

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

RECEIVED

2011 JUN 30 PM 1:40

REGIONAL ADMINISTRATOR
EPA REGION III, PHILA, PA

In the Matter of:

City of Lebanon
400 S. 8th Street
Lebanon, PA 17042

Respondent.

Proceeding under Section 309(a)
of the Clean Water Act, 33 U.S.C. § 1319

Section 309(g) of the Clean Water Act
Docket No. CWA-03-2011-0231DN

FINDINGS OF VIOLATION
AND
ORDER FOR COMPLIANCE

I. STATUTORY AUTHORITY

1. The following Findings of Violation and Order for Compliance (“Order”) is issued under the authority vested in the United States Environmental Protection Agency (“EPA”) by Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a) (“CWA” or “the Act”). The Administrator has delegated this authority to the Regional Administrator of EPA Region III who in turn has redelegated it to the Director of the Water Protection Division of EPA Region III.

II. FINDINGS OF FACT and CONCLUSIONS OF LAW

2. 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.

3. 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. The discharges are subject to specific terms and conditions as prescribed in the permit.

4. Pursuant to 40 C.F.R. §122.26(a)(9)(i), small MS4s require an NPDES permit if they are required to be regulated pursuant to 40 C.F.R. § 122.32.

5. The City of Lebanon, Pennsylvania (“Lebanon” or “Respondent”) is a municipality within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).

6. Respondent is therefore a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

7. "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.
8. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." *Id.* § 122.26(b)(13).
9. The term "municipal separate storm sewer system" or "MS4" includes, *inter alia*, "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains): (i) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States." 40 C.F.R. § 122.26(b)(8)(i).
10. The term "small municipal separate storm sewer system" or "small MS4" means "all separate storm sewers that are: (i) Owned or operated by the United States, a State, city, town, borough . . . or other public body (created by or pursuant to State law) having jurisdiction over disposal of . . . storm water. . . .; [and] (ii) Not defined as 'large' or 'medium' municipal separate storm sewer systems." 40 C.F.R. § 122.26(b)(16).
11. Pursuant to 40 C.F.R. §122.32(a)(1), the Pennsylvania Department of Environmental Protection ("PADEP" or "the Department") has determined that Lebanon is a small MS4 located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census, and accordingly requires an NPDES permit
12. Therefore, Lebanon is a "small MS4" within the meaning of 40 C.F.R. § 122.26(b)(16).
13. Pursuant to Section 402(b) of the Act, 33.U.S.C. § 1342(b), EPA authorized the Commonwealth of Pennsylvania to issue NPDES permits in 1978. In 1991, EPA authorized PA to issue General NPDES Permits.
14. On March 9, 2003, PADEP issued a General NPDES Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems a/k/a Authorization to Discharge ("the Permit"). The Permit was scheduled to expire on March 8, 2008, and has been administratively extended since that time, and is currently scheduled to expire on June 11, 2012. 40 Pa.B. 7159 (December 11, 2010).
15. On March 10, 2003, Respondent submitted a signed Notice of Intent ("NOI") to PADEP for coverage under the Permit.
16. PADEP approved Respondent for coverage under the Permit.
17. The Permit authorizes discharges of storm water from Respondent's MS4 to the Quittapahilla Creek, Swatara Creek, Susquehanna River and associated tributaries, but only in accordance with the conditions of the Permit.

18. The Quittapahilla Creek, Swatara Creek, Susquehanna River and associated tributaries, to which storm water flows and, at all times relevant to this Order, has flowed from the MS4, are each a "water of the United States" as that term is defined at 40 C.F.R. § 122.2.

19. On December 2, 2002, PADEP published a guidance document entitled "Municipal Separate Storm Sewer System (MS4) Stormwater Management Program Protocol," 3900-PM-WM0100h (Dec. 2, 2002), <http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-54734/3900-PM-WM0100h.pdf> ("the Protocol"). The Protocol includes six Best Management Practice categories called "Minimum Control Measures".

20. The Permit, Part A.3., requires Permittees to either: (a) implement the Protocol; or (b) develop and implement their own stormwater management program.

21. The Permit, Part A.3., establishes that for Permittees that choose to implement the Protocol, the Protocol becomes a part of the Permit coverage and requirements.

