

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 the CWA between December 6, 2013 and November 2, 2015 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 for violations that; an administrative penalty not to exceed \$20,628 per day for each day of violation up to a total penalty amount of \$257,848 for violations that occurred after November 2, 2015, and assessed on or after August 1, 2016; and an administrative penalty not to exceed \$20,968 per day for each day of violation up to a total penalty amount of \$262,066 for violations that occurred after November 2, 2015, and assessed on or after January 15, 2017.

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.

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. “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.

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

9. Respondent is an executive department of the Commonwealth of Pennsylvania, a “State” and therefore a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

10. 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 applicable Permit. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides that the Administrator may authorize a state to issue an NPDES permit.

11. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Pennsylvania Department of the Environment (“PA DEP”) to issue NPDES permits in 1978, and to issue general NPDES permits in 1991.

12. Pursuant to its authorization to issue general NPDES permits, PA DEP first issued its General Permit for Stormwater Discharges Associated with Construction Activities (PAG-02) ("PAG-02") on October 10, 1992.

13. Regulations implementing Pennsylvania's NPDES permitting program can be found in 25 Pa. Code Chapters 92a and 102. 25 Pa. Code § 102.5(a) provides in relevant part:

Other than agricultural plowing or tilling activities, animal heavy use areas, timber harvesting or road maintenance activities, a person proposing an earth disturbance activity that involves equal to or greater than 1 acre (0.4 hectare) of earth disturