



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

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REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

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

JUL 17 2012

Re: In the Matter of Turner Construction Company and Tompkins Builders, Inc.
CWA-03-2012-0171DN

Dear Mr. Branca:

Enclosed is a file-stamped copy of the Administrative Order on Consent concerning alleged violations of the Clean Water Act by Turner and Tompkins at several construction sites in EPA Region 3. Thanks for working with us to promptly resolve these matters.

To the extent that Turner or Tompkins may be a "small business" under the Small Business Regulatory Enforcement Fairness Act (SBREFA), please see the enclosed information sheet, which provides information on contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities and also information on compliance assistance. The Ombudsman and fairness boards do not participate in the resolution of EPA's enforcement actions.

Sincerely,

Nina Rivera
Office of Regional Counsel (3RC20)

Enclosure





ECDIC-2002-027

Office of Enforcement and Compliance Assurance
INFORMATION SHEET

U.S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance and tools to assist you in complying with federal and State environmental laws. These resources can help you understand your environmental obligations, improve compliance and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. Many public libraries provide access to the Internet at minimal or no cost.

EPA's Small Business Home Page (<http://www.epa.gov/sbo>) is a good place to start because it links with many other related websites. Other useful websites include:

EPA's Home Page

<http://www.epa.gov>

Small Business Assistance Programs

<http://www.epa.gov/ttn/sbap>

Compliance Assistance Home Page

<http://www.epa.gov/oeca/oc>

Office of Site Remediation Enforcement

<http://www.epa.gov/oeca/osre>

Hotlines, Helplines and Clearinghouses

EPA sponsors approximately 89 free hotlines and clearinghouses that provide convenient assistance on environmental requirements.

EPA's Small Business Ombudsman Hotline can provide a list of all the hot lines and assist in determining the hotline best meeting your needs. Key hotlines include:

EPA's Small Business Ombudsman

(800) 368-5888

Hazardous Waste/Underground Tanks/ Superfund

(800) 424-9346

National Response Center

(to report oil and hazardous substance spills)

(800) 424-8802

Toxics Substances and Asbestos Information

(202) 554-1404

Safe Drinking Water

(800) 426-4791

Stratospheric Ozone and Refrigerants Information

(800) 296-1996

Clean Air Technical Center

(919) 541-0800

Wetlands Hotline

(800) 832-7828

Continued on back



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

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REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

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

ADMINISTRATIVE ORDER FOR
COMPLIANCE ON CONSENT

EPA Docket No. CWA-03-2012-0171DN

I. STATUTORY AUTHORITY

1. This Administrative Order for Compliance on Consent (Administrative Order) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (hereinafter "EPA") under Section 309(a) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1319(a). Authority has been delegated by the Administrator to the Regional Administrator of EPA Region III, who has further delegated this authority to the Director of the Water Protection Division of Region III.

II. STATUTORY AND REGULATORY BACKGROUND

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source to waters of the United States except in compliance with, among other things, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

3. Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to her the Administrator finds that any person is in violation of any permit condition or limitation implementing certain CWA sections in a permit

issued under section 402 of the Act, she shall issue an order requiring such person to comply with such section or requirement.

4. Section 402 of the Act, 33 U.S.C. § 1342, 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, or may authorize states to issue such permits. The discharges are subject to specific terms and conditions as prescribed in the permit.

5. 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).

6. 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).

7. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” *Id.* § 122.26(b)(13).

8. Owners and/or 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).

III. EPA’S FACTUAL ALLEGATIONS

9. Respondents neither admit nor deny the specific factual allegations in this section, except that Respondents admit the jurisdictional allegations below.

10. 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.

11. 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.

12. 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.”

13. 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.

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

15. 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.”

16. 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.”

17. 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.

18. 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.

19. 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.

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

21. 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

22. 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.

23. 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.

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

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

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

27. 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.

28. 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

29. 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.

30. 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.

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

32. 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.

33. 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

34. 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.

35. 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.

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

37. 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.

38. 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.

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

40. 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

41. 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.

42. 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.

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

44. 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.

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

46. 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.

47. 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.

48. 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

49. 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.

50. 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.

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

52. 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.

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

54. 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.

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

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

57. 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.

58. 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.

59. 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.

