

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

_____	:	
In the Matter of:	:	
	:	Proceeding to Assess Class II Penalty
Towson University	:	Under Section 309(g)(2)(B) of the
8000 York Road	:	Clean Water Act, 33 U.S.C. § 1319(g)(2)(B)
Towson, Maryland 21252-0001	:	
	:	Docket No. CWA-03-2016-0135
	:	
Respondent.	:	<u>CONSENT AGREEMENT</u>
_____	:	

I. STATUTORY AND REGULATORY AUTHORITY

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, 33 U.S.C. § 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 Towson University located in Towson, Maryland ("Towson" or "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. Pursuant to 40 C.F.R. § 22.13(b), the Consolidated Rules 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 may be simultaneously 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 commences and concludes 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 \$25,000.

5. Pursuant to the 2009 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 between January 12, 2009 up to and through December 6, 2013 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. 73 Fed. Reg. 75340 (Dec. 11, 2008), as corrected 74 Fed. Reg. 626 (Jan. 7, 2009).

6. Pursuant to the 2013 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 from December 7, 2013 through the present 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 \$187,500. 78 Fed. Reg. 215 (Nov. 6, 2013).

II. GENERAL PROVISIONS

7. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.

8. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and it waives its right to contest all of the allegations contained herein, and it further consents to issuance of this CAFO without adjudication.

9. Respondent agrees to bear its own costs and attorney fees.

10. 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.

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

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. Respondent is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

13. 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.

14. 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 any pollutant from a point source to the 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, 33 U.S. C. §1342(b), provides that the Administrator may authorize a state to issue NPDES permit.

15. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Maryland Department of the Environment ("MDE") to issue NPDES permits on September 5, 1974, and to issue general NPDES permits in 1991.

16. MDE issued NPDES "General Permit for Discharges from State and Federal Small Municipal Separate Storm Sewer Systems," General Discharge Permit No. 05-SF-5501; General NPDES Permit No. MDR 055501 (hereinafter, "the Permit") effective November 12, 2004.

17. The Permit was scheduled by its terms to expire on November 11, 2009.

18. Pursuant to Section 402(i) of the CWA, 33 U.S.C. §1342(i), EPA retains its authority to take enforcement action within the State of Maryland for NPDES permit violations.

19. At all times relevant to this CAFO, Respondent owned and/or operated a municipal separate storm sewer system (MS4) as that term is defined in 40 C.F.R. § 122.26(b)(8) (hereinafter, "Towson MS4").

20. The Towson MS4 is located within Baltimore County, Maryland.

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

22. The Towson MS4 discharges stormwater to Towson Run and its associated tributaries, including Glenn Creek, which 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.

23. On October 4, 2005, the Towson MS4 received initial coverage for its discharges under the Permit, and its discharges have been covered by the Permit through an administrative extension since its expiration on November 11, 2009.

24. On November 7-8, 2013, EPA performed an inspection of the Towson MS4 (hereinafter, "EPA Inspection") during which it observed multiple violations of the Permit as described in Section IV below.

25. Respondent admits the Findings of Fact and Conclusions of Law set forth herein.

IV. VIOLATIONS

Count I

Failure to Implement Illicit Discharge Detection and Elimination Program

26. Section III.C of the Permit requires Towson to implement a program to identify and eliminate illicit storm drain system connections and non-stormwater discharges to the maximum extent practicable.

27. The EPA Inspection revealed that Towson had failed to implement a program to identify and eliminate illicit storm drain system connections and non-stormwater discharges to the maximum extent practicable.

28. Towson's failure to implement a program to identify and eliminate illicit storm drain system connections and non-stormwater discharges to the maximum extent practicable constitutes violations of the Section III.B of the Permit and Section 402 of the Act, 33 U.S.C. § 1342.

Count II

Failure to Comply with State Stormwater Requirements

29. Section III.D of the Permit requires Towson to comply with all State and Federal laws, regulations, ordinances, and procedures relating to stormwater management, including but not limited to Maryland Code of Regulations (COMAR) 26.17.02.10.

