

**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-03-2012-0196

**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. Construction activity that disturbs one or more acre but less than five acres is small construction activity. 40 C.F.R. § 122.26(b)(15).

7. Operators who discharge stormwater associated with industrial activities or associated with small construction activity 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).

8. 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 Virginia Stormwater Management Program General Permit No. DCR01 (General Permit for Discharges of Stormwater from Construction Activities] ("VA Permit 2004"). The effective date of the VA Permit was July 1, 2004 and it expired on June 30, 2009.

9. Upon the expiration of VA Permit 2004, Virginia issued General Permit No. VAR10 (General Permit for Discharges of Stormwater from Construction Activities) ("VA Permit 2009"). The effective date of this permit, which succeeded VA Permit 2004, was July 1, 2009 and it is set to expire on June 30, 2014.

10. The VA Permit 2004 and VA Permit 2009 authorize 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 permits.

11. Paragraphs II(B)(1) and (2) of the VA Permit 2004 and VA Permit 2009 require that the SWPPP be signed and it be retained, along with a copy of the permit at the construction site (or other location easily accessible in VA Permit 2009) from the date of commencement of construction activity to the date of final stabilization.

12. Paragraph II(D)(2)(a)(1) of the VA Permit 2004 and paragraph II(D)(2)(b)(1) of the VA Permit 2009 require that the SWPPP include provisions for permanent stabilization and for the preservation of existing vegetation where attainable, including practices such as tree protection.

13. Paragraph II(D)(2)(b)(1) of the VA Permit 2004 and paragraph II(D)(2)(b)(2) of the VA Permit 2009 state that "[a]ll control measures must be properly selected, installed and maintained...."

14. Paragraph II(D)(3)(a) of the VA Permit 2004 and paragraph II(D)(3) of the VA Permit 2009 require that if site inspections identify control measures that are not operating effectively, maintenance shall be performed before the next anticipated storm event, or as soon as practicable.

15. Paragraph II(D)(4)(a) of the VA Permit 2004 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." Paragraph II(D)(4)(a) of the VA Permit 2009 requires that inspections be conducted either every seven days, or at least once every 14 days and within 48 hours following any runoff-producing storm event.

16. 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 - State Discharge Permit 08GP ("MD Permit 2008"). The effective date of the MD Permit 2008 was March 31, 2008 and it expired on December 31, 2008.

17. MDE issued General Permit for Stormwater Associated with Construction Activity, NPDES General Permit No. MDR10 - State Discharge Permit 09GP ("MD Permit 2009"), which succeeded the MD Permit 2008. The effective date of this permit was January 1, 2009 and it is set to expire on December 31, 2013.

18. MD Permit 2008 and MD Permit 2009 authorize 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 Permits.

19. Paragraph IV(B)(2) of the MD Permit 2008 and paragraph IV(C)(2) of the MD Permit 2009 require that the site covered by the permit be inspected weekly and after rainfall events. Paragraph IV(B)(3) of MD Permit 2008 and paragraph IV(C)(3) of the MD Permit 2009

require 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.

20. Paragraph V(F) of the MD Permit 2008 and paragraph VI(F) of the MD Permit 2009 require that all systems of treatment and control be properly maintained.

21. The State of Pennsylvania has been approved by EPA to administer the NPDES program in Pennsylvania. Pursuant to the authority of the Act, and the NPDES program approval, and the Pennsylvania Clean Streams Law, Pennsylvania Department of Environmental Protection ("PADEP") issued the General NPDES Permit for Stormwater Discharges Associated with Construction Activities PAG-02 (2002 Amendment) ("PA Permit 2002"). The PA Permit was issued on December 7, 2002 and was set to expire on December 7, 2007. PADEP extended the expiration date of the PA Permit 2002 several times. It finally expired on December 7, 2009.

22. PADEP issued the General NPDES Permit for Stormwater Discharges Associated with Construction Activities PAG-02 (2009) ("PA Permit 2009"). The PA Permit 2009, which succeeded PA Permit 2002, was issued on December 8, 2009 and was set to expire on December 7, 2011. PADEP has extended the expiration date until December 7, 2012.

23. Parts A(2)(a) of the PA Permits 2002 and 2009 require weekly site inspections, as well as inspections within 24 hours of a rainfall event. The PA Permits require a written report for each inspection, which must include the name of the person conducting the inspection. PA Permit 2009 also requires the signature of the person conducting the inspection.

24. Parts C(2) of the PA Permits 2002 and 2009 require the implementation of an Erosion & Sedimentation Control Plan (E&S Plan).

25. EPA issues NPDES permits for discharges in the District of Columbia. On July 1, 2003 EPA issued an NPDES General Permit for Storm Water Discharges From Construction Activities ("DC Permit"). Although the DC Permit expired on July 1, 2008, permit coverage was extended to ongoing permitted projects in accordance with the Administrative Procedure Act and Section 4.1 of the DC Permit.

26. The DC Permit requires that operators conduct and document periodic inspections. Inspection reports must include, among other information, the date of the inspections, the name and qualifications of the person conducting the inspections, weather information, location of any discharge and identification of erosion control measures that require maintenance or that have failed. Part 3.10 of the DC Permit.

27. 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 Hershey Expansion Project**

28. At all times relevant to this case, upon information and belief, Turner was the operator of a construction site known as Hershey Expansion Project ("Hershey") located in Hershey, Pennsylvania.

29. Beginning on or about September 22, 2010, Turner was engaged at all relevant times in construction activity at Hershey.

30. Discharges of stormwater from the site flowed from a point source to Spring Creek and to an unnamed tributary of Swatara Creek. Spring Creek also flows into Swatara, 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.

31. The construction activity at the site disturbed approximately 17 acres of land.

32. The Hershey E&S Plan requires that the site be inspected at least once a week and after each storm event.

33. On June 15, 2010, Pennsylvania determined that the construction activity at Hershey was eligible for coverage under the PA Permit 2009, Registration No. PAG02-0022-10-099.

34. 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 there are no reports for weekly inspections required by the PA Permit from September 22, 2010, until November 24, 2010.

### **EPA's Allegations Regarding Martin Luther King Memorial**

35. At all times relevant to this case, upon information and belief, Tompkins and Turner were operators of a construction site known as Martin Luther King Memorial ("MLK Memorial") located in Washington, District of Columbia.

36. Beginning on or about December 16, 2009, Tompkins and Turner were engaged at all relevant times in construction activity at MLK Memorial.

37. Discharges of stormwater from the site flowed from a point source to the Tidal Basin. The Tidal Basin drains to the Potomac 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.

38. The construction activity at the MLK Memorial disturbed approximately 5 acres of land.

39. Stormwater discharges associated with construction at the MLK Memorial have been covered by the DC Permit since approximately October 2007, under Number DCR10A582.

40. Information 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 there are no inspection reports for the MLK Memorial site from January 2010 until at least November 2010.

#### **EPA's Allegations Regarding Fort Belvoir Community Hospital**

41. At all times relevant to this case, upon information and belief, Turner was an operator of a construction site known as Fort Belvoir Community Hospital located in Fort Belvoir, Virginia.

42. Beginning on or about November 8, 2007, Turner was engaged at all relevant times in construction activity at Fort Belvoir Community Hospital.

43. Discharges of stormwater from the site flowed from a point source to Accotink and Dogue Creeks, both which flow into the Potomac 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.

44. The construction activity at Fort Belvoir Community Hospital disturbed approximately 68 acres of land.

45. Virginia determined that the construction activity at Fort Belvoir Community Hospital was eligible for coverage under the VA Permit 2004, Registration No. DCR01-18-100953, effective November 30, 2007.

46. Virginia determined that the construction activity at Fort Belvoir Community Hospital was eligible for coverage under the VA Permit 2009, Registration No. VAR10-10-102402, effective July 2009.

47. 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, from March 2008 through April 2010, indicate that Turner violated the VA Permits on several occasions by not installing silt fencing correctly, by failing to address erosion in a sediment basin, by failing to maintain as soon as practicable silt and tree fences, check dams, the construction entrance, and basin inlets, and by not stabilizing areas where construction activity had temporarily ceased. In addition, self-inspection reports did not comply with all the requirements in Section II(D)(4)(e) of the VA Permits. Several required inspection reports are missing in the period between November 2007 and January 2010.

#### **EPA's Allegations Regarding Prince George's Community College Center for Health Studies**

48. At all times relevant to this case, upon information and belief, Tompkins was the operator of a construction site known as Prince George's Community College Center for Health Studies ("Center for Health Studies") located in Largo, Maryland.

49. Beginning on or about April 26, 2010, Tompkins was engaged in construction activity at the Center for Health Studies.

50. Construction activity at this site discharged stormwater through a municipal separate storm sewer into the Western Branch of the 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.

51. The construction activity at the Center for Health Studies has disturbed or will disturb approximately 6 acres of land.

52. On or about May 25, 2011, Maryland determined that the construction activity at the Center for Health Studies was eligible for coverage under permit registration No. 11PG0049.

53. From approximately April 26, 2010, until approximately May 25, 2011, Tompkins discharged stormwater in multiple occasions from this site without an NPDES permit.

#### **EPA's Allegations Regarding TRADOC Headquarters**

54. At all times relevant to this case, upon information and belief, Tompkins was the operator of a construction site known as TRADOC Headquarters ("TRADOC") in Fort Eustis, Virginia.

55. Beginning on or about June 1, 2009, Tompkins was engaged at all relevant times in construction activity at TRADOC.

56. Discharges of stormwater from the site flowed from a point source to the Warwick 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.

57. The construction activity at the site disturbed approximately 30 acres of land.

58. On or about November 12, 2010, Virginia determined that the construction activity at TRADOC was eligible for coverage under the VA Permit, Registration No. VAR10-11-100693.

59. From approximately June 2009 until approximately November 12, 2010, Tompkins discharged stormwater on multiple occasions from the site without an NPDES permit.

#### **EPA's Allegations Regarding Franklin & Marshall University Race Street Parking Lot**

60. At all times relevant to this case, upon information and belief, Turner was the operator of a construction site known as Franklin & Marshall University Race Street Parking Lot ("F&M Parking Lot"), located in Lancaster, Pennsylvania.

61. Beginning on or about June 2, 2010, Turner was engaged at all relevant times in construction activity at F&M Parking Lot.

62. Discharges of stormwater from the site flowed from a point source through a stormwater conveyance to Little Conestoga Creek to the Conestoga 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.

63. The construction activity at the site disturbed or will disturb approximately 7 acres of land.

64. On June 3, 2010, Pennsylvania determined that the construction activity at the F&M Parking Lot was eligible for coverage under the PA Permit 2009, Registration No. PAG02003610019.

65. The inspection reports for self-inspections conducted between June 7, 2010 and August 16, 2010 do not include the name and signature of the person conducting the inspections.

66. On or about July 28, 2010, a PADEP inspector visited the site.

67. The inspector reported that several inlets did not have protection even though the F&M Parking Lot E&S Plan required protection for all inlets.

#### **EPA's Allegations Regarding Army National Guard Readiness Center**

68. At all times relevant to this case, upon information and belief, Tompkins was the operator of a construction site known as Army National Guard Readiness Center ("Readiness Center") in Arlington, Virginia.

69. Beginning on or about December 1, 2008, Tompkins was engaged at all relevant times in construction activity at the Readiness Center.

70. Discharges of stormwater from the site flowed from a point source to the Four Mile Run which flows into the Potomac 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.

71. The construction activity at the site disturbed approximately 6 acres of land.

72. On or about November 4, 2008, Virginia determined that the construction activity at the Readiness Center was eligible for coverage under the VA Permit 2004, Registration No. DCR01-09-100716.

73. On or about May 21, 2009, an inspector from VA visited the site.

74. The inspector reported that a complete and signed SWPPP was not available at the site.

### **EPA's Allegations Regarding Drexel University Integrated Sciences Building**

75. At all times relevant to this case, upon information and belief, Turner was the operator of a construction site known as Drexel University Integrated Sciences Building ("Drexel") in Philadelphia, Pennsylvania.

76. Beginning on or about October 7, 2009, Turner was engaged at all relevant times in construction activity at the Drexel site.

77. Discharges of stormwater from the site flowed from a point source through a storm water conveyance to the Schuylkill 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.

