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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT NO.

York County
28 E. Market Street
York, PA 17401

Re: Administrative Order and Information Request
Docket No. CWA-03-2010-0210DN

Dear County Manager:

Through consultation with the Pennsylvania Department of Environmental Protection (PADEP), the United States Environmental Protection Agency (USEPA) has determined that York County (York) ("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.

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Also, please note that the Agency plans to provide training to jurisdictions receiving these Administrative Orders. There will be a one-day conference on May 5 in Harrisburg, to discuss the requirements of the MS4 program. I encourage you or other representatives to attend this conference. You may register for this conference by E-mailing Chuck Schadel of my staff at Schadel.chuck@epa.gov.

The U.S. EPA encourages the Respondent to review its entire MS4 program for compliance with the Permit and immediately correct any deficiencies. If you require any information or assistance regarding this Order and Request or the conference in Harrisburg, please contact Mr. Schadel at (215) 814-5761.

Sincerely,

John A Armstead for

Jon M. Capacasa, Director
Water Protection Division

Enclosures

cc: Scott Williamson, SC PADEP
Ken Murin, HQ PADEP

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

IN THE MATTER OF:

York County 28 E. Market Street York, PA 170401	:	Docket No. CWA-03-2010-0210DN FINDINGS OF VIOLATION, ORDER FOR COMPLIANCE AND INFORMATION REQUEST
Respondent	:	

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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;

c. Any requirement under Section 308 of the Clean Water Act; and

d. Carrying out Sections 305, 311, 402, 404, and 504 of the Clean Water Act.

4. 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 him 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.

5. 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.

6. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Commonwealth of Pennsylvania ("PA") to issue NPDES permits in 1978. In 1991, EPA authorized PA to issue General NPDES P

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, "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) 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: (1) 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] (2) not defined as "large or medium" municipal separate storm sewer systems. 40 C.F.R. § 122.26(b)(16).

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.

III. EPA FINDINGS AND ALLEGATIONS

11. At all times relevant to this Complaint, York County, Pennsylvania ("Respondent") owned and/or operated an MS4, located in York County, Pennsylvania.

12. The Pennsylvania Department of Environmental Protection (PADEP) has determined that York County, 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).

13. Therefore, York County, Pennsylvania is a small MS4 within the meaning of 40 C.F.R. § 122.26(b)(16).

14. 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).

15. Following issuance of the Permit, 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 South Branch Codorus Creek, Codorus 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.

18. The Permit authorizes discharges of storm water from Respondent's MS4 to the South Branch Codorus Creek, Codorus Creek, Susquehanna River and associated tributaries, but only in accordance with the conditions of the Permit.

19. 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").

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 which choose to implement the Protocol, the Protocol becomes a part of the Permit coverage and requirements.

22. Respondent chose to implement the Protocol.

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

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 or about August 17th to August 21st, and August 24th, 2009, EPA personnel conducted a review of files related to the Respondent located at the PADEP South Central Regional Office in Harrisburg, PA (hereafter, "August 2009 File Review"). Such files included Annual Reports submitted by Respondent as required by the Permit.

IV. VIOLATIONS

Minimum Control Measure (MCM) #1: Public Education and Outreach

26. Part A.2 of the Permit requires the Respondent to, among other things, develop and implement a public education and outreach program.

27. The Permit, through item 8 of the Annual Report Form, MCM #1, requires the Respondent to annually review of its Public Education Plan for accuracy and provide new information about target audiences and communication channels.

28. The August 2009 File Review indicated that the Respondent had failed to comply with the Permit by not identifying in the Annual Report that the Respondent reviewed its Public Education Plan for accuracy and provided new information about target audiences and communication channels.

MCM #2: Public Involvement/Participation

29. Part A.2 of the Permit requires the Respondent to, among other things, implement procedures for receipt and consideration of information submitted by the public.

30. The Permit, through item 10 of the Annual Report Form, MCM #2, requires the Respondent to indicate the following in the Annual Report:

    a. that the Public Involvement and Participation Plan (PIPP) was reviewed for accuracy and content, and to identify any relevant changes.

31. 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. that the Public Involvement and Participation Plan (PIPP) was reviewed for accuracy and content, and to identify any relevant changes.

MCM #3: Illicit Discharge Detection and Elimination

32. Part A.2 of the Permit requires the Respondent to, among other things, implement and enforce a program to detect and eliminate illicit discharges into the MS4.

33. The Permit, through item 12 of the Annual Report Form, MCM #3, requires the Respondent to identify the following in the Annual Report:

a. whether the MS4's map showing all outfalls and surface waters is up-to-date and accurate;
b. how the ordinance for prohibiting non-storm water discharges into the MS4 is implemented and enforced;
c. the educational material that was distributed to public employees, businesses and the general public concerning the hazards associated with illegal discharges and improper disposal of wastes;
d. how the priority area was established and which outfalls were selected for screening during the past permit year;
e. summarized results of the outfall screening/sampling;
f. a properly completed illicit discharge field screening form for any problem outfall;
g. the illicit discharge quarterly summary report form; and
h. any corrective actions taken to eliminate any illicit discharges or connections.

34. 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. whether the MS4's map showing all outfalls and surface waters is up-to-date and accurate;
b. how the ordinance for prohibiting non-storm water discharges into the MS4 is implemented and enforced;
c. the educational material that was distributed to public employees, businesses and the general public concerning the hazards associated with illegal discharges and improper disposal of wastes;
d. how the priority area was established and which outfalls were selected for screening during the past permit year;
e. summarized results of the outfall screening/sampling;
f. a properly completed illicit discharge field screening form for any problem outfall;
g. the illicit discharge quarterly summary report form; and
h. any corrective actions taken to eliminate any illicit discharges or connections.

MCM #4: Construction Site Stormwater Runoff Control

35. Part A.2 of the Permit requires the Respondent to, among other things, develop, 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.

36. 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;
    b. what education /outreach materials were distributed to developers/builders; and
    c. summarized information or complaints received from the public concerning construction site storm water runoff.

37. 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;
    b. what education /outreach materials were distributed to developers/builders; and
    c. summarized information or complaints received from the public concerning construction site storm water runoff.

MCM #6: Pollution Prevention/Good Housekeeping for Municipal Operations

38. Part A.2 of the Permit requires the Respondent to, among other things, 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.

39. The Permit, through item 18 of the Annual Report Form, MCM #6, requires the Respondent to identify the following in the Annual Report:

    a. a written Operation & Maintenance (O&M) plan if not previously submitted; and
    b. a
    for all municipal vehicle /equipment operation, maintenance, fueling, and washing activities was implemented over the past year.

40. 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. a written Operation & Maintenance (O&M) plan if not previously submitted; and

b. a description of how a pollution prevention/operation and maintenance program for all municipal vehicle /equipment operation, maintenance, fueling, and washing activities was implemented over the past year.

V. CONCLUSION OF LAW

41. 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 3/15 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.

42. 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 the Violations section of 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;

to:

Chuck Schadel, Enforcement Officer
U.S. EPA, Region III, (3WP42)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Scott R. Williamson, Environmental Group Manager
PA Department of Environmental Protection
South Central Regional Office
909 Elmerton Ave
Harrisburg, PA 17110

e. Provide certification, signed by a responsible corporate officer, as defined in 40 C.F.R. § 122.22, that reads as follows: *"I certify that the information contained in or accompanying this submission is true, accurate, and complete. As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."*

VII. GENERAL PROVISIONS

43. Issuance of this Order and Request 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. Failure to comply and/or respond to this Order and Request, or providing misleading or false information, may subject you to civil and/or criminal sanctions pursuant to, 33 U.S.C. § 1319, and/or a civil judicial action initiated by the U.S. Department of Justice. If EPA initiates such an action, Respondent may 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.

44. If a criminal judicial action is initiated, and Respondent is convicted of a criminal offense under Section 309 of the Act, Respondent may be subject to a monetary fine and/or imprisonment, and may become ineligible for certain contracts, grants, or loans under Section 508 of the Act.

45. Respondent shall permit EPA or its authorized representative to inspect any site at reasonable times to confirm that Respondent is in compliance with this Order and Request, and with any applicable permit. EPA reserves all existing inspection authority.

46. 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.

47. 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: 3/31/10

Jon M. Capacasa, Director
Water Prote tion Division
EPA, Region III