



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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT NO.

Lower Paxton Township
425 Prince Street
Harrisburg, PA 17109

Re: Administrative Order and Information Request
Docket No. CWA-03-2010-0164DN

Dear Township Manager:

Through consultation with the Pennsylvania Department of Environmental Protection (PADEP), the United States Environmental Protection Agency (USEPA) has determined that Lower Paxton Township (Dauphin) ("Respondent") and numerous other jurisdictions in southcentral Pennsylvania have violated their Pennsylvania National Pollutant Discharge Elimination System Stormwater Discharges From Small Municipal Separate Storm Sewer Systems (MS4) Permit, (Permit) and the Clean Water Act.

As a consequence, Region 3's Water Protection Division has issued the enclosed document entitled "Findings of Violation and Order for Compliance and Information Request" (Order and Request) pursuant to Sections 309(a) and 308 of the Clean Water Act, ("the Act") as amended, 33 U.S.C. Sections 1319(a). I encourage you to read the contents of the enclosed Order and Request, and communicate to each responsible official, agent or employee the actions that each such person must take to ensure compliance with its terms. Failure to comply with the terms of the Order and Request may result in this office taking further enforcement actions, including a civil suit for penalties and injunctive relief, or a criminal prosecution as appropriate.

This action is an important part of the Agency's Chesapeake Bay Compliance Strategy to protect and improve the water quality of the local rivers and streams in the Chesapeake Bay watershed. As such, EPA will be making the public aware of this enforcement action and its efforts to bring numerous Respondents into compliance with this regulatory program.

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

IN THE MATTER OF:

Lower Paxton Township
425 Prince Street
Harrisburg, PA 17109

Respondent

Docket No. CWA-03-2010-0164DN
FINDINGS OF VIOLATION,
ORDER FOR COMPLIANCE
AND
INFORMATION REQUEST

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I. STATUTORY AUTHORITY

1. This Order for Compliance and Request for Information ("Order and Request") is issued under the authority vested in the Administrator of the Environmental Protection Agency (hereinafter "EPA") under Section 308 of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. §§ 1318 and Section 309(a) of the Act, 33 U.S.C. § 1319(a). The Administrator has delegated these authorities to the Regional Administrator of EPA Region III, who in turn has delegated them to the Director of the Water Protection Division, EPA 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 pollutants (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. EPA is authorized under Section 308 of the Act, 33 U.S.C. § 1318, to require owners and operators of point sources to establish records and make such reports as may be necessary to carry out the objective of the Act, including but not limited to:
 - a. Developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance under the Clean Water Act;
 - b. Determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance;

III. EPA FINDINGS AND ALLEGATIONS

12. At all times relevant to this Complaint, Lower Paxton Township, Pennsylvania ("Respondent") owned and/or operated an MS4, located in Dauphin County, Pennsylvania.
13. The Pennsylvania Department of Environmental Protection (PADEP) has determined that Lower Paxton Township, Pennsylvania 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 pursuant to 40 C.F.R. §122.32(a)(1).
14. Therefore, Lower Paxton Township, Pennsylvania is a small MS4 within the meaning of 40 C.F.R. § 122.26(b)(16).
15. On March 9, 2003, the Pennsylvania Department of Environmental Protection (PADEP or the Department) issued a General NPDES Permit, the Permit, for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems ("the Permit"). The Permit was scheduled to expire on March 8, 2008, and was initially administratively extended for 12 months. 38 Pa. Bulletin 4679 (August 23, 2008). The Permit expired on March 9, 2010, and has been extended until March 9, 2011. 39 Pa. Bulletin 4953 (August 15, 2009).
16. Following issuance of the Permit, Respondent submitted a signed Notice of Intent ("NOI") to PADEP for coverage under the Permit.
17. PADEP approved Respondent for coverage under the Permit.
18. The Swatara Creek, Susquehanna River and associated tributaries, to which storm water flows and, at all times relevant to this Order, have 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. The Permit authorizes discharges of storm water from Respondent's MS4 to the Swatara Creek, Susquehanna River and associated tributaries, but only in accordance with the conditions of the Permit.
20. On December 2, 2002, PADEP published a Protocol 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").
21. The Permit, Part A.3, requires Permittees to either: (a) implement the Protocol; or (b) develop and implement their own stormwater management program.

MCM #4: Construction Site Stormwater Runoff Control

30. Part A.2 of the Permit requires the Respondent to, among other things, implement and enforce a program to reduce pollutants in any stormwater runoff to the MS4 from construction activities that result in a land disturbance of greater than or equal to one acre.
31. The Permit, through item 14 of the Annual Report Form, MCM #4, requires the Respondent to identify the following in the Annual Report:
- a. enforcement actions taken by the MS4
32. The August 2009 File Review indicated that the Respondent had failed to comply with the Permit by not identifying the following in the Annual Report:
- a. enforcement actions taken by the MS4

V. CONCLUSION OF LAW

33. Respondent has violated the Permit, and therefore violated section 301 of the CWA, 33 U.S.C. § 1311.

VI. ORDER AND REQUEST

AND NOW, this 31st day of March, 2010, Respondent is hereby ORDERED AND REQUESTED, pursuant to Section 309(a) of the Act, 33 U.S.C. Section 1319(a) and Section 308 of the Act, 33 U.S.C. 1318, to do the following.


34. Within one hundred and twenty (120) days of the effective date of this Order and Request, Respondent shall:
- a. Complete the requirements of the Permit and submit a completed Protocol;
 - b. Provide the dates when the Annual Report Form BMPs that have been alleged in violations identified in this Order were first implemented;
 - c. Provide a map of all the outfall locations within the MS4's jurisdiction;
 - d. Provide a list of all Post-Construction Storm Water management structures, types and locations;

38. This Order and Request does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order and Request does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.
39. Violation of the terms and conditions of this Order and Request 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. Section 1319(b) and (d). In addition, Section 309 provides criminal sanctions for knowing or negligent violations of the Act including imprisonment and fines of up to \$50,000 per day of violation.

VIII. EFFECTIVE DATE

This ORDER AND REQUEST are effective upon receipt.

Date: 2/3/00



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