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

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

IV. EPA'S CONCLUSION OF LAW

62. Based on the allegations set forth above, EPA concludes that by violating the terms of the VA Permit and the MD Permit as described above, Respondents have violated the CWA.

63. Respondents neither admit nor deny EPA's allegations and conclusions of law, nor do Respondents acknowledge fault or liability.

V. ORDER AND REQUEST

AND NOW, this 17th day of July, 2012, Respondents are hereby ORDERED, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), and do consent to do the following:

64. Within thirty (30) days of the effective date of this Administrative Order, Respondents shall comply with the Clean Water Act, and with any applicable permits for stormwater discharges from construction activities at existing Sites operated by Turner or Tompkins in Virginia, Maryland, Pennsylvania, West Virginia, Delaware, and the District of Columbia. Compliance with such permits includes compliance with the applicable SWPPP, ESCP or equivalent plan required by the permit ("the Plan").

65. Within sixty (60) days of the effective date of this Administrative Order or July 1, 2012, whichever occurs later, Respondents shall develop and implement a Stormwater Compliance Program (the "Program"). The Program shall be implemented with respect to any project within EPA Region 3 on which Turner is a party required by applicable federal or State law (1) to obtain a construction stormwater NPDES permit in its own name or (2) to assume responsibility for compliance with a construction stormwater NPDES permit obtained by another party and on which Turner performs land disturbing activities using its own forces or through subcontracts held by Turner, and which commences after the effective date of this Administrative Order (hereinafter, "Sites"). The Program is not intended or required to be implemented by Turner where Turner is not performing in that capacity, for example, consulting assignments or other engagements where Turner is neither performing nor holding subcontracts for the performance of land disturbing activities.

66. The Program shall incorporate the following elements:

- a. Respondents will designate one or more Business Unit¹ Stormwater Compliance Coordinators ("BU SCC") who will oversee stormwater compliance activities at Sites operated by their Business Units. The person(s) so designated shall be Turner employees adequately trained in stormwater compliance, shall have the authority to require implementation of the applicable CWA requirements for stormwater discharges and shall have the authority to develop and implement stormwater compliance policies for the Respondents.
- b. Respondents shall designate a Site Stormwater Compliance Coordinator ("Site SCC") for each Site. This Site SCC shall be an employee of the Respondent at the Site, trained in storm water compliance and shall supervise the implementation of the storm water requirements and have the authority to require corrective action when necessary. If necessary, Respondents can designate an alternate Site SCC with the same qualifications and authority as the principal Site SCC.
- c. Respondents shall develop and implement an employee stormwater training program. The program shall include comprehensive training for stormwater compliance personnel such as the BU SCCs and the Site SCCs, as well as training for all of Respondents' employees who primarily supervise and direct construction activity at a Site. The program shall require annual refresher training for storm water compliance personnel. Respondents shall keep records of the storm water training for a period of three (3) years
- d. Respondents shall include in subcontracts entered into after the effective date hereof with subcontractors engaged in earth disturbing activities at the Site, the requirement that such subcontractors comply with the applicable stormwater permit and the Plan.
- e. Respondents will develop a standard form to document site inspections which, at a minimum, will require the following information:
 - i. date and time of the inspection;
 - ii. name and signature of the inspector;
 - iii. weather conditions at the site, and last precipitation event if known;
 - iv. observations reflecting current or past discharges of sediment from a Site, including location;

1. A Business Unit (BU) generally consists of a profit center of Turner Construction (including Tompkins Builders, Inc.) that is responsible for projects within a geographical area or a line of business and that is headed by a General Manager and an Operations Manager. Currently, there are four BUs that operate within EPA Region 3.

- v. identification, including location, of any stormwater control measures in need of repair or maintenance, including the type of repair or maintenance required;
 - vi. status, based on visual observation, of any maintenance or repair items identified in the prior inspection;
- and
- vii. any updates or changes needed in the Plan.

Please submit to EPA a copy of the standard site inspection form for review.

- f. Respondents will not initiate land disturbing activities at any Site until the construction activity at the Site is covered by a stormwater discharge permit. The operating Respondent shall obtain permit coverage as required by the applicable federal law and regulations or, where a state has received approval under 33 U.S.C. 1342(b) to administer the NPDES program with respect to discharges of construction stormwater, by the applicable state law and regulations.
- g. Respondents will not initiate land disturbing activities at any Site until the operating Respondent has prepared the Plan required by the applicable stormwater discharge permit issued pursuant to the CWA, or has ensured that such Plan has been prepared.
- h. Respondents will not initiate land disturbing activities at any Site until the operating Respondent has taken measures to assure that the Plan complies with the applicable stormwater discharge permit and applicable regulations. At a minimum, for all Plans prepared by Respondent, the Plan shall:
 - i. Identify a Site SCC prior to the initiation of land disturbing activities at the Site;
 - ii. include a detailed description of the site, the nature of the construction, the existing conditions prior to construction including the run-off coefficient, the expected area of disturbance, and sequencing;
 - iii. include a detailed map with drainage patterns and slopes, stormwater control measures, surface waters including wetlands, separate storm sewers, discharge points, and staging areas;
 - iv. identify construction stormwater control measures that are in compliance with all applicable regulations and that are appropriate for the Site;
 - v. include clear and concise descriptions of the stormwater control measures, including sequencing;

- vi. incorporate inspection frequency and deadlines for maintenance and responsive actions, and procedures for conducting inspections and implementing maintenance; and
 - vii. identify any required post construction storm water control measures.
- i. Respondents shall implement procedures for revising the Plan if there are changes to the design under construction at a Site or to construction activities at a Site that could affect the discharge of pollutants through stormwater, or changes to stormwater control measures that result from inspections or maintenance. The Plan revisions shall take place within 14 days of such change or such shorter time period as is specified in the applicable permit.
 - j. The operating Respondent shall ensure that a copy of the permit and a copy of the Plan are available at the site. If allowed by the applicable permit the Plan and permit can be available electronically.
 - k. The operating Respondent shall assure that the contact information for the Site SCC is conspicuously posted at the construction office or in another more conspicuous location. The notice should authorize and encourage all employees and contractors to contact the Site SCC with questions or problems related to sediment and erosion control at the site.
 - l. Prior to beginning land disturbing activities at a Site, the Site SCC must verify that permit coverage has been obtained and that the permit and Plan are available on-site, or electronically if allowed by the applicable permit.
 - m. Prior to beginning land disturbing activities at a Site, except for activities associated with the installation of initial stormwater control measures, the Site SCC must:
 - i. inspect the site to determine whether the stormwater control measures that are required to be in place prior to construction have been installed in accordance with the Plan. The Site SCC shall document the preconstruction inspection and that the required stormwater control measures have been installed in accordance with the Plan. The Site SCC shall sign the preconstruction inspection report based on his or her knowledge, information and belief; and
 - ii. hold a pre-construction meeting with the operating Respondents' project supervisory employees and a representative of each subcontractor engaged at that time to review the permit and the Plan requirements. If project supervisory employees of Respondent or representatives of a subcontractor did not attend the preconstruction meeting, the Site SCC shall review the permit and Plan requirements prior to that individual or representative beginning work at the Site.

- n. The Site SCC shall hold weekly meetings with the operating Respondents' project supervisory employees and subcontractor representatives to review the applicable permit and Plan requirements and to address any problems that have arisen in implementing the Plan, maintaining the stormwater control measures or in controlling sediment discharges and erosion.
- o. The Site SCC shall inspect the site at the frequency required by the applicable permit and Plan. The Site SCC shall determine whether the operating Respondents' land disturbing activities are being conducted in accordance with the applicable permit and Plan, and shall assure that all needed repair and maintenance actions are performed as required by the applicable permit and Plan. The Site SCC shall document the inspections using the standard inspection form developed as part of this Program.
- p. The Site SCC shall perform an inspection at the conclusion of the operating Respondents' land disturbing activities at the site to ascertain that the site has been stabilized in accordance with the applicable permit and Plan requirements.
- q. Respondent shall implement a process by which, not less frequently than quarterly, a review shall be conducted by each BU SCC of the performance under this Order of Site(s) under their respective control and a discussion shall be held among the BU SCCs with Sites subject to this Order to confer regarding recurring issues of concern and to discuss approaches to addressing those issues.
- r. Respondents shall implement a process by which, not less frequently than annually, a review will be conducted to identify all instances of apparent noncompliance during that year. Respondents will then prepare a report 1) listing all the sites subject to this Order during the reporting period; 2) identifying recurring apparent noncompliance issues that indicate the need for adjustments to the program, and the solutions that the Respondents have implemented or intend to implement to address such issues; and 3) attaching any government inspection report or compliance action taken within the reporting period.
- s. For the annual periods concluding on the first, second and third anniversaries of the effective date of this Administrative Order (the first annual report shall apply only to the six month period immediately prior to the first anniversary), Respondent shall forward two copies of the annual report within sixty (60) days of the end of the annual period to:

