

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

In the Matter of

Borough of Clarks Summit
304 South State Street
Clarks Summit, Pennsylvania 18411

Respondent.

**ADMINISTRATIVE ORDER
ON CONSENT**

Docket No. CWA-03-2015-0191DN

I. STATUTORY AND REGULATORY BACKGROUND

1. EPA has made the following findings of fact and issues this Administrative Order on Consent (Consent Order) pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) under Section 309(a) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1319(a). This authority has been delegated by the Administrator to the Regional Administrator of EPA Region III, and further delegated to the Director, Water Protection Division, Region III.

2. 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, 33 U.S.C. § 1342, he shall issue an Order requiring such person to comply with such section or requirement.

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

5. "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.

6. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).

7. The term "municipal separate storm sewer system" ("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).

8. 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).

9. Small MS4s are regulated pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p) and the regulations promulgated thereunder. 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.

II. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS AND CONCLUSIONS OF LAW

10. The Borough of Clarks Summit, Pennsylvania (“Respondent”) is a “municipality” within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).

11. The Borough of Clarks Summit, is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

12. At all times relevant to this Order, Respondent has owned and/or operated a MS4 as that term is defined in 40 C.F.R. § 122.26(b)(8).

13. Respondent’s MS4 is located within the geographic boundaries of Clarks Summit, Lackawanna County, Pennsylvania.

14. The Borough of Clarks Summit encompasses a total area of approximately 1.59 square miles. According to the 2010 Census, its population is estimated at 5,116 people.

15. The Borough of Clarks Summit MS4 is a “small MS4” within the meaning of 40 C.F.R. § 122.26(b)(16).

16. Respondent’s MS4 discharges stormwater to Ackerly Creek and Leggetts Creek and their associated tributaries. Ackerly Creek and Leggetts Creek are “waters 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.

17. 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 the Pennsylvania Department of Environmental Protection (PADEP) to issue General NPDES Permits.

18. On March 16, 2013, PADEP issued an NPDES Stormwater Discharges From Small Municipal Separate Storm Sewer Systems (MS4s) General Permit (PAG-13)(the 2013 small MS4 Permit) that authorized the discharge of stormwater from small MS4s, generally defined as MS4s located in an incorporated place with a population less than 100,000. See 40 C.F.R. § 122.26(b). The 2013 small MS4 Permit expires on March 15, 2018. In order to be eligible for general permit coverage, a regulated MS4 had to submit a Notice of Intent (NOI) to PADEP.

19. The Borough of Clarks Summit submitted a NOI to PADEP and obtained coverage under the 2013 small MS4 Permit on April 22, 2013.

20. The 2013 small MS4 Permit, Part A.2.b., "Effluent Limitations and Other Requirements for PAG-13" required permittees to implement a Stormwater Management Program (SWMP) as set forth in Appendix A of the permit to reduce the discharge of pollutants from small MS4s. The SWMP shall include Best Management Practices (BMPs) to comply with the following six Minimum Control Measures (MCMs): (1) Public Education and Outreach on Stormwater Impacts; (2) Public Involvement/Participation; (3) Illicit Discharge Detection and Elimination, (4) Construction Site Stormwater Runoff Control; (5) Post-Construction Stormwater Management in New and Re-Development Activities; and (6) Pollution Prevention / Good Housekeeping for Municipal Operations.

21. The 2013 small MS4 Permit, Part A.2.c., required Permittees to implement the SWMP as set forth in Appendix A of the permit in its entirety. Any permittee that chose not to use the SWMP in Appendix A was required to submit an individual NPDES MS4 Permit application that contains a proposed written SWP that meets the regulatory requirements.

22. Respondent did not submit an individual NPDES MS4 permit application and, therefore, is required to comply with the SWMP requirements set forth in Appendix A of the 2013 small MS4 Permit.

23. The 2013 small MS4 Permit, Part B.1.a, requires permittees to "comply with all terms and conditions of this General Permit."

24. On June 25 and 26, 2014, duly-authorized EPA representatives and their contractors conducted an inspection of Respondent's MS4 program ("the 2014 MS4 Inspection").

25. On August 18, 2014 EPA prepared a final Clean Water Act Compliance Inspection Report for the Borough of Clarks Summit, Pennsylvania (EPA's Inspection Report).

26. Clarks Summit received a copy of EPA's Inspection Report. Clarks Summit prepared and submitted a response to EPA on September 15, 2014.

27. Based upon the 2014 MS4 Inspection, EPA representatives identified the following violations of the 2013 small MS4 Permit and the CWA as described below.

Count I: Failure to Ensure Proper Operation and Maintenance of Post Construction Best Management Practices

28. Appendix A of the 2013 small MS4 Permit, MCM #5: Post-Construction Stormwater Management in New and Re-Development, BMP #6 requires the permittee to "Ensure adequate operation and maintenance of all post-construction stormwater management

BMPs installed at all qualifying development or redevelopment projects (including those owned or operated by the permittee).” All permittees were required to develop an inventory of post construction stormwater management BMPs (facilities) within their jurisdiction installed after March 10, 2003.

29. At the time of the 2014 MS4 Inspection, Respondent had one post construction BMP facility subject to the permit. That post construction BMP facility was the CareGivers America facility located at 718 South State Street in Clarks Summit, Pennsylvania.

30. During the 2014 MS4 Inspection, the EPA inspectors and Respondent’s representatives visited the CareGivers America facility. At that visit, Respondent’s Borough Engineer observed that the developers had not installed the approved BMP according to the plan submitted to Clarks Summit as part of the construction plans for the facility. That plan included a BMP which required a cap on the end of a storm drain inlet pipe to have a circular orifice cut into it to allow water to enter the pipe. EPA inspectors observed that the cap was completely sealed and the BMP was not operating according to the plan specifications. Immediately following the 2014 MS4 Inspection, the Borough Engineer corrected the BMP deficiency.

31. Respondent’s failure to ensure the proper operation and maintenance of all post construction BMPs within its jurisdiction is a violation of the 2013 small MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count II: Failure to Develop, Implement and Maintain a Written Operation and Maintenance Program for Municipal Operations

32 Appendix A of the 2013 small MS4 permit, MCM #6: Pollution Prevention/Good Housekeeping for Municipal Operations, BMP #2 requires the permittee to “Develop, implement and maintain a written operation and maintenance (O&M) program for all municipal operations and facilities that could contribute to the discharge of pollutants from the regulated small MS4s...”

33. At the time of the 2014 MS4 Inspection, Clark Summit representatives informed the EPA Inspection Team that the Borough had recently completed an *Operation and Maintenance Program Manual* (dated March 17, 2014) but had not yet fully implemented it nor documented any self-inspection and maintenance procedures performed. Borough representatives provided the EPA Inspection Team with a copy of the recently completed manual. After a brief review of the manual, the EPA Inspection Team observed it did not contain the Borough’s list of facilities and activities that have the potential for generating stormwater runoff to the regulated small MS4. During a specific visit to Respondent’s Department of Public Works (DPW) facility, the EPA inspectors observed the following:

- a. The salt storage appeared to be exceeding the limits of the storage shed. The EPA Inspection Team observed evidence of salt runoff from the storage shed. The

Borough's O&M manual contains protocols for storing materials such as road salt, which include the following practices: "Do not 'overload' storage areas; provide ample room for access and inspections; sweep loading areas after use; and consider berms or similar to channel runoff to containment or treatment devices."

- b. Floor drains within the vehicle maintenance garage at the DPW facility drained to the stormwater system.
- c. The lid to the trash dumpster at the DPW vehicle maintenance facility was open. The Borough's O&M manual states that dumpster lids should be kept closed.
- d. Borough representatives stated vehicle washing occurred in an outdoor area at the front of the maintenance yard lot. Any wash water from that activity would drain to the drainage ditch at the back of the property. Respondent's O&M manual requires Respondent to "Construct berms and identify delineation of wash area to assure containment of wash water."

34. Respondent's failure to implement its Operation and Maintenance program at its municipal facilities is a violation of the 2013 small MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count III: Failure to Develop and Implement a Municipal Employee Stormwater Training Program

35. Appendix A of the 2013 small MS4 permit, MCM #6: Pollution Prevention/Good Housekeeping for Municipal Operations, BMP #3 requires the permittee to "Develop and implement an employee training program that addresses appropriate topics to further the goal of preventing or reducing the discharge of pollutants from municipal operations to your regulated small MS4s."

36. The Borough's MS4 required annual report to PADEP for March 10, 2012 through April 21, 2013 states, "Training not performed during reporting period." During onsite discussions as part of the 2013 MS4 Inspection, Borough representatives stated that Department of Public Works staff receive contractor-supplied training every Monday; however, that training does not address stormwater issues. EPA did not receive any record of any written employee stormwater training program during the inspection. Respondent's September 15, 2014 response to EPA's August 18, 2014 inspection report stated that Clarks Summit was in the process of developing a stormwater training manual for its municipal employees. The Borough's current municipal employees have been long term employees and have undertaken the required training multiple times during their Borough employment.

37. Respondent's failure to develop and implement a stormwater training program for its employees is a violation of the 2013 small MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

III. ORDER

AND NOW, this 16th day of September, 2015, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), having taken into account the seriousness of the violations and any good faith efforts by Respondent to comply with Section 301(a) of the Act, Respondent is hereby ORDERED, pursuant to Section 309(a) to do the following within thirty days of the effective date of this Consent Order:

38. Respondent shall take all actions necessary to comply with its MS4 Permit, including:

- a. Develop an inspection and mapping program for post construction BMPs which insures their proper operation and maintenance;
- b. Insure that the Operations and Maintenance Plan for the Maintenance Yard is being implemented accordingly;
- c. Develop and implement a stormwater training program for municipal employees; and
- d. Develop a written program for the inspection, detection and elimination of illicit discharges. This program will document the actions taken to eliminate any illicit discharge that is found by the Respondent; and
- e. Submit copies of all documents prepared pursuant to this Paragraph 38 to Peter Gold at the address listed in Paragraph 39 of this Consent Order within 30 days of the effective date of this Consent Order.

39. All documents required by Paragraph 38 of this Order shall be accompanied by a certification signed by a responsible municipal officer, as defined in 40 CFR § 122.22(d), that reads as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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.

Signed _____
Title _____

All documents required herein shall be submitted to:

Peter Gold
Enforcement Officer
NPDES Enforcement Branch
Mail Code (3WP42)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

IV. GENERAL PROVISIONS

40. Issuance of this Consent Order is intended to address the violations described herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Further, EPA reserves any existing rights and remedies available to it under the CWA, 33 U.S.C. §1311, et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction. Further, EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Consent Order, following its effective date (as defined below).

41. This Order does not constitute a waiver or modification of the terms or conditions of the Respondent's MS4 permit. Compliance with the terms and conditions of this Order does not relieve Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.

42. For the purposes of this proceeding, the Respondent neither admits nor denies the factual allegations and conclusions of law set forth in this Order.

43. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order on Consent, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

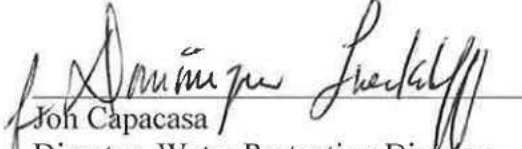
44. By entering into this Order, the Respondent does not admit any liability for the civil claims alleged herein.

V. EFFECTIVE DATE

This ORDER is effective after receipt by Respondent of a fully executed document.

SO ORDERED:

Date: September 16, 2015


John Capacasa
Director, Water Protection Division
U.S. EPA Region III

AGREED TO:

For the Borough of Clarks Summit:

Date: August 25, 2015


Germaine Carey
Council President

Borough of Clarks Summit
Docket No. CWA-03-2015-0191DN

CERTIFICATE OF SERVICE

I certify that on this date I caused to be sent by certified mail, return receipt requested, a copy of this "Administrative Order on Consent" to the following persons:

Virginia Kehoe
Borough Manager
Borough of Clarks Summit
304 South State Street
Clarks Summit, Pennsylvania 18411


And the original and a copy delivered by hand to:

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

Additionally, I caused to be sent by first class mail a copy of this "Consent Agreement and Final Order" to the following persons:

Lee McDonnell, Director
Bureau of Point and Non-Point Source Management
Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
400 Market Street
P.O. Box 1105
Harrisburg, Pennsylvania 17101

Date: September 16, 2015


Robert J. Smolski
Senior Assistant Regional Counsel