22. Upon information and belief, Respondent chose to implement the Protocol.

23. Therefore, the Protocol has become part of the Permit coverage and requirements for Respondent as established under Part A.3. of the Permit, and the Permittee must comply with the Protocol.

24. Part C.2. of the Permit requires the Permittee to submit Annual Reports to PADEP to report on stormwater management activities performed during the permit year. The Permit further requires the Annual Reports to be in the format required by the Department, see <http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-73109/03%203930-PM-WM0100u%202009%20Form.pdf>. The Annual Report Form is incorporated into the Permit.

25. On March 31, 2010, EPA issued an Administrative Order to Respondent for separate violations of the Permit.

26. On July 20-21, 2010, duly-authorized EPA representatives conducted an inspection (including a file review) of Respondent's MS4 program (hereinafter referred to as "the Inspection").

III. VIOLATIONS

Minimum Control Measure #3: Illicit Discharge Detection and Elimination

27. The Permit (Part A.2) and the Protocol (pp. 14-19) require the Respondent to implement and enforce a program to detect and eliminate illicit discharges into the MS4 through, *inter alia*, the following activities: (i) developing a storm sewer system map that shows the location of all outfalls and the names and locations of all surface waters that receive discharges from those outfalls; (ii) conducting field screening; (iii) distributing (Year 1) and continuing to distribute (Years 2-5) educational materials on impacts of illicit discharges through the storm sewer system; (iv) enacting an ordinance prohibiting non-stormwater discharges into the MS4; and (v) informing public employees, business, and the general public of the hazards associated with illegal discharges and improper waste disposal.

28. The file review revealed that Respondent had failed to comply with the Permit, including the Protocol, by not implement and enforcing a program to detect and eliminate illicit discharges into the MS4 through, *inter alia*, the following activities: (i) developing a storm sewer system map that shows the location of all outfalls and the names and locations of all surface waters that receive discharges from those outfalls; (ii) conducting field screening; (iii) distributing (Year 1) and continuing to distribute (Years 2-5) educational materials on impacts of illicit discharges through the storm sewer system; (iv) enacting an ordinance prohibiting non-stormwater discharges into the MS4; and (v) informing public employees, business, and the general public of the hazards associated with illegal discharges and improper waste disposal.

29. Respondent's failure to comply with the Permit, including the Protocol, by failing to implement and enforce a program to eliminate illicit discharges in the MS4 violates the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Minimum Control Measure #4: Construction Stormwater Runoff Management

30. The Permit (Part A.2) and the Protocol (pp. 20-26) require the Respondent to implement and enforce a program to reduce pollution in any stormwater runoff to the MS4 from construction activities that result in a land disturbance of greater than or equal to one acre through, *inter alia*, the following activities: (i) enacting an ordinance (or revising an existing one) containing requirements for: (a) review and approval of E&S Control Plan; and (b) review and approval as prerequisite for building permits; (ii) Distributing educational materials to developers on impacts of stormwater runoff and construction site stormwater management requirements; and (iii) Implementing procedures for site inspection and enforcement of control measures.

31. The file review revealed that Respondent had failed to comply with the Permit, including the Protocol, by not implementing and enforcing a program to reduce pollution in any stormwater runoff to the MS4 from construction activities that result in a land disturbance of greater than or equal to one acre through, *inter alia*, the following activities: (i) enacting an ordinance (or revising an existing one) containing requirements for: (a) review and approval of E&S Control Plan; and (b) review and approval as prerequisite for building permits; (ii) Distributing educational materials to developers on impacts of stormwater runoff and construction site stormwater management requirements; and (iii) Implementing procedures for site inspection and enforcement of control measures.

32. Respondent's failure to comply with the Permit, including the Protocol, by failing to implement and enforce a program to reduce pollution in any stormwater runoff to the MS4 from construction activities that result in a land disturbance of greater than or equal to one acre violates the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Minimum Control Measure #5: Post-Construction Stormwater Runoff Management

33. The Permit (Part A.2) and the Protocol (pp. 23-26) require the Respondent to implement and enforce a program to reduce pollution in any stormwater runoff to the MS4 from new development and redevelopment that result in a land disturbance of greater than or equal to one acre through, *inter alia*, the following activities: (i) enacting, implementing and enforcing a stormwater control ordinance for Post-Construction BMPs; (ii) ensuring installation of post-construction BMPs as designed; (iii) developing procedure for monitoring BMPs and addressing BMPs that are not operated or maintained; and (iv) ensuring long-term operation and maintenance of BMPs.

