

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

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In the Matter of:

Brookland South Campus, LLC

and

Bozzuto Development Company,

Respondents

Property Location:

Lawrence Street and 7th Street NE
Washington, DC 20017

Proceeding to Assess Class II
Administrative Penalty Under
Section 309(g) of the Clean Water Act

Docket No. CWA-03-2015-0045

**ADMINISTRATIVE PENALTY
COMPLAINT
AND NOTICE OF OPPORTUNITY TO
REQUEST HEARING**

I. STATUTORY AUTHORITY

1. Pursuant to Section 309(g) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency (“EPA” or “the Agency”) is authorized to assess administrative penalties against persons who violate Section 301(a) of the Act, 33 U.S.C. § 1311(a). The Administrator of EPA has delegated this authority to the Regional Administrator of EPA, Region III, who in turn has delegated this authority to the Water Protection Division Director (“Complainant”).
2. Pursuant to Section 309 of the Act, 33 U.S.C. § 1319, and in accordance with the enclosed *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, Complainant hereby proposes to assess a civil penalty in the amount of \$177,500 (one hundred seventy-seven thousand five hundred dollars) against Brookland South Campus, LLC (“Brookland”) and Bozzuto Development Company (“Bozzuto”) (together, “Respondents”) for violations of Section 301 of the CWA, 33 U.S.C. § 1311.

II. FACTUAL AND LEGAL ALLEGATIONS

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (“NPDES”) program under Section 402 of the Act, 33 U.S.C. § 1342.
4. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States 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. §§ 122.2 and 122.26 provide that, with some exceptions not relevant here, storm water discharges are “point sources” subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).
6. “Discharge of a pollutant” includes “any addition of any ‘pollutant’ or combination of pollutants to ‘waters of the United States’ from any ‘point source’.” 40 C.F.R. § 122.2.
7. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).
8. Respondent Brookland is an entity located and doing business in Washington, D.C. and the state of Maryland.
9. Respondent Brookland is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
10. Respondent Brookland is a joint venture among Bozzuto, Pritzker Realty, and Adbo Development.
11. Respondent Bozzuto is an entity located and doing business in Washington, D.C. and the state of Maryland.
12. Respondent Bozzuto is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
13. At all times relevant to this Complaint, Respondents have been developing a construction project in Washington, D.C. that includes private retail, commercial, and residential uses, which is bounded by Michigan Avenue, Monroe Street NE, 7th Street NE, Bunker Hill Road NE, and Lawrence Street NE (“the Site”).

14. Respondents are the owners and/or operators of the Site, operating in a joint real estate venture to develop the Site.
15. The Site construction limits encompass a total area of land disturbance of approximately 13.25 acres.
16. The Site consists of multiple blocks, referred to as Blocks A through E.
17. Block A is divided into Blocks A-1 and A-2.
18. Block A-2 encompasses a total area of land disturbance of approximately 1.92 acres.
19. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA issued a revised National Pollutant Discharge Elimination System (“NPDES”) Construction General Permit, effective on February 16, 2012 (hereinafter, “the Permit” or “2012 CGP”). The Permit authorizes discharges of storm water associated with construction activities, but only in accordance with the conditions of the Permit.
20. The Permit requires an applicant for coverage under the Permit to submit to EPA a complete and accurate Notice of Intent (“NOI”) for coverage prior to commencing construction activities. 2012 CGP at Part 1.4.
21. The Permit requires that for existing projects an NOI for coverage under the 2012 CGP must be submitted no later than May 16, 2012. 2012 CGP at Part 1.4.2, Table 1.
22. On or about August 27, 2012, Respondents (through their agent(s) and/or representative(s)) submitted an NOI for coverage under the Permit for the Site.
23. As required by Part 7.1.1 of the Permit, Respondents prepared a Stormwater Pollution Prevention Plan (“SWPPP”) on August 3, 2011, which they maintain at the Site.
24. EPA determined that the Site was eligible for coverage under the Permit, effective September 10, 2012, and assigned Respondents the Facility Permit Tracking Number DCR12A041.
25. Respondents began clearing, grading, excavating, and conducting related activities at the Site in February 2012.
26. The clearing, grading, excavating, and related activities performed by Respondents at the Site constitute “industrial activity” within the meaning of Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26(b)(14)(x).

