA by Turner, in response to a request for information issued under Section 308 of the CWA, 33 U.S.C. § 1318, indicated that at least during the period from April 2007 through June 2008, inspections were not conducted within 48 hours of several run-off producing storm events.

EPA's Allegations Regarding Warrenton Training Center Station C Firing Range

31. At all times relevant to this case, upon information and belief, Tompkins was the operator of a construction site known as Warrenton Training Center Station C Firing Range ("Station C") located in Remington, Virginia.

32. Tompkins was engaged at all relevant times in construction activity at Station C that discharged stormwater from a point source to an unnamed tributary of Marsh Run, to Marsh Run and then to the Rappahannock River, which is a "water of the United States" as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

33. The construction activity at Station C disturbed at least 13 acres of land.

34. On November 20, 2005, Virginia determined that the construction activity at Station C was eligible for coverage under the VA Permit, Registration No. DCR01-06-100793.

35. On September 21, 2006, a contractor for EPA inspected the site at Station C. On the date of the inspection, the inspector found that neither the SWPPP nor the permit were available on site even though the site had not yet been stabilized.

36. The inspector reported that during the September 21 inspection rock check dams were obstructed by straw, and not maintained as required.

37. The inspector also reported that at least two periodic inspections required by the permit were not conducted in August and September 2006. In addition, no inspections were conducted and documented before June 2006, although construction had begun in December 2005.

EPA's Allegations Regarding Warrenton Training Center Building B-70

38. At all times relevant to this case, upon information and belief, Turner was the operator of a construction site known as Warrenton Training Center Building B-70 ("Building B-70") located in Warrenton, Virginia.

39. Turner was engaged at all relevant times in construction activity at Building B-70 that discharged stormwater from a point source to Cattail Branch which flows through Towser Branch to the Warrenton Reservoir which flows through Cedar Run to the Occoquan River, which is a "water of the United States" as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

40. The construction activity at Building B-70 disturbed at least 20 acres of land.

41. On March 31, 2005, Virginia determined that the construction activity at Building B-70 was eligible for coverage under the VA Permit, Registration No. DCR01-05-100220.

42. On September 21, 2006, a contractor for EPA inspected the site at Building B-70.

43. On the date of the inspection, the SWPPP was not made available to the inspector on site even though the site was not yet stabilized.

44. The inspector reported that during the September 21 inspection a rock check dam was almost full of sediment and a silt fence was undermined by runoff, neither being maintained as required.

45. The inspector also reported that at least two periodic inspections required by the permit were not conducted in August and September 2006. In addition, no inspections were conducted and documented before May 2006, although construction had begun in March 2005.

EPA's Allegations Regarding DC Youth Center

46. At all times relevant to this case, upon information and belief, Tompkins was the operator of a construction site known as DC Youth Center in Laurel, MD.

47. Tompkins was engaged at all relevant times in construction activity at the DC Youth Center that discharged stormwater from a point source to a tributary of the Little Patuxent River, which is a "water of the United States" as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

48. The construction activity at the site disturbed approximately 14 acres of land.

49. On September 26, 2007, Maryland determined that the construction activity at the DC Youth Center was eligible for coverage under the MD Permit, Registration No. 08-SF-0044.

50. On or about June 24, 2008 an inspector from MDE visited the site.

51. The inspector reported that during the June 24 inspection several sediment traps had been closed earlier than allowed by the sequence established by the ESCP, which required the sediment traps to remain open until further site stabilization.

52. The inspector also reported that there were no inspection reports for a period of several months.

53. On or about July 28, 2008, the MDE inspector returned to visit the site.

54. The inspector reported that during the July 28 inspection sequencing violations still continued. The inspector reported that construction had proceeded without the required sediment traps and without approval for the change in sequence, and that drainage for one of the areas where one of the traps used to be now flowed through a pipe into a drainage swale, without further controls.

55. The inspector also reported that inspection reports were missing, including an inspection required after the last rain fall event. Further she reported that at least one report inaccurately indicated that the site was stabilized although stabilization had not yet been implemented as required.

56. The inspector reported several instances of sediment leaving the site, as mud being tracked off site into the road as well as sediment accumulating in a drainage channel.

57. The inspector also reported inlet structures without protection as well as inlet protection devices that were full of sediment and required maintenance.

58. The inspector reported that perimeter fencing was missing around the disturbed area.

III. EPA'S FINDING OF FACT AND EPA'S CONCLUSIONS OF LAW

59. EPA finds that Respondents violated the terms of the VA Permit and the MD Permit as described above, and thus Respondents violated Section 301 of the Act, 33 U.S.C. § 1311(a). These findings were based on the foregoing allegations and prior to any litigation, hearing or adjudication.

IV. CONSENT AGREEMENT AND FINAL ORDER

60. Respondents neither admit nor deny EPA's allegations set forth in Section II, above, and waive any defenses they might have as to jurisdiction and venue.

61. Respondents admit the jurisdictional allegations and agree not to contest EPA's jurisdiction to issue and enforce this CAFO.

62. Respondents neither admit nor deny EPA's conclusions of law, nor do Respondents acknowledge any fault or liability.

63. Respondents hereby expressly waive their right to a hearing or other proceeding 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 consent to issuance of this CAFO without adjudication.

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

65. The provisions of this CAFO shall be binding upon the Respondents, their officers, principals, directors, successors and assigns.

66. The parties agree that settlement of this matter prior to the initiation of litigation, any hearing or adjudication is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.

67. 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 this CAFO prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1)(A), EPA has consulted with the MDE and the Virginia Department of Conservation and Recreation regarding this action, and will mail a copy of this document to the appropriate Maryland and Virginia officials.

68. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violation(s) alleged, Respondents' 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), EPA and Respondents agree that Respondents will pay an administrative civil penalty in the amount of one hundred-thousand dollars (\$100,000) in full and final settlement of EPA's claims for the violations alleged herein.

69. Respondents shall pay the amount of one hundred-thousand dollars (\$100,000) pursuant to this CAFO within thirty (30) days of the effective date , in the following manner:

- A. All payments by Respondents shall reference Respondents' name and address, and the Docket Number of this action, CWA 03-2011-0286;
- 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
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Contact: Heather Russell 513-487-2044

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

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

- 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 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"

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 No.: 310006, Environmental Protection Agency
CTX Format 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

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

70. Respondents shall send notice of such payment, including a copy of the check, to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk
Mail Code: 3RC00
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

-and-

Nina Rivera
Mail Code: 3RC20
Office of Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

71. This CAFO shall not relieve Respondents of their 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.

72. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of amount due pursuant to this CAFO 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 amount assessed by this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount 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 amount 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).

73. This Consent Agreement and the accompanying Final Order settle and resolve only the civil claims for the specific violations alleged or based on the allegations set forth herein. EPA reserves the right to commence action against any person, including Respondents,

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. This CAFO is not, nor did any proceeding render, an adjudication or finding of fault or liability or violation of any law or regulation by the Respondents, nor do the Respondents, by their consent or otherwise, admit any liability to any third party or parties.

74. 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 Respondents' violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondents' violation of any applicable provision of law, except as specified in paragraph 73.

75. The amount due pursuant to this CAFO represents a civil penalty assessed by EPA and shall not be deductible for purposes of Federal taxes.

76. EPA shall have the right to institute a new and separate action to recover civil penalties for the claims made in this CAFO if the EPA obtains evidence that the information and/or representations of the Respondents is false, or, in any material respect, inaccurate. 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.

77. The undersigned representatives of the Respondents 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 that party to it.

78. 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.

V. EFFECTIVE DATE

79. Pursuant to 33 U.S.C. § 309(g)(4) and 40 C.F.R. § 22.45, this CAFO shall be issued after a 40-day public notice period has concluded and upon filing with the Regional Hearing Clerk. This CAFO will become final thirty (30) days after issuance, 33 U.S.C. § 1319(g)(5), and will become effective on that same date, 40 C.F.R. § 22.31(b).

FOR RESPONDENT Turner Construction Company:

By: _____

Name: _____

Title: _____

FOR RESPONDENT Tompkins Builders, Inc.:

By: _____

Name: _____

Title: _____

FOR COMPLAINANT, US ENVIRONMENTAL PROTECTION AGENCY, REGION III:

By: 
Jon Capacasa
Director, Water Protection Division
U.S. EPA Region III

Date: 8/22/12

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

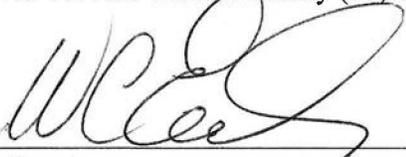
In the Matter of:	:	Proceeding under Section 309(g)(2)(B) of the Clean Water Act
Turner Construction Company	:	
375 Hudson Street	:	
New York, NY 10014	:	
and	:	
Tompkins Builders, Inc.	:	
1110 Vermont Avenue N.W., Suite 200	:	
Washington, DC 20005	:	EPA Docket No. CWA-03-2012-0170
Respondents	:	FINAL ORDER

PURSUANT TO Section 309(g) of the Clean Water Act, as amended, 33 U.S.C. § 1319 (“CWA”), and the Consolidated Rules of Practice, and having determined that the amount agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 309(g)(3) of the CWA, IT IS HEREBY ORDERED that Respondents pay one hundred-thousand dollars (\$100,000) in accordance with Section IV of the Consent Agreement.

The foregoing Consent Agreement and this Final Order shall be issued after the forty (40) days public comment period described at 33 U.S.C. § 309(g)(4) and 40 C.F.R. § 22.45(b) and upon filing with Regional Hearing Clerk. It will become effective thirty (30) days after issuance, 33 U.S.C. § 309(g)(5).

AUG 22 2012

Date



Shawn Garvin
Regional Administrator
U.S. Environmental Protection Agency, Region III

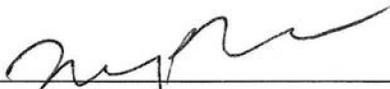
CERTIFICATE OF SERVICE

I hereby certify that on this day, I caused to be filed with the Regional Hearing Clerk, EPA Region III, the original Consent Agreement and Final Order, and that copies of these documents were sent to the following individual in the manner described below:

By first class, certified mail, return receipt requested:

Michael Branca
Pecker & Abramson
Two Lafayette Center
1133 21st Street N.W. Suite 500
Washington, DC 20036

Date: 8/27/12



Nina Rivera
Sr. Asst. Regional Counsel
US EPA Region III