34. The file review revealed that Respondent had failed to comply with the Permit, including the Protocol, by not implementing and enforcing a program to reduce pollution in any stormwater runoff to the MS4 from new development and redevelopment that result in a land disturbance of greater than or equal to one acre through, *inter alia*, the following activities: (i) enacting, implementing and enforcing a stormwater control ordinance for Post-Construction BMPs; and (ii) ensuring installation of post-construction BMPs as designed; (iii) developing procedure for monitoring BMPs and addressing BMPs that are not operated or maintained; and (iv) ensuring long-term operation and maintenance of BMPs.

35. Respondent's failure to comply with the Permit, including the Protocol, by failing to implement and enforce a program to reduce pollution in any stormwater runoff to the MS4 from new development and redevelopment through post-construction controls violates the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Minimum Control Measure #6: Pollution Prevention/Good Housekeeping For Municipal Operations

36. The Permit (Part A.2) and the Protocol (pp. 27-31) require the Respondent to implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations through, *inter alia*, the following activities: (i) in Permit Year 1, compile information on existing facilities, operations/maintenance, inspection and pollution prevention programs; (ii) in Permit Year 2, develop an Operation & Maintenance (O&M) program; (iii) in Years 3-5, follow specified fueling practices; (iv) in years 3-5, follow specified vehicle maintenance practices; (v) in years 3-5, follow specified vehicle washing practices; (vi) inspect stormwater detention/retention facilities and other BMPs; (vii) Inspect and clean catch basins; and (viii) train municipal employees in pollution prevention an good housekeeping.

37. The files reviewed revealed that Respondent had failed to comply with the Permit, including the Protocol, by not implementing an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations through, *inter alia*, the following activities: (i) in Permit Year 1, compile information on existing facilities, operations/maintenance, inspection and pollution prevention programs; (ii) in Permit Year 2, develop an Operation & Maintenance (O&M) program; (iii) in Years 3-5, follow specified fueling practices; (iv) in years 3-5, follow specified vehicle maintenance practices; (v) in years 3-5, follow specified vehicle washing practices; (vi) inspect stormwater detention/retention facilities and other BMPs; (vii) Inspect and clean catch basins; and (viii) train municipal employees in pollution prevention and good housekeeping.

38. Respondent's failure to comply with the Permit, including the Protocol, by failing to implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations violates the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

IV. ORDER FOR COMPLIANCE

Therefore, this 30th day of June 2011, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Clean Water Act, 33 U.S.C. §1319(a), to conduct the following activities:

39. Within thirty (30) days of receipt of this Order, Respondent shall come into compliance with requirements of PAG-13, including but not limited to all provisions cited herein.

40. Within thirty (30) days upon receipt of this Order, Respondent shall submit a written report detailing the specific actions taken to correct the violations cited herein to the following individual:

Matthew R. Colip
NPDES Enforcement Branch (3WP42)
Water Protection Division
U.S. Environmental Protection Agency
1650 Arch St, Philadelphia, PA 19103

V. GENERAL PROVISIONS

41. Issuance of this Order shall not be deemed an election by the 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.

42. Respondent's compliance with the terms of this Order shall not constitute compliance with the Clean Water Act or any other Federal, State or local law or regulation. Nor does this Order constitute a waiver or modification of the terms or conditions of any issued permit.

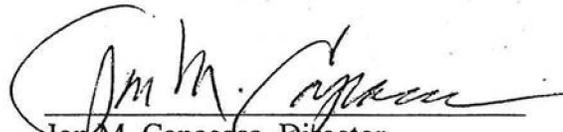
43. Violation of the terms and conditions of this Order constitutes an additional violation of the Act, and may result in a civil action for injunctive relief and/or a penalty not to exceed \$37,500 per day of such violation, pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. § 1319 (b) and (d). In addition, Section 309(c) provides criminal sanctions for knowing or negligent violations of the Act including imprisonment and fines of up to \$50,000 per day of violation.

VI. EFFECTIVE DATE

The effective date of this Order shall be the date it is received by the Respondent.

JUN 30 2011

Date: _____



Jon M. Capacasa, Director
Water Protection Division
U.S. Environmental Protection
Agency, Region III