27. The Site discharges pollutants to the Potomac River via the Washington, D.C. municipal separate storm sewer (“MS4”) system and combined sewer system.
28. The Potomac River is a “water of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.
29. The Potomac River is an “impaired water”, included on Washington, D.C.’s 303(d) list. At least one segment of the Potomac River is listed as impaired for nutrients and/or sediment.
30. On February 19, 2013, representatives of EPA Region III and EPA contractors from the Environmental Resource Group (“the Inspection Team”) conducted an inspection of Block A of the Site (“the Inspection”).
31. Representatives from Bozzuto accompanied the Inspection Team on the Inspection.
32. During the Inspection, the Inspection Team reviewed Respondents’ SWPPP and Erosion and Sediment Control Plan.
33. The Inspection Team prepared an inspection report from the Inspection (“the Inspection Report”), which included multiple observations regarding Respondents’ compliance with the requirements of the Permit and a list of documents provided by Respondents either before or after the Inspection.
34. A copy of the Inspection Report was sent to Respondents on August 9, 2013.
35. During the Inspection, the Inspection Team observed that activities at Block A-2 included employee parking and some material staging, and that Block A-2 had been graded before the time of the Inspection and was not stabilized.
36. At the time of the Inspection, Block A-2 was not covered by the 2012 CGP.
37. On September 15, 2014, EPA issued an Administrative Order to Respondents pursuant to Section 309 of the Act, 33 U.S.C. § 1319(a), requiring Respondents to submit a Notice of Intent for Block A-2 for coverage under the 2012 CGP and to take all actions necessary to comply with the 2012 CGP.

III. FINDINGS OF VIOLATIONS

Count 1: Failure to Post Notice of NPDES Permit Coverage

38. The Permit requires that the permittee “post a sign or other notice conspicuously at a safe, publicly accessible location in close proximity to the project site. At a minimum, the notice must include the NPDES Permit tracking number and a contact name and phone number for obtaining additional project information. The notice must be located so that it

is visible from the public road that is nearest to the active part of the construction site, and it must use a font large enough to be readily viewed from a public right-of-way.” 2012 CGP Part 1.5.

39. At the time of the Inspection, the Inspection Team did not observe any sign or notice that was posted conspicuously at a safe, publicly accessible location in close proximity to the Site, much less one that met the requirements of the Permit.
40. Based on the information described in this Complaint, Respondents failed to post a sign or other notice conspicuously at a safe, publicly accessible location in close proximity to the Site that contained the information required by the Permit.
41. Respondents’ failure to post a sign or other notice conspicuously at a safe, publicly accessible location in close proximity to the Site that contained the information required by the Permit constitutes violations of the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count 2: Failure to Install Erosion and Sediment Controls Along Perimeter

42. Part 2.1 of the Permit and its subparts require the permittee to “design, install, and maintain erosion and sediment controls that minimize the discharge of pollutants from earth-disturbing activities.” 2012 CGP at Part 2.1. Earth-disturbing activities include “actions taken to alter the existing vegetation and/or underlying soil of a site, such as clearing, grading, site preparation (e.g. excavating, cutting, and filling), soil compaction and movement and stockpiling of top soils.” 2012 CGP at Appendix A-Definitions and Acronyms.
43. Specifically regarding installation, the Permit requires the permittee to “install sediment controls along those perimeter areas of [the Site] that will receive stormwater from earth-disturbing activities.” 2012 CGP at Part 2.1.2.2(a). Installation of those sediment controls must be complete by the time that earth-disturbing activities in any given portion of the Site have begun. 2012 CGP at Part 2.1.1.3(a). The permittee “must install all stormwater controls in accordance with good engineering practices, including design specifications.” 2012 CGP at Part 2.1.1.3(b).

44. At the time of the Inspection, the EPA Inspection Team observed multiple failures to install erosion and sediment controls around the perimeter of the Site and to do so in accordance with good engineering practices, including:
 - i. A disconnected silt fence;
 - ii. Sections of silt fence that were not entrenched along 7th Street NE; and
 - iii. A missing silt fence along the northwestern corner of Monroe Street NE and Michigan Avenue NE.
45. Based upon the information described in this Complaint, Respondents failed to install sediment controls along those perimeter areas of the Site that were to receive stormwater from earth-disturbing activities and failed to install such controls in accordance with good engineering practices.
46. Respondents' failure to install sediment controls along those perimeter areas of the Site that were to receive stormwater from earth-disturbing activities constitutes violations of the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count 3: Failure to Maintain Erosion and Sediment Controls

47. Part 2.1 of the Permit and its subparts require the permittee to "design, install, and maintain erosion and sediment controls that minimize the discharge of pollutants from earth-disturbing activities." 2012 CGP at Part 2.1. Earth-disturbing activities include "actions taken to alter the existing vegetation and/or underlying soil of a site, such as clearing, grading, site preparation (e.g. excavating, cutting, and filling), soil compaction and movement and stockpiling of top soils." 2012 CGP at Appendix A-Definitions and Acronyms.
48. Specifically regarding maintenance, the Permit requires the permittee to "ensure that all erosion and sediment controls remain in effective operating condition during permit coverage and are protected from activities that would reduce their effectiveness," 2012 CGP at Part 2.1.1.4(a), and requires the "remov[al of] sediment before it has accumulated to one-half of the above-ground height of any perimeter control." 2012 CGP at Part 2.1.2.2(b).

49. At the time of the Inspection, the Inspection Team observed a number of failures to maintain erosion and sediment controls, including:
- i. Sections of silt fence and super silt fence were either compromised by sediment, not repaired, or not fastened per specifications in the Sediment and Erosion Control Plan;
 - ii. The silt fence and super silt fences along the Site borders on Monroe Street NE and 7th Street NE had gaps that had allowed sediment to escape the Site; and
 - iii. A stabilized construction entrance on the northern perimeter and 7th Street NE near the corner of Monroe Street NE and 7th Street NE was compacted and full of sediment.
50. Based upon the information described in this Complaint, Respondents failed to ensure that all erosion and sediment controls remained in effective operating condition during permit coverage and were protected from activities that would reduce their effectiveness.
51. Respondents' failure to ensure that all erosion and sediment controls remained in effective operating condition during permit coverage and were protected from activities that would reduce their effectiveness constitutes violations of the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count 4: Failure to Minimize the Track-out of Sediment from Vehicles Exiting the Site

52. The Permit requires the permittee to “minimize the track-out of sediment onto off-site streets, other paved areas, and sidewalks from vehicles exiting [the Site]”. 2012 CGP at Part 2.1.2.3. The Permit also requires that, “[w]here sediment has been tracked-out from [the] site onto the surface of off-site streets, other paved areas, and sidewalks, [the permittee] must remove the deposited sediment by the end of the same work day in which the track-out occurs or by the end of the next work day if track-out occurs on a non-work day.” 2012 CGP at Part 2.1.2.3(d).
53. At the time of the Inspection, the Inspection Team observed multiple failures to minimize the track-out of sediment, including:
- i. A stabilized construction entrance on the northern perimeter and 7th Street NE near the corner of Monroe Street NE and 7th Street NE was compacted and full of sediment; and
 - ii. Sediment residue had accumulated on the sidewalk outside of the stone aggregate near the northern perimeter construction entrances.

54. Based upon the information described in this Complaint, Respondents failed to minimize the track-out of sediment onto off-site streets, other paved areas, and sidewalks from vehicles exiting the Site.
55. Respondents' failure to minimize the track-out of sediment onto off-site streets, other paved areas, and sidewalks from vehicles exiting the Site constitutes violations of the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count 5: Failure to Control Discharges from Stockpiled Sediment or Soil

56. The Permit requires the permittee to comply with, *inter alia*, the following requirements for "any stockpiles or land clearing debris composed, in whole or in part, of sediment or soil": "(a) Locate the piles outside of any natural buffers established under Part 2.1.2.1a and physically separated from other stormwater controls implemented in accordance with Part 2.1; . . . [and] (c) Where practicable, provide cover or appropriate temporary stabilization to avoid direct contact with precipitation or to minimize sediment discharge." 2012 CGP at Part 2.1.2.4(a), (c).
57. The Permit defines "sediment or soil stockpiles" as "the storage for multiple days of soil or other sediment material to be used in the construction project." 2012 CGP at Part 2.1.2.4 (Note).
58. The Permit defines "temporary stabilization" to mean "a condition where exposed soils or disturbed areas are provided a temporary vegetative and/or non-vegetative protective cover to prevent erosion and sediment loss. Temporary stabilization may include temporary seeding, geotextiles, mulches, and other techniques to reduce or eliminate erosion until either final stabilization can be achieved or until further construction activities take place to re-disturb this area." 2012 CGP, Appendix A.
59. At the time of the Inspection, the Inspection Team observed multiple failures to control discharges from stockpiled sediment or soil, including an unstabilized sediment stockpile located near the northern perimeter construction entrance and adjacent to the super silt fence along the perimeter of the Site, in which there was a gap.
60. Based upon the information described in this Complaint, Respondents failed to locate stockpiles outside of any natural buffers and physically separated from other stormwater controls and failed to provide cover or appropriate temporary stabilization for the stockpiles.
61. Respondents' failure to comply with certain requirements to control discharges from stockpiles or land clearing debris composed, in whole or in part, of sediment or soil constitutes violations of the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count 6: Failure to Minimize the Discharge of Pollutants from Equipment and Vehicle Washing

62. The Permit requires the permittee to “design, install, and maintain effective pollution prevention measures in order to prevent the discharge of pollutants.” 2012 CGP at Part 2.3.
63. Specifically regarding compliance with pollution prevention standards for the washing of equipment and vehicles, the permittee “must provide an effective means of minimizing the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other types of washing.” 2012 CGP at Part 2.3.3.2(a).
64. The Permit provides that “[e]xamples of effective controls include, but are not limited to, locating activities away from surface waters and stormwater inlets or conveyances and directing wash waters to a sediment basin or sediment trap, using filtration devices, such as filter bags or sand filters, or using other similarly effective controls.” 2012 CGP at Part 2.3.3.2 (fn 20).
65. At the time of the Inspection, the Inspection Team observed multiple failures to minimize the discharge of pollutants from vehicle washing, including site personnel washing a truck at the front of the construction entrance on 7th Street NE without using the portable sediment tank located near the opening of the construction entrance to contain the wash water.
66. Based upon the information described in this Complaint, Respondents failed to minimize the discharge of pollutants from equipment and vehicle washing at the Site.
67. Respondents’ failure to minimize the discharge of pollutants from equipment and vehicle washing at the Site constitutes violations of the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count 7: Failure to Comply with Pollution Prevention Standards for Storage of Construction Products, Materials, and Wastes

68. The Permit requires the permittee to “design, install, and maintain effective pollution prevention measures in order to prevent the discharge of pollutants.” 2012 CGP at Part 2.3. The Permit requires the permittee to comply with certain pollution prevention standards for, among other things, handling and storage of construction products, materials, and wastes. 2012 CGP at Part 2.3.3.
69. Specifically regarding the storage, handling, and disposal of diesel fuel, oil, hydraulic fluids, other petroleum products, and other chemicals, the permittee must “store chemicals in water-tight containers, and provide either (1) cover (e.g., plastic sheeting or

temporary roofs) to prevent these containers from coming into contact with rainwater or (2) a similarly effective means designed to prevent the discharge of pollutants from these areas (e.g., spill kits), or provide secondary containment (e.g., spill berms, decks, spill containment pallets)". 2012 CGP at Part 2.3.3.3(c).

70. At the time of the Inspection, the Inspection Team observed construction products, materials, and wastes including but not limited to paint remover, hydraulic oil, diesel fuel, and form release oils on bare ground (i.e., not in watertight containers), uncovered and exposed to stormwater.
71. Based upon the information described in this Complaint, Respondents failed to comply with the pollution prevention standards required by the Permit with respect to the storage of construction products, materials, and wastes.
72. Respondents' failure to comply with the pollution prevention standards required by the Permit constitutes violations of the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count 8: Failure to Comply with Pollution Prevention Standards for Handling of Construction Products, Materials, and Wastes

73. The Permit requires the permittee to "design, install, and maintain effective pollution prevention measures in order to prevent the discharge of pollutants." 2012 CGP at Part 2.3. The Permit requires the permittee to comply with certain pollution prevention standards for, among other things, handling and storage of construction products, materials, and wastes. 2012 CGP at Part 2.3.3.
74. Part 2.3.3.3(c)(ii) of the Permit also requires the permittee to "[c]lean up spills [of diesel fuel, oil, hydraulic fluids, other petroleum products, and other chemicals] immediately, using dry clean-up methods where possible, and [to] dispose of used materials properly. Do not clean surfaces or spills by hosing the area down. Eliminate the source of the spill to prevent a discharge or a continuation of an ongoing discharge." 2012 CGP at Part 2.3.3.3(c)(ii).
75. At the time of the Inspection, the Inspection Team observed an oily sheen on the ground near the fuel tank in the materials staging area of Block A-1 that had not been cleaned up.
76. Based upon the information described in this Complaint, Respondents failed to clean up spills of oil immediately and therefore failed to comply with the pollution prevention standards for handling of construction products, materials, and wastes.
77. Respondents' failure to comply with the pollution prevention standards for handling of construction products, materials, and wastes constitutes violations of the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count 9: Failure to Provide an Effective Means of Eliminating the Discharge of Water from the Washout and Cleanout of Concrete

78. The Permit requires the permittee to “design, install, and maintain effective pollution prevention measures in order to prevent the discharge of pollutants.” 2012 CGP at Part 2.3. The Permit requires the permittee to comply with certain pollution prevention standards for, among other things, handling and storage of construction products, materials, and wastes. 2012 CGP at Part 2.3.3.
79. The Permit requires the permittee “to provide an effective means of eliminating the discharge of water from the washout and cleanout of stucco, paint, concrete, form release oils, curing compounds, and other construction materials. To comply with this requirement, you must: (a) [d]irect all washwater into a leak-proof container or leak-proof pit . . . designed so that no overflows can occur due to inadequate sizing or precipitation; [and] (b) . . . (iii) [r]emove and dispose of hardened concrete waste consistent with your handling of other construction wastes in Part 2.3.3.3.” 2012 CGP at Part 2.3.3.4.
80. Part 2.3.3.3(e) of the Permit requires the permittee to “[p]rovide waste containers (e.g., dumpster or trash receptacle) of sufficient size and number to contain construction and domestic wastes. In addition, [the permittee] must: (1) On work days, clean up and dispose of waste in designated waste containers; and (2) Clean up immediately if containers overflow.” 2012 CGP at Part 2.3.3.3(e).
81. At the time of the Inspection, the Inspection Team observed multiple failures to eliminate the discharge of water from the washout and cleanout of concrete, including: (1) an unlined concrete washout pit; (2) pooled water sitting on top of hardened concrete; (3) a pile of concrete pieces adjacent to the washout pit; and (4) concrete residue near the bucket washout area.
82. Based upon the information described in this Complaint, Respondents failed to provide an effective means of eliminating the discharge of water from the washout and cleanout of concrete by, *inter alia*, failing to direct all washwater into a leak-proof container or leak-proof pit and failing to properly dispose of hardened concrete waste.
83. Respondents’ failure to provide an effective means of eliminating the discharge of water from the washout and cleanout of concrete constitutes violations of the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count 10: Failure to Properly Conduct, Document, and Maintain
Records of Site Inspections

84. Due to the fact that the Site discharges to the Potomac River, which is an impaired water, the Permit requires the permittee to conduct Site inspections at least once every seven (7) calendar days and within twenty-four (24) hours of the occurrence of a storm event of 0.25 inches or greater. 2012 CGP at Part 4.1.3.
85. The Permit requires the permittee to “complete an inspection report within 24 hours of completing any site inspection” and specifies the information that must be included in the inspection report. 2012 CGP at Part 4.1.7.1.
86. The Permit also requires the permittee that “to keep a current copy of all inspection reports at the site or at an easily accessible location, so that it can be made available at the time of an onsite inspection or upon request by EPA.” 2012 CGP at Part 4.1.7.3.
87. Respondents failed to conduct, document, and maintain records of thirty-three (33) inspections that the Permit required to be conducted every seven (7) days.
88. Respondents also failed to properly conduct, document, and maintain records of thirty-two (32) site inspections between January 2012 and February 15, 2013 that the Permit required to be conducted within 24 hours of a storm event 0.25 inches or greater.
89. Based upon the information described in this Complaint, Respondents failed to conduct, document, and maintain records of Site inspections as required by the Permit.
90. Respondents’ failure to conduct, document, and maintain records of Site inspections as required by the Permit constitutes violations of the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count 11: Failure to Include Required Information in SWPPP

91. Due to the fact that the Site discharges to the Potomac River, which is an impaired water, the Permit requires the permittee to conduct Site inspections at least once every seven (7) calendar days and within twenty-four (24) hours of the occurrence of a storm event of 0.25 inches or greater. 2012 CGP at Part 4.1.3.
92. The Permit requires the SWPPP to describe the procedures the permittee will follow for inspection, maintenance, and corrective action, including “[t]he inspection schedule you will be following, which is based on whether your site is subject to Part 4.1.2 or 4.1.3 . . . If you will be conducting inspections in accordance with the inspection schedule in Part 4.1.2.2 or Part 4.1.3, the location of the rain gauge on your site or the address of the weather station you will be using to obtain rainfall data”. 2012 CGP at Part 7.2.12.2.

93. The SWPPP for the Site states that inspection shall be conducted at least once every 14 calendar days and within 48 hours of the end of a storm event that results in runoff.
94. The SWPPP for the Site does not contain any information regarding the location of a rain gauge on the Site, nor does it contain the address of the weather station that would be used to obtain rainfall data.
95. Based upon the information described in this Complaint, Respondents failed to include required information in their SWPPP as required by the Permit.
96. Respondents' failure to include required information in their SWPPP as required by the Permit constitutes violations of the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count 12: Failure to Submit a Complete and Accurate NOI
Prior to Commencing Construction Activities

97. Part 1.4 of the Permit requires the submission of "a complete and accurate NOI prior to commencing construction activities."
98. In their NOI, Respondents stated that the Site does not discharge to a Municipal Separate Storm Sewer System.
99. In their NOI, Respondents also stated that the Potomac River is not an "Impaired Water".
100. Based upon the information described in this Complaint, Respondents failed to submit a complete and accurate NOI prior to commencing construction activities.
101. Respondents' failure to properly submit an accurate NOI prior to commencing construction activities constitutes violations of the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count 13: Failure to Meet Deadline for NOI Submittal

102. Part 1.4.2 of the Permit requires the submission of an NOI for an existing facility that had prior permit coverage by no later than May 16, 2012. 2012 CGP at Part 1.4.2(b) and Table 1.
103. Respondents submitted their NOI for the Site on August 27, 2012.
104. Based upon the information described in this Complaint, Respondents failed to submit an NOI for the Site by May 16, 2012.

105. Respondents' failure to submit an NOI for the Site by May 16, 2012 constitutes violations of the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

IV. PROPOSED CIVIL PENALTY

106. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (28 U.S.C. § 2461), and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, violations that are assessed penalties under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), subject the violator to civil penalties in an amount not to exceed \$177,500 per proceeding for violations that occurred after January 12, 2009 and through December 6, 2013.
107. Based upon the foregoing allegations, pursuant to the authority of Section 309(g)(2)(B) of the CWA, and in accordance with the enclosed "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; Final Rule", 40 C.F.R. Part 22, Complainant hereby proposes to issue a Final Order Assessing Administrative Penalties to the Respondents in the amount of **one hundred seventy-seven thousand five hundred dollars (\$177,500)** for the violations alleged herein. This does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.
108. The proposed penalty was determined after taking into account the nature, circumstances, extent, and gravity of the violations, Respondents' prior compliance history, ability to pay the penalty, degree of culpability for the cited violations, and any economic benefit or savings to Respondents because of the violations. 33 U.S.C. § 1319(g)(3). In addition, to the extent that facts or circumstances unknown to Complainant at the time of issuance of this Complaint become known after issuance of this Complaint, such facts or circumstances may also be considered as a basis for adjusting the proposed administrative penalty.
109. If warranted, EPA may adjust the proposed civil penalty assessed in this Complaint. In so doing, the Agency will consider a number of factors in making this adjustment, including Respondents' ability to pay. However, the burden of raising the issue of an inability to pay and demonstrating this fact rests with the Respondent.
110. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, shall affect Respondents' continuing obligation to comply with the CWA, any other Federal or State laws, and/or with any separate Compliance Order issued under Section 309 of the Act, 33 U.S.C. § 1319, for the violations alleged herein.