78. The construction activity at the site disturbed over one acre of land.

79. On or about May 19, 2009, Pennsylvania determined that the construction activity at Drexel was eligible for coverage under the PA Permit, Registration No.PAG2015108027. Permit coverage was granted until May 19, 2014.

80. The Drexel E&S Plan required inlet protection for all city stormwater inlets within a block of the site.

81. The Drexel E&S Plan also included specifications for the constructions entrances at the site.

82. On or about January 11, 2010, an inspector from the Philadelphia Water Department ("PWD"), which maintains the stormwater system in Philadelphia, visited the site.

83. The inspector reported that one of the construction entrances had not been properly installed, and the other construction entrance needed maintenance.

84. On or about March 30, 2010, and April 12, 2010, an inspector from PWD visited the site.

85. On both occasions the inspector reported that there were inlets that did not have the protection required in the E&S Plan.

86. On or about July 27, 2011, August 22, 2011, and September 7, 2011, an inspector from PWD visited the site.

87. In all three inspections the inspector reported that a drain area full of sediment that needed to be maintained.

### **EPA's Allegations Regarding FDA Consolidation at White Oak – Buildings 31 & 32**

88. At all times relevant to this case, upon information and belief, Tompkins was the operator of a construction site known as White Oak Buildings 31 & 32 of the FDA Consolidation ("FDA Consolidation") located in Silver Spring, Maryland.

89. Construction activity at this site discharged stormwater from a point source to tributary of Paint Branch, to Paint Branch, to the Anacostia 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.

90. The construction activity which Tompkins operated was part of a common plan of construction that disturbed approximately a total of 75 acres.

91. On or about November 16, 2007, Maryland determined that the construction activity at FDA Consolidation was eligible for coverage under permit registration No. 08SF0073.

92. From on or about January 10, 2008 through February 27, 2008, silt fencing and inlet protection around the site were not properly maintained as required by the MD Permit 2008.

93. On or about June 6, 2008, an MDE inspector visited the site. The inspector reported that the sediment basin at the site had not been properly maintained.

94. On or about November 20, 2008, an MDE inspector visited the site. The inspector reported that the sediment basin and the construction entrance at the site had not been properly maintained, that the construction had exceed the limits of disturbances for which had been approved, and that not all the required inspections had been conducted.

### **EPA's Allegations Regarding Penn Park Complex**

95. At all times relevant to this case, upon information and belief, Turner was the operator of a construction site known as Penn Park Complex of the University of Pennsylvania ("Penn Park") in Philadelphia, PA.

96. Beginning on or about April 12, 2010, Turner was engaged at all relevant times in construction activity at Penn Park.

97. Discharges of stormwater from the site flowed from a point source through a storm water conveyance to the Schuylkill 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.

98. The construction activity at the site disturbed about 24 acres acre of land.

99. On or about September 22, 2009, Pennsylvania issued an individual NPDES permit for stormwater discharges associated with the construction activities at Penn Park under permit registration No. PAI015109004.



100. Penn Park's NPDES permit required weekly visual inspections of the site, as well as inspection after each measurable precipitation event. The permit also required a written report of each inspection.

101. 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, for the period between May 14, 2010 and December 2, 2010, included inspection reports only for every other week, instead of weekly as required by the PA Permit and the Penn Park E&S Plan. Nor were all the required post-precipitation inspections reports completed.

### **EPA's Allegations Regarding Salamander Resort and Spa**

102. At all times relevant to this case, upon information and belief, Turner was an operator of a construction site known as Salamander Resort and Spa ("Salamander") located in Middleburg, Virginia.

103. Beginning on or about October 27, 2007, Turner was engaged at all relevant times in construction activity at Salamander.

104. Stormwater discharges from the site flowed from a point source to a tributary of Goose Creek, 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.

105. The construction activity at Salamander disturbed approximately 54 acres of land.

106. Virginia determined that the construction activity at Salamander was eligible for coverage under the VA Permit 2004, Registration No. DCR01-08-101363, effective February 2008.

107. Virginia determined that the construction activity at Salamander was eligible for coverage under the VA Permit 2009, Registration No. VAR10-10-102103, effective July 2009.

