

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
Borough of Steelton	:	
Municipal Building	:	
123 North Front Street	:	
Borough of Steelton	:	
Steelton, PA 17113	:	Docket No. CWA-03-2017-0108
Respondent	:	CONSENT AGREEMENT

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 Borough of Steelton ("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)(A) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(A), 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 Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), 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 \$37,500 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" 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) & (17)
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), a small MS4 requires an NPDES permit where such a permit is required pursuant to 40 C.F.R. § 122.32.
14. 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.
15. Pursuant to Section 402(i) of the CWA, 33 U.S.C. 1342(i), EPA retains its authority to take enforcement action with the Commonwealth for NPDES violations.

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

16. The Borough of Steelton, Pennsylvania (“Respondent”) is a “municipality” within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).
17. The Borough of Steelton is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
18. At all times relevant to this Order, Respondent has owned and/or operated a regulated small MS4 as that term is defined in 40 C.F.R. § 122.26(b)(16).
19. Respondent’s small MS4 is located within the Borough of Steelton, within Dauphin County, Pennsylvania (the Steelton 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).
20. The Borough of Steelton encompasses a total area of approximately 1.8 square miles. According to the 2010 Census, its population is estimated at 5,990 people.

21. Respondent's MS4 discharges stormwater to the Susquehanna River, the Pennsylvania Canal and associated unnamed tributaries. The Susquehanna River, the Pennsylvania Canal and associated unnamed tributaries 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.
22. In December 2002, PADEP issued the "NPDES Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4s) General Permit" (PAG-13). That PAG-13 Permit became effective in 2003 (the "2003 Permit"). PAG-13 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 2003 Permit was administratively extended by PADEP until March 15, 2013.
23. On March 16, 2013, PADEP re-issued PAG-13 (the 2013 Permit). The 2013 Permit became effective starting March 16, 2013 and 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.
24. Steelton timely submitted their Notice of Intent ("NOI") for coverage under the reissuance of the 2013 Permit on August 31, 2012. Starting on the effective date of the 2013 Permit, March 16, 2013, the 2013 Permit thereafter authorized stormwater discharges from the Steelton MS4.
25. 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 was required to 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.
26. The 2003 Permit MCMP: "Illicit Discharge Detection and Elimination MCM" required the Permittee to begin annual field screening by Year 2 of coverage, or, in this case, 2005. That requirement specifies that every outfall in the priority areas must be screened two times a year as each priority area is screened. Appendix A of the 2013 Permit (at MCM #3, BMP #4) requires the Permittee to screen outfalls, which have had past problems on a continual basis, annually.

27. Under the requirements of the 2003 Permit, Protocol 2003, Steelton is required to document all steps taken to remove or correct illicit discharges. The results of all discussions, tests, and screening, should be documented. The Permittee is required to document the status of all illicit discharges detected in its Annual Report Form to PADEP. The 2013 Permit, Appendix A (MCM #3 BMP #4) requires that the permittee: shall conduct outfall field screening, identify the source of any illicit discharges, and remove or correct any illicit discharges using procedures developed under BMP #1.
28. The 2003 Permit required Steelton to take the appropriate action to correct illicit discharges. The 2013 Permit, Appendix A (MCM #3 BMP #5) states that the Permittee must continue to maintain, update, implement, and enforce a Stormwater Management Ordinance that satisfies all applicable requirements.
29. EPA and its representatives conducted an inspection of the Borough's Municipal Separate Storm Sewer Systems ("MS4") program on October 21-22, 2014. A copy of the report of the findings of that inspection was sent to the Borough. The Borough provided a response to that inspection report.
30. Based on the 2014 inspection, as well as a review of the information provided by the Borough during and after the inspection, and information obtained from PADEP, EPA identified the following violations of the 2003 and 2013 small MS4 Permits and the CWA as described below.

III. VIOLATIONS

Count 1

Failure to Conduct Field Screening of Priority Areas

31. The Permittee failed to conduct illicit discharge detection field screenings twice a year at priority outfalls in accordance with the requirements set forth, respectively, in the 2003 Permit and the 2013 Permit, Appendix A.
32. The Borough's failure to conduct illicit discharge detection field screenings twice a year at priority outfalls as required by the 2003 and 2013 Permits respectively are violations of the 2003 and 2013 Permits, and Section 301 of the CWA, 33 U.S.C. § 1311.

Count 2

Failure to Adequately Document Illicit Discharges

33. At the time of the inspection Steelton failed to adequately document the status of illicit discharges that occurred in August 2014. Permittee also failed to report one illicit discharge from Swatara Auto Service in its Annual Report to PADEP for that 2013 year.
34. Respondent's failure to adequately document illicit discharges is a violation of the 2013 MS4 Permit Appendix A (MCM #3 BMP #4) and Section 301 of the CWA, 33 U.S.C. § 1311.

Count 3

Failure to Take Appropriate Corrective Action for Illicit Discharges

35. At the time of EPA's inspection and based on a further review of records, the Permittee had failed to take adequate enforcement action to correct an illicit discharge to its MS4.
36. Respondent's failure to take an adequate enforcement action is a violation of both the 2003 Permit and the 2013 Permit, Appendix A (MCM #3 BMP #5) as well as Section 301 of the CWA, 33 U.S.C. § 1311.

IV. GENERAL PROVISIONS

37. For the purpose of this proceeding, Respondent admits the jurisdictional allegations set forth in this CAFO.
38. Respondent neither admits nor denies the Allegations of Fact set forth in this CAFO.
39. 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.
40. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.
41. 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.
42. Respondent shall bear its own costs and attorney fees.
43. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.

44. 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

45. 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 five thousand dollars (\$5,000) within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c).
46. The civil penalty amount set forth in Paragraph 45, 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).
47. Respondent shall pay the civil penalty amount described in Paragraph 45, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 48 through 51, 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.

Additional payment guidance is available at:

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

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

Christopher A. Day
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

48. 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.
49. Interest on the civil penalty assessed in this CAFO will begin to accrue on the effective date of this CAFO or the date that a true and correct copy of this CAFO is mailed or hand-delivered to Respondent, whichever is later. 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).

50. 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.
51. 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).
52. The penalty specified in Paragraph 45 shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

V. APPLICABLE LAWS

53. 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

54. 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.
55. 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

56. 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

57. 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

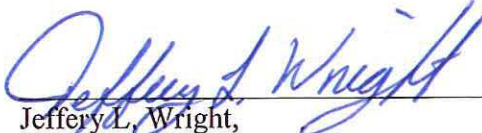
58. Pursuant to 40 C.F.R. § 22.45(b), this CAFO shall be issued after a 40-day public notice period is concluded. This CAFO will become final and effective thirty (30) days after it is filed with the Regional Hearing Clerk, pursuant to Section 309(g)(5) of the Act, 33 U.S.C. § 1319(g)(5), or until a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

X. ENTIRE AGREEMENT

59. 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.

FOR RESPONDENT, BOROUGH OF STEELTON:

Date: 3/27/2017



Jeffery L. Wright,
President of Borough Council