

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

In the Matter of:

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

City of Hazleton
40 North Church Street
Hazleton, Pennsylvania 18201

:
: Docket No. CWA-03-2016-0117
:

Respondent

:

:
: **CONSENT AGREEMENT AND**
: **FINAL ORDER**
:
:
:

CONSENT AGREEMENT

I. STATUTORY AND REGULATORY BACKGROUND

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") is authorized to assess administrative penalties against persons who violate Section 301(a) of the Act, *id.* § 1311(a). The Administrator has delegated this authority to the Regional Administrator of EPA Region III, who in turn has delegated this authority to the Director, Water Protection Division ("Complainant").

2. This Consent Agreement is entered into by the Complainant and the City of Hazleton ("Respondent"), pursuant to Section 309(g) of the CWA and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22.

3. The Consolidated Rules, at 40 C.F.R. § 22.13(b) provide in pertinent part that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). Pursuant thereto, this Consent Agreement and Final Order ("CAFO") simultaneously commence and conclude this administrative proceeding against Respondent.

4. Section 309(g)(2)(B) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(B), authorizes the assessment of administrative penalties against any person who violates any NPDES permit condition or limitation in an amount not to exceed \$10,000 per day for each day of violation, up to a total penalty amount of \$125,000.

5. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), any person who has violated any NPDES permit condition or limitation after January 12, 2009 is liable for an administrative penalty not to exceed \$16,000 per day for each day of violation up to a total penalty amount of \$177,500 for violations that occurred between January 12, 2009 and December 6, 2013, and \$187,500 per proceeding for violations that occurred after December 6, 2013.

6. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1)(A), EPA has consulted with the Pennsylvania Department of Environmental Protection ("PADEP") regarding this action, and will mail a copy of this document to the appropriate PADEP official.

7. 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.

8. 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. Section 402(b) of the Act provides for the authorization of state programs to issue NPDES permits.

9. "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.

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

11. 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).

12. 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).

13. 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

14. The City of Hazleton, Pennsylvania ("Respondent") is a "municipality" within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).

15. The City of Hazleton is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

16. 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).

17. Respondent's MS4 is located within the City of Hazleton, within Luzerne County, Pennsylvania (the Hazleton MS4), which is an urbanized area as determined by the latest Decennial Census by the Bureau of the Census, and requires an NPDES permit to discharge storm water pursuant to 40 C.F.R. § 122.32(a)(1).

18. The City of Hazleton encompasses a total area of approximately 6.0 square miles. According to the 2010 Census, its population is estimated at 25,340 people.

19. The Hazleton MS4 is a "small MS4" within the meaning of 40 C.F.R. § 122.26(b)(16).

20. Respondent's MS4 discharges stormwater to Black Creek and Hazle Creek and their associated tributaries. Black Creek and Hazle 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.

21. 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.

22. 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.

23. The City of Hazleton submitted a NOI to PADEP and obtained coverage under the 2013 small MS4 Permit on May 2, 2013.

24. 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.

25. 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.

26. 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.

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

28. On June 23 and 24, 2014, duly-authorized EPA representatives and their contractors conducted an inspection of Respondent's MS4 program ("the 2014 MS4 Inspection").

29. On August 14, 2014 EPA prepared a final Clean Water Act Compliance Inspection Report for the City of Hazleton, Pennsylvania (EPA's Inspection Report).

30. Hazleton received a copy of EPA's Inspection Report. Hazleton did not submit a response to EPA's Inspection Report.

31. 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 1: Failure to Have a Written Procedure for the Detection of Illicit Discharges

32. Appendix A of the 2013 small MS4 Permit, MCM #3: Illicit Discharge Detection and Elimination (IDD&E), BMP #1 requires the permittee to “develop and implement a written program for the detection, elimination, and prevention of illicit discharges into your regulated MS4s.”

33. At the time of the 2014 Inspection, Respondent’s representatives stated that Hazleton had not developed nor implemented a formal standard operating procedure (SOP) for Illicit Discharge Detection and Elimination. The EPA inspection team requested written procedures for identifying priority areas, screening outfalls and identifying and eliminating illicit discharges. Respondent’s representatives were unable to provide the inspection team with this information. Hazleton representatives stated that sewer outfall B, at one time the only Hazleton MS4 stormwater outfall, was being observed on a monthly basis, but Hazleton could not provide documentation of these inspections. In addition, Hazleton had added a second stormwater outfall shortly before the 2014 Inspection, but had no records that the second outfall had been incorporated into a written program for the detection of illicit discharges.

34. Respondent’s failure to have a written procedure for the detection of illicit discharges is a violation of the 2013 small MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count 2: Illicit Discharge Detection and Elimination program: Failure to Develop and Maintain an MS4 Map

35. Appendix A of the 2013 small MS4 Permit, MCM#3: Illicit Discharge Detection and Elimination (IDD&E), BMP #2 requires the permittee to “Develop and maintain a map of your regulated small MS4. The map must also show the location of all outfalls and the locations and names of all surface waters of the Commonwealth (e.g., creek, stream, pond, lake, basin, swale, [and] channel) that receive discharges from those outfalls.”

36. At the time of the inspection, the respondent was using an MS4 map from the early 1900s of which approximately 25% of the system was field verified. At the time of inspection, a new stormwater outfall was added to the system as part of the Broad Street construction project. This outfall was not included on any of the storm sewer maps provided by the City. The City’s MS4 Outfall map also incorrectly labelled “Sewer Outfall A” as a storm sewer when it was part of the combined system.

37. Respondent’s failure to maintain their MS4 map is a violation of the 2013 MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count 3: Failure to Develop and Implement a Municipal Employee Stormwater Training Program

38. 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.”

39. At the time of inspection and as part of the post inspection document request, EPA requested records of Hazleton’s training activities. Hazleton was unable to provide any record of a written municipal employee stormwater training program or any documentation of stormwater training received by municipal employees.

40. 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. GENERAL PROVISIONS

41. For the purpose of this proceeding, Respondent admits the jurisdictional allegations set forth in this CAFO.

42. Respondent neither admits nor denies the Allegations of Fact set forth in this CAFO.

43. Respondent waives any defenses it might have as to jurisdiction and venue, its right to contest the allegations through hearing or otherwise; and its right to appeal the proposed final order accompanying the Consent Agreement.

44. Respondent agrees not to contest EPA’s jurisdiction to issue and enforce this CAFO.

45. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter and consents to issuance of this CAFO without adjudication.

46. Respondent shall bear its own costs and attorney fees.

47. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.

48. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.

IV. CIVIL PENALTY

49. In full and final settlement of the Complainant's claims for civil penalties for the alleged violations identified herein, Respondent consents to the assessment of, and agrees to pay, in accordance with the terms set forth herein, the total administrative civil penalty of three thousand dollars (\$3,000) within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c).

50. The civil penalty amount set forth in Paragraph 49, above, is based on a number of factors, including the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g). The final civil penalty amount has been reduced in recognition of Hazleton's commitment to complete the project described in paragraph 36.d. (Attachment A) of the City of Hazleton Administrative Order On Consent, Docket No. CWA-03-2016-0116DN.

51. Respondent shall pay the civil penalty amount described in Paragraph 49, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 52 through 55, below, by either cashier's check, certified check, or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action;
- b. All checks shall be made payable to "**United States Treasury**";
- c. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Primary Contact: Craig Steffen, (513) 487-2091
Secondary Contact: Molly Williams, (513) 487-2076

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Primary Contact: Craig Steffen, (513) 487-2091
Secondary Contact: Molly Williams, (513) 487-2076

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court

Riverdale, MD 20737

Contact: John Schmid, (202) 874-7026
Remittance Express (REX): (866) 234-5681

h. On-Line Payment Option:

WWW.PAY.GOV/paygov/

Enter **sfo 1.1** in the search field. Open and complete the form.

i. Additional payment guidance is available at:

<http://www2.epa.gov/financial/makepayment>

j. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CAFO.

A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

Robert J. Smolski
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC20)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. EPA, Region III (3RC00)
1650 Arch Street
Philadelphia, PA 19103-2029

52. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment as specified herein shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

53. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. 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).

54. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

55. A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

56. The penalty specified in Paragraph 49 shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

V. APPLICABLE LAWS

57. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251 *et seq.*, or any regulations promulgated thereunder.

VI. RESERVATION OF RIGHTS

58. This CAFO resolves only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present and imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. § 301 *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

59. Entry of this CAFO is a final settlement of all violations alleged in this CAFO. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO, if EPA obtains evidence that the information and/or representations of the Respondent are false, or, in any material respect, inaccurate. This right shall

be in addition to all other rights and causes of action, civil or criminal, EPA may have under law or equity in such event.

VII. FULL AND FINAL SATISFACTION

60. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for the violations alleged in this CA. Compliance with the requirements and provisions of this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and/or regulations administered by EPA.

VIII. PARTIES BOUND

61. This CAFO shall apply to and be binding upon the EPA, Respondent and Respondent's officers, employees, agents, successors and assigns. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

IX. EFFECTIVE DATE

62. Pursuant to 40 C.F.R. § 22.45(b), this CAFO shall be issued after a 40-day public notice period is concluded. This CAFO will become final and effective thirty (30) days after it is filed with the Regional Hearing Clerk, pursuant to Section 309(g)(5) of the Act, 33 U.S.C. § 1319(g)(5), or until a public comment process pursuant to 40 C.F.R. § 22.45(b) is concluded.

X. ENTIRE AGREEMENT


63. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

XI. FINAL ORDER

FOR RESPONDENT,

CITY OF HAZLETON:

Date: 5/17/16



Jeffrey Cusat
Mayor, City of Hazleton

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION III

SO ORDERED, pursuant to 33 U.S.C. 1319(g), and 40 C.F.R. Part 22,

this _____ day of _____, 2016

Date: _____

Jon M. Capacasa, Director
Water Protection Division