Matthew Colip
Water Protection Division
US EPA Region III
1650 Arch St. (3WP42)
Philadelphia, PA 19103

67. With respect to any Site to which the Program described in Paragraphs 64 and 65 applies but which is subject to a construction stormwater consent decree or judgment entered by a Federal District Court and on which the United States appears as a Plaintiff, Respondents will implement the Program as follows:

- a. Designate a Site SCC as described in Paragraph 65.b.
- b. Verify permit coverage and availability of Plan as described in Paragraph 65.l.
- c. BU SCCs will include these Sites in the reviews described in Paragraph 65.q.
- d. Respondents must implement the following elements of the Program at these Sites, unless another entity subject to a construction stormwater consent decree or judgment is implementing these elements:
 - i. Conduct a preconstruction inspection;
 - ii. Hold a preconstruction meeting;
 - iii. Hold weekly or regular meetings with supervisory employees to review the Plan and address any implementations and maintenance problems; or
 - iv. Conduct inspections. If another entity conducts inspections pursuant to a decree or judgment, the Site SCC will regularly review the inspection reports conducted by the other entity.

68. Within fourteen (14) days of the effective date of this Administrative Order, Respondents shall submit to EPA certification of Respondents' intent to comply with this Administrative Order. A responsible company official must sign on behalf of the corporate Respondents. The certification shall be submitted to:

Matthew Colip
Water Protection Division
US EPA Region III
1650 Arch St. (3WP42)
Philadelphia, PA 19103

VI. GENERAL PROVISIONS

69. This Administrative Order does not relieve the 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. This Administrative Order does not constitute a waiver, suspension or modification of the requirements of the CWA or of any issued permit. .

70. This Administrative Order 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 liability to any third party or parties.

71. Issuance of this Administrative Order shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited above. If EPA initiates such an action, Respondents will be subject to civil penalties of up to \$37,500 per day of violation pursuant to 33 U.S.C. § 1319 and 40 C.F.R. Part 19. If a criminal judicial action is initiated, and Respondents are convicted of a criminal offense under Section 309 of the Act, Respondents may be subject to a monetary fine and/or imprisonment, and may become ineligible for certain contracts, grants, or loans pursuant to Section 508 of the Act.

72. Respondents waive any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondents may have with respect to any allegation of fact or law set forth in this Order on Consent, including, but not limited to, any right of judicial review of the Section 309(a)(3) Compliance Order on Consent under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

73. EPA reserves all existing inspection authority otherwise available to EPA pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, or pursuant to any other statute or law.

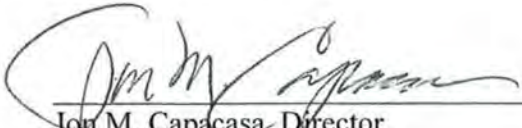
74. The undersigned representatives of Respondents certify that he or she is fully authorized by the party represented to enter into the terms and conditions of this AO and to execute and legally bind the party.

75. All of the terms and conditions of the Administrative Order 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 Administrative Order, 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 Administrative Order shall be null and void.

VI. EFFECTIVE DATE

76. This ADMINISTRATIVE ORDER is effective upon receipt.

Date: 1 7 2002


Jon M. Capacasa, Director
Water Protection Division
EPA, Region III

FOR RESPONDENT ~~Turner~~ Turner Construction Company:

By: 

Name: RICHARD P. HOMAN

Title: Executive Vice President

FOR RESPONDENT Tompkins Builders, Inc.:

By: 

Name: James L. Leary III

Title: President

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 Administrative Order for Compliance on Consent, 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 21st Street N.W. Suite 500
Washington, DC 20036

Date:

7/17/2012



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