V. SETTLEMENT CONFERENCE

111. EPA encourages settlement of proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the CWA. Whether or not a hearing is requested, the Respondents may request a settlement conference to discuss the allegations of the Complaint and the amount of the proposed civil penalty. However, a request for a settlement conference does not relieve the Respondents of the responsibility to file a timely Answer to the Complaint.
112. If Respondents wish to arrange a settlement conference or if Respondents have any questions related to this proceeding, Respondents may contact the attorney assigned to this case, as indicated in Section VI, *infra*, following Respondents' receipt of this Complaint.
113. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The execution of such a Consent Agreement shall constitute a waiver of Respondents' right to contest the allegations of the Complaint or to appeal the Final Order accompanying the Consent Agreement.

**VI. ANSWER TO COMPLAINT AND
NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

114. Each of the Respondents must file an Answer to this Complaint within thirty (30) days of service of the Complaint. See 40 C.F.R. § 22.15.
115. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with respect to which the Respondent has any knowledge, or clearly state that the Respondent has no knowledge as to particular factual allegations in the Complaint. Where a Respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The Answer must also state the following:
 - a. the specific factual and legal circumstances or arguments which are alleged to constitute any grounds of defense;
 - b. the facts that Respondents dispute;
 - c. the basis for opposing any proposed relief; and
 - d. whether a hearing is requested.

Failure to admit, deny, or explain any material factual allegations in the Complaint constitutes admission of such allegations.

116. Pursuant to Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. § 22.15(c) a Respondent may include in its Answer a request a hearing on the proposed civil penalty.
117. EPA is obligated, pursuant to Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to give members of the public notice of and an opportunity to comment on this proposed penalty assessment.
118. If Respondents request a hearing on this proposed penalty assessment, members of the public who submitted timely comments on this proposed penalty assessment will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to not only be notified of the hearing but also to be heard and to present evidence at the hearing on the appropriateness of this penalty assessment.
119. If Respondents do not request a hearing, EPA will issue a Final Order Assessing Administrative Penalties, and only members of the public who submit timely comments on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon. 33 U.S.C. § 1319(g)(4)(C). EPA will grant the petition and will hold a hearing if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.
120. Any hearing requested will be held and conducted in accordance with the Part 22 Procedural Rules, described in the "*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits,*" 40 C.F.R. Part 22, a copy of which is enclosed.
121. At such a hearing, Respondents may contest any material fact contained in the Factual and Legal Allegations listed in Section II above, the Findings listed in Section III above, and the appropriateness of the amount of the proposed civil penalty in Section IV above.
122. The Answer to this Complaint and any Request for Hearing must be filed within thirty (30) days of service of this Complaint with the following:

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

123. A copy of the Answer and any Request for Hearing, and any subsequent documents filed in this action, shall also be sent to the following:

Kelly Gable, Esq.
Assistant Regional Counsel (3RC20)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
gable.kelly@epa.gov
(Tel.): (215) 814-2471
(Fac.): (215) 814-2603

124. Failure to file an Answer within thirty (30) days of service of this Complaint may result in issuance of a default order against Respondents. Default by the Respondents constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondents' right to contest such factual allegations.
125. Upon issuance of a default order, the civil penalty proposed herein shall become due and payable without further proceedings thirty (30) days after the default order becomes final. Respondents' failure to pay the entire penalty assessed by the default order by its due date will result in a civil action to collect the assessed penalty, plus interest, attorney's fees, costs, and an additional quarterly nonpayment penalty pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9).
126. In addition, the default penalty is subject to the provisions relating to imposition of interest, penalty, and handling charges, set forth in the Federal Claims Collection Act at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11.
- a. Interest will begin to accrue on any unpaid amount if it is not paid within thirty (30) calendar days of Respondents' receipt of notice of filing of an approved copy of an Order assessing Administrative Penalties with the Regional Hearing Clerk. 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).
 - b. The costs of the Agency's administrative handling of overdue debts, based on either actual or average cost incurred, will be charged on all debts. 40 C.F.R. § 13.11(b).
 - c. A penalty will be assessed on any portion of the debt that remains delinquent more than ninety (90) calendar days after payment is due. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge of the debt be required, it will be assessed as of the first day payment is due pursuant to 4 C.F.R. § 102.13(e).

- d. Pursuant to Chapter 9 of EPA's Resource Management Directive System policy on cash management (RMDS No. 2540-09), EPA will assess a fifteen dollar (\$15.00) handling charge for administrative costs on unpaid penalties for the first thirty (30)-day period after a payment is due and an additional fifteen dollars (\$15.00) for each subsequent thirty (30) days the penalty remains unpaid.

