

**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 Camp Hill :
2145 Walnut Street :
Camp Hill, PA 17011 :

: Docket No. CWA-03-2017-0181

Respondent :
_____ :

: **CONSENT AGREEMENT**

CONSENT AGREEMENT

I. STATUTORY AND REGULATORY BACKGROUND

1. Pursuant to Section 309(g)(1) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(g)(1), the Administrator of the United States Environmental Protection Agency (“EPA”) is authorized to assess administrative penalties against persons who, in pertinent part, have violated Section 301 of the Act (33 U.S.C. § 1311) or any permit condition or limitation implementing Section 301 of the Act. The Administrator has delegated this authority to the Regional Administrator of EPA Region III, who in turn has delegated this authority to the Director of the Water Protection Division (“Complainant”).
2. This Consent Agreement is entered into by the Complainant and the Borough of Camp Hill (“Respondent” or “the Borough”), pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), 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 provide 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)].” 40 C.F.R. § 22.13(b). Pursuant thereto, this Consent Agreement and the attached Final Order simultaneously commence and conclude this administrative proceeding against Respondent.
4. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except in compliance with sections 301, 302, 306, 307, 318, 402, and 404 of the Act.

5. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the National Pollutant Discharge Elimination System (“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, 33 U.S.C. § 1342(b), provides for the authorization of state programs to issue NPDES permits.
6. 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.
7. Pursuant to Section 402(i) of the Act, 33 U.S.C. § 1342(i), EPA retains its authority to take enforcement action pursuant to Section 309 of the Act (33 U.S.C. § 1319(g)) for violations of NPDES permits.
8. Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), authorizes the assessment of administrative penalties in an amount not to exceed \$10,000 per day for each day of violation, up to a total penalty amount of \$25,000.
9. 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.
10. 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.
11. In addition, pursuant to Section 309(g)(1)(A) of the Act, 33 U.S.C. § 1319(g)(1)(A), EPA has consulted with the PADEP regarding this action, and will mail a copy of this document to the appropriate PADEP official.
12. “Discharge of a pollutant” includes “[a]ny addition of any ‘pollutant’ or combination of pollutants to ‘waters of the United States’ from any ‘point source’.” 40 C.F.R. § 122.2.
13. “Storm water” is defined as “storm water runoff, snow melt runoff, and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).
14. “Municipal separate storm sewer” is defined, in pertinent part, as “a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains): (i) 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 . . .; (ii) Designed or used for collecting or conveying storm water; (iii) Which is not a combined sewer; and (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.” 40 C.F.R. § 122.26(b)(8).

15. 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). See also 40 C.F.R. § 122.26(b)(17)-(19).
16. 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 must obtain an NPDES permit where such a permit is required pursuant to 40 C.F.R. § 122.32.
17. 40 C.F.R. § 122.32(a)(1) requires a permit if the “small MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census.”
18. The latest Decennial Census, conducted in 2010, includes Harrisburg, Pennsylvania as an urbanized area; the Borough is located within the Harrisburg urbanized area.

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

19. Respondent is a “municipality” within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).
20. Respondent is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
21. At all times relevant to this Consent Agreement, Respondent has owned and/or operated a regulated small MS4 as that term is defined in 40 C.F.R. § 122.26(b)(16).
22. Respondent’s small MS4 is located within the Borough of Camp Hill, within Cumberland County, Pennsylvania (“the Camp Hill 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).