30. The EPA inspection revealed that Towson failed to comply with specific aspects of state regulation requirements, including the performance of various inspections and maintenance of inspection reports during stormwater management facility construction and upon completion of final grading and establishment of permanent stabilization.

31. Respondent's failure to comply with all State regulations, ordinances and procedures relating to stormwater management constitutes violations of the Section III.D of the Permit and Section 402 of the Act, 33 U.S.C. § 1342.

Count III

Failure to Ensure Proper Permitting of all Facilities; Failure to Develop Pollution Prevention and Good Housekeeping Procedures

32. Section III.F of the Permit requires Towson to ensure that "all facility activities are properly permitted under NPDES or any other appropriate State or federal water pollution control program."

33. The EPA inspection revealed that Towson had failed to obtain permit coverage for at least two of the facilities that discharge into the Towson MS4 – the University General Services Facility and the Landscape Services Facility.

34. Respondent's failure to ensure that "all facility activities are properly permitted under NPDES or any other appropriate State or federal water pollution control program" constitute violations of the Section III.F of the Permit and Section 402 of the Act, 33 U.S.C. § 1342.

Count IV

Failure to Submit Annual Reports and Deficient Annual Report

35. Section V.C of the Permit requires Towson to submit annual reports regarding its MS4 operations to the Maryland Department of the Environment.

36. Upon information and belief, Towson failed to submit Annual Reports for 2012 and 2013, and it submitted an Annual Report for 2014 that did not comply with several applicable Permit requirements.

37. Respondent's failure to submit annual reports for 2012 and 2013, and submission of a deficient report for 2014, constitute violations of Section V.C of the Permit and Section 402 of the Act, 33 U.S.C. § 1342.

V. CIVIL PENALTIES

38. 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 State of Maryland regarding this action, and will mail a copy of this document to the appropriate Maryland official.

39. Based upon the foregoing and having taken into account 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), EPA HEREBY ORDERS and Respondent HEREBY CONSENTS to pay a civil penalty in the amount of **thirty-one thousand three-hundred twenty (\$31,320)** in full and final settlement of EPA's claims for penalties for the violations alleged herein.

40. Respondent shall pay the total administrative civil penalty of **thirty-one thousand three-hundred twenty (\$31,320)** within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c). Payment shall be made by one of the following methods set forth below.

All payments by Respondent shall reference Respondent's name and address and the Docket Number of this action, CWA-03-2016-0135.

Payment by check to "United States Treasury":

By regular mail:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Box 979077
St. Louis, MO 63197-9000

Contact: 513-487-2091

By overnight delivery:

U.S. Bank
Government Lock Box 979077
US EPA, Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1028

By Wire Transfer:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the wire transfer message should read:
D 68010727 Environmental Protection Agency)

By Automated Clearinghouse (ACH) Transfers for receiving U. S. currency (also known as REX or remittance express):

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact for ACH: John Schmid (202-874-7026)
Remittance Express (REX): 1-866-234-5681

On-Line Payments:

WWW.PAY.GOV
Enter sfo 1.1 in the search field
Open form and complete required fields.

Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

Respondent shall send notice of such payment, including a copy of the check if payment is made by check, to the Regional Hearing Clerk at the following address:

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

-and-

Lori G. Kier
Mail Code 3RC20
Office of Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

41. 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.

42. The following notice concerns interest charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11(a), EPA is entitled to assess interest on outstanding debts owed to the United States. Accordingly, Respondent's failure to make timely payments as required herein or to comply with the conditions in this CAFO shall result in the assessment of interest.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of the fully-executed 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 it is due. 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).

43. The penalty specified in Paragraph 39 shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

VI. SUPPLEMENTAL ENVIRONMENTAL PROJECT

44. Respondent shall undertake and complete the Towson University Geographical Information System supplemental environmental project ("SEP"), as described in Attachment A hereto which is incorporated herein as part of this CAFO

45. Respondent shall complete the SEP no later than 330 days from the effective date of this CAFO, as described with more specificity in Attachment A hereto.

46. Respondent shall expend no less than \$58,296.00 for expenses related to the SEP, itemized as described in Attachment A hereto.

47. Respondent hereby certifies that, as of the date of this Consent Agreement, it is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case.

48. Respondent further certifies that it has not received, and is not presently negotiating to receive credit in any other enforcement action in any forum by any entity for the SEP besides the instant proceeding resolved by this CAFO.

49. The activities to be undertaken as part of the SEP are not required by any other law (federal, state or local); nor are they required by any other agreement, grant or as injunctive relief in the instant or any other case. In addition, the language precludes Respondent from attempting to obtain double credit for the same project. Also, Respondent cannot be allowed to "bank" projects (*i.e.*, Respondent may not receive credit for projects it has already commenced or completed in 30 advance of the enforcement action by EPA.)

50. SEP Completion Report. Respondent shall submit a SEP Completion Report to EPA at the address in Paragraph 51 below no later than 30 days following completion of the SEP. The SEP Completion Report shall contain the following information:

- (i) a detailed description of the SEP as implemented;
- (ii) a description of any operating problems encountered and the solutions thereto;
- (iii) itemized costs and documentation for each such expenditure;
- (iv) certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order; and

- (v) a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible). Upon request, Respondent shall send EPA any additional documentation requested by EPA.

51. Respondent agrees that failure to submit the SEP Completion Report shall be deemed a violation of this Consent Agreement and Final Order and Respondent shall become liable for stipulated penalties pursuant to paragraph 54 below. Respondent shall submit all notices and reports required by this Consent Agreement and Final Order to the following address by first class mail or email:

Ms. Rebecca Crane
NPDES Enforcement (Mail Code 3WP42)
Water Protection Division
US EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

52. Respondent agrees that in order to receive credit for the SEP, it must fully and timely complete the SEP project in accordance with Paragraphs 45 and 46 herein. If Respondent fails to timely and fully complete any part of the SEP, including failure to spend the minimum amount of \$58,296.00, it shall pay to the United States a stipulated penalty of the difference between \$58,296.00 and the actual amount spent in performance of the SEP.

53. For purposes of the preceding paragraph, whether Respondent has fully and timely completed the SEP shall be in the sole discretion of EPA.

54. If Respondent fails to timely submit a SEP completion Report as required by this CAFO, Respondent shall pay to the United States a stipulated penalty of \$1,000 for each calendar day that the report is late.

55. Any public statement, oral or written, by Respondent making any reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the federal Clean Water Act."

VII. PUBLIC NOTICE

56. 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 Maryland Department of the Environment (MDE) regarding this action, and will mail a copy of this document to the appropriate MDE official.

VIII. 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.

IX. 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 the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). 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.

X. 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 CAFO. 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.

XI. 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.

XIII. ENTIRE AGREEMENT

62. 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.

XIII. NON-SEVERABILITY

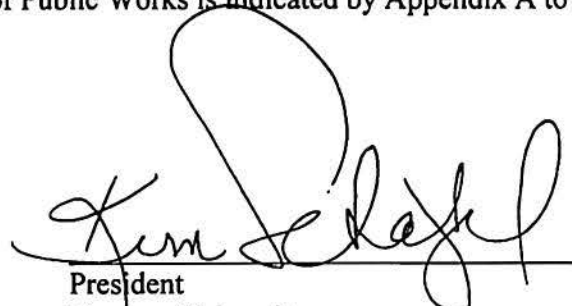
63. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

XIV. EXECUTION

64. The undersigned representative of Respondent certifies that s/he is fully authorized by Respondent to enter into the terms and conditions of this CAFO and to execute and legally bind Respondent to it, after obtaining the approval of the Maryland Board of Public Works. The approval of the Maryland Board of Public Works is indicated by Appendix A to this CAFO.

FOR RESPONDENT:

Date: 8/19/16



President
Towson University

Accordingly, the Water Protection Division, US EPA Region III, recommends that the Regional Administrator of EPA Region III, ratify this Consent Agreement and issue the accompanying Final Order. The amount of the recommended civil penalty assessment is \$31,320.

Date: 9/28/2016



Jon M. Capacasa, Director
Water Protection Division