108. From approximately October 27, 2007 until approximately February 11, 2008, Turners discharged stormwater on several occasions from the site without an NPDES permit.

109. Information 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 there are no inspection reports for Salamander from January 2008 until approximately April 9, 2009.

110. On or about September 8 and September 29, 2008, an inspector from Loudoun County visited the site. The inspector reported on both occasions that check dams and inlet protection in the site needed maintenance, and needed to be cleaned of sediment.

111. On or about February 29, 2009, March 2, 2009, and March 23, 2009, an inspector from Loudon County visited the site. The inspector reported that during these inspections inlet protections needed to be fixed and replaced.

112. On April 9, 2009, a VA inspector visited the site. The inspector reported that inlet protection needed to be replaced and/or maintained. She also noted the lack of inspection reports, and that the SWPPP did not include the site map required by the VA Permits.

113. 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, for April 2009, and from June 2009 through February 2010, indicate that Turner violated the VA Permits on several occasions by failing to maintain as soon as practicable damaged silt fences and to clean sediment build up on silt fences.

#### **EPA's Allegations Regarding C4ISR Center for Excellence**

114. At all times relevant to this case, upon information and belief, Tompkins was an operator at a construction site known as C4ISR Center for Excellence ("C4ISR") located in Aberdeen Proving Ground, Maryland.

115. Beginning on or about April 15, 2008, Tompkins was engaged in construction activity at C4ISR.

116. Construction activity at this site discharged to tributaries and wetlands adjacent to those tributaries of Romney Creek, 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.

117. The construction activity at the C4ISR disturbed over 100 acres of land.

118. On or about May 8, 2008, Maryland determined that the construction activity at C4ISR was eligible for permit coverage under registration No.08SF0220. Permit coverage was granted until May 8, 2013.

119. On June 30, 2008, an MDE inspector visited the site and reported that construction traffic was using and tracking dirt to an area outside the limits of disturbance of the approved ESCP, which should have been separated by a silt fence which was missing. The area was adjacent to wetlands and a stream.

120. On February 3, 2009, an MDE inspector visited the site. She reported that the site was having recurrent problems with sediment on the road because construction traffic leaving the site through an opening that lacked protection, even though the ESCP required that protection of all points of egress.

121. 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, from September 2009 through March 2010, indicate that Tompkins violated the MD Permits that require maintenance

of erosion controls and the ESCP requirement that swales be permanently stabilized with sod or seed when it failed to address rills and erosion in the swales.

122. On June 23, 2010, an MDE inspector visited the site. He reported that the site continued to have problems because of construction traffic leaving the site through an opening that lacked protection. He also noted that swales and stockpiles were not stabilized.

123. On October 14, 2010, an MDE inspector visited the site. He reported a large unstabilized area right next to a swale that discharged to stream, where the silt fence protecting the swale had been removed, contrary to the requirements of the ESCP.

124. On March 30, 2011, and April 6, 2011, an MDE inspector visited the site. He reported that erosion and sedimentation perimeter controls had been removed from certain areas prior to permanent stabilization, despite the ESCP requirement to establish permanent stabilization prior to control removal.

125. On September 13, 2011, an MDE inspector visited the site. He noted a large disturbed area around which there were no erosion and sedimentation controls. Flows from this area were directed without controls to a swale, contrary to the requirements of the ESCP.

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

126. 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**

127. 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.

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

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

130. 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.

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

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

133. 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.

134. 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, the PADEP, and the Virginia Department of Conservation and Recreation regarding this action, and will mail a copy of this document to the appropriate Maryland, Pennsylvania and Virginia officials.

135. 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 and seventy thousand dollars (\$170,000) in full and final settlement of EPA's claims for the violations alleged herein.

136. Respondents shall pay the amount of one hundred and seventy thousand dollars (\$170,000) 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 03-2012-0196;
- 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](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

137. 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

138. 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.

139. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the 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).

140. 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.

141. 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 140.

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

143. 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.

144. 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.

145. 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**

146. 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:

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-03-2012-0196

**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 and seventy thousand dollars (\$170,000) 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 this document 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 21<sup>st</sup> Street N.W. Suite 500  
Washington, DC 20036

Date: 8/27/12

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