23. According to the 2010 U.S. Census, the Borough of Camp Hill encompasses a total area of approximately 2.1 square miles and has an estimated population of 7,888 people.
24. The Camp Hill MS4 discharges stormwater to the Susquehanna River, Cedar Run, and Conodoguinet Creek. The Susquehanna River, Cedar Run, and Conodoguinet Creek are “waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and as that term is defined at 40 C.F.R. section 122.2.
25. On March 16, 2013, PADEP issued the “NPDES Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4s) General Permit” (PAG-13), which authorized the discharge of stormwater from small MS4s (“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.
26. Respondent timely submitted its NOI for coverage under the 2013 Permit on September 12, 2012. Starting on the effective date of the 2013 Permit, March 16, 2013, the 2013 Permit thereafter authorized stormwater discharges from the Camp Hill MS4.
27. The 2013 Permit at Part A.2.a requires permittees to “implement, enforce and report on the Stormwater Management Program (SWMP) as set forth in Appendix A. . .” It specifies that “[t]he SWMP as set forth in Appendix A of this permit contains DEP’s approved approach for satisfying each of the six [Minimum Control Measures (MCMs)]. The SWMP in Appendix A describes each MCM and the permit requirements, including BMPs and measurable goals. Permittees operating under this General Permit shall implement the SWMP in Appendix A in its entirety.” 2013 Permit at Part A.2.c (emphasis in original).
28. MCM #5 from Appendix A requires the permittee to “[d]evelop a written procedure that describes how the permittee shall address all required components of this MCM.” 2013 Permit, Appendix A, at p. 9 (BMP #1).
29. MCM #6 from Appendix A requires the permittee to “[d]evelop, 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.” 2013 Permit, Appendix A, at p. 12 (BMP #2).
30. MCM #6 from Appendix A requires the permittee to “[d]evelop and implement an employee training program” that contains certain requirements. 2013 Permit, Appendix A, at p. 13 (BMP #3). The 2013 Permit also requires the permittee to provide that training to “[a]ny municipal employee or contractor” at least annually and to document the training in writing – “[d]ocumentation shall include the date(s) of the training, the names

of the attendees, the topics covered, and the training presenter(s).” 2013 Permit, Appendix A, at p. 13 (BMP #3).

31. EPA and its representatives conducted an inspection of Respondent’s MS4 program on October 2-3, 2014. On February 4, 2015, EPA sent Respondent a copy of the report of the findings of that inspection.
32. On or about March 3, 2015, Respondent provided EPA with a response to EPA’s inspection report.
33. Based on EPA’s 2014 inspection, as well as a review of the information provided by Respondent during and after the inspection, EPA identified the following violations of the 2013 Permit and the CWA as described below.

III. VIOLATIONS

Count 1

Failure to Develop a Written Program for Inspection of Post-Construction Stormwater Management BMPs and to Maintain a Complete Inventory of Post-Construction Stormwater Management BMPs

34. At the time of EPA’s inspection, Respondent had not developed a written program for inspection of post-construction stormwater management BMPs (“PCSM BMPs”) or a complete inventory of PCSM BMPs as required by the 2013 Permit, Appendix A (MCM #5 BMP #1).
35. Respondent’s failure to develop a written program for inspection of PCSM BMPs and did not have a complete inventory of PCSM BMPs as required by the 2013 Permit is a violation of the 2013 Permit, and Section 301 of the CWA, 33 U.S.C. § 1311.

Count 2

Failure to Develop and Implement a Written O&M Program

36. At the time of EPA’s inspection, Respondent had neither fully developed or implemented a written operation and maintenance (O&M) program nor ensured that BMPs were in place at municipal facilities to eliminate or minimize pollutant discharges to surface waters as required by the 2013 Permit, Appendix A (MCM #6 BMP #2).
37. Respondent’s failure to develop or implement a written operation and maintenance (O&M) program and failure to ensure that BMPs were in place at municipal facilities to eliminate or minimize pollutant discharges to surface waters is a violation of the 2013 Permit and Section 301 of the CWA, 33 U.S.C. § 1311.

Count 3
Failure to Develop and Implement an Employee Training Program

- 38. At the time of EPA's inspection, and based on a review of subsequent information provided by Respondent, Respondent was unable to provide documentation of complete and appropriate stormwater training being provided at least annually as required by the 2013 Permit, Appendix A (MCM #6, BMP #3).
- 39. Respondent's failure to provide documentation of complete and appropriate stormwater training being provided at least annually is a violation of the 2013 Permit as well as Section 301 of the CWA, 33 U.S.C. § 1311.

IV. GENERAL PROVISIONS

- 40. For the purpose of this proceeding, Respondent admits the jurisdictional allegations set forth in this Consent Agreement.
- 41. Respondent neither admits nor denies the Findings of Fact set forth in this Consent Agreement.
- 42. 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 Final Order accompanying this Consent Agreement.
- 43. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this Consent Agreement and the Final Order.
- 44. Respondent waives its right to a hearing on any issue of law or fact in this matter and consents to issuance of this Consent Agreement and the Final Order without adjudication.
- 45. Respondent shall bear its own costs and attorney fees.
- 46. The provisions of this Consent Agreement and the Final Order shall be binding upon Respondent, its officers, principals, directors, successors and assigns.
- 47. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this Consent Agreement and the Final Order is the most appropriate means of resolving this matter.

IV. CIVIL PENALTY

- 48. 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 nineteen thousand dollars (\$19,000) within thirty (30) days of the Effective Date of this Consent Agreement and the attached Final Order pursuant to 40 C.F.R. § 22.31(c).

49. The civil penalty amount set forth in Paragraph 48, 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).
50. Respondent shall pay the civil penalty amount described in Paragraph 48, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 51 through 54, 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:

Kelly A. Gable
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

51. 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.
52. Interest on the civil penalty assessed in this Consent Agreement will begin to accrue on the effective date of this Consent Agreement or the date that a true and correct fully-executed copy of this Consent Agreement 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).
53. 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.
54. 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).

55. The penalty specified in Paragraph 48 shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

V. APPLICABLE LAWS

56. Neither this Consent Agreement nor the Final Order shall 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. Neither this Consent Agreement nor the Final Order constitutes 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

57. This Consent Agreement and the Final Order resolve 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 that 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 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 Consent Agreement and the attached Final Order.
58. Entry of this Consent Agreement and the Final Order is a final settlement of all violations alleged herein. EPA reserves the right to institute a new and separate action to recover additional civil penalties for the claims made in this Consent Agreement 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

59. 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 Consent Agreement. Compliance with the requirements and provisions of this Consent Agreement and the Final Order 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

60. This Consent Agreement and the Final Order shall apply to and be binding upon 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 Consent Agreement and to execute and legally bind that party to it.

IX. EFFECTIVE DATE

61. Pursuant to 40 C.F.R. § 22.45(b), this Consent Agreement and the Final Order shall be issued after a 40-day public notice period is concluded. This Consent Agreement and the Final Order will become final and effective thirty (30) days after they are 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

62. This Consent Agreement 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 Consent Agreement.

FOR RESPONDENT, BOROUGH OF CAMP HILL:

Date: _____

The Honorable Mark A. Simpson,
Mayor, Borough of Camp Hill

FOR COMPLAINANT, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: _____

Dominique Lueckenhoff
Acting Director
Water Protection Division

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**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 Camp Hill	:	
2145 Walnut Street	:	
Camp Hill, PA 17011	:	Docket No. CWA-03-2017-0181
Respondent	:	FINAL ORDER

Complainant, Acting Director of the Water Protection Division, U.S. Environmental Protection Agency, Region III, and Respondent, the Borough of Camp Hill, by its Mayor, have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the evocation/Termination or Suspension of Permits, 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon the consideration of the statutory factors set forth in Section 309 of the Clean Water Act, 33 U.S.C. § 1319.

NOW, THEREFORE, pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319, and 40 C.F.R. § 22.18(b)(3), it is hereby ordered that Respondent pay a civil penalty in the amount of nineteen thousand dollars (\$19,000) in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

Pursuant to 40 C.F.R. § 22.45(b), this Final Order shall be issued following a 40-day public notice period, execution by an authorized representative of EPA, and filing with the Regional Hearing Clerk. This Final Order 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 after a public comment process pursuant to 40 C.F.R. § 22.45(b), is concluded, whichever occurs later.

SO ORDERED, pursuant to 33 U.S.C. § 1319(g), and 40 C.F.R. Part 22,
this _____ day of _____, 2017.

Dominique Lueckenhoff, Acting Director
Water Protection Division