VII. QUICK RESOLUTION

127. If Respondents do not contest the findings and assessments set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18 and this paragraph. No such payment may be made until ten (10) days after the close of the public comment period provided for under 40 C.F.R. § 22.45. If Respondents elect to resolve this action by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18, no Answer need be filed, provided that Respondents file, within thirty (30) days after service of the Complaint, a statement pursuant to 40 C.F.R. § 22.18(a)(2) agreeing to pay the proposed penalty in full. Upon receipt of such a statement from Respondent, but no sooner than ten (10) days after close of the public comment period and subject to any comments received, Complainant will cause a final order to be issued. 40 C.F.R. §§ 22.18(a)(3); 22.31. If Respondents file a statement pursuant to 40 C.F.R. § 22.18(a)(2), Respondents shall pay the penalty no sooner than ten (10) days after the close of the public comment period and no later than sixty (60) days after receipt of the Complaint.
128. If Respondents wish to file a statement pursuant to 40 C.F.R. § 22.18(a)(2), agreeing to pay the proposed penalty in full, such statement shall be filed with the following:

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

and a copy shall be provided to:

Kelly Gable, Esq.
Assistant Regional Counsel (3RC20)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
gable.kelly@epa.gov

129. Payment of the penalty in this manner shall constitute consent by Respondents to the assessment of the proposed penalty and a waiver of Respondents' right to a hearing in this matter.
130. Payment of the penalty shall be made by one of the following methods below. Payment shall reference Respondents' names and addresses, and the EPA Docket Number of this Complaint.
- a. Via check made payable to "United States Treasury":
 - i. If sent via first-class mail, to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P. O. Box 979077
St. Louis, MO 63197-9000
 - ii. If sent via UPS, Federal Express, or Overnight Mail, to:

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028
 - b. Via wire transfer, sent to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Attn: "D 68010727 Environmental Protection Agency"
 - c. Via ACH (Automated Clearing House) for receiving U.S. currency, sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Contact REX (Remittance Express): 866-234-5681

Finance Center Contacts:

Craig Steffen: 513-487-2091; steffen.craig@epa.gov

Molly Williams: 513-487-2076; williams.molly@epa.gov

131. Copies of the check and/or proof of payment via wire transfer or ACH shall be mailed at the same time payment is made to:

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

and to

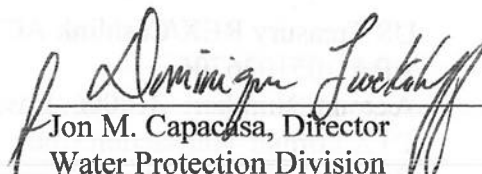
Kelly Gable, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street (3RC20)
Philadelphia, Pennsylvania 19103-2029
gable.kelly@epa.gov.

VIII. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

132. The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the EPA Region III Office of Regional Counsel, the EPA Region III Water Protection Division, the Office of the EPA Assistant Administrator for the Office of Water, and the EPA Assistant Administrator for Enforcement and Compliance Assurance. From the date of this Complaint until the final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice, 40 C.F.R. Part 22, prohibit any unilateral discussion or *ex parte* communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer after issuance of a Complaint.

Date: _____

7/22/15



Jon M. Capacasa, Director
Water Protection Division

U.S. Environmental Protection Agency, Region III

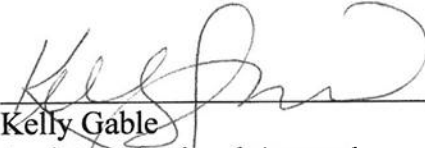
CERTIFICATE OF SERVICE

I hereby certify that on this day, I caused to be filed with the Regional Hearing Clerk, EPA Region III, the original Administrative Penalty Complaint and Notice of Opportunity to Request Hearing, to the following individual by First Class Mail, return receipt requested:

Michael Henehan, Principal
Brookland South Campus, LLC
6406 Ivy Lane, Suite 700
Greenbelt, MD 20770

Steve Strazzella, President
Bozzuto Development Company
6406 Ivy Lane, Suite 700
Greenbelt, MD 20770

Date: 7/23/2015



Kelly Gable
Assistant Regional Counsel
U.S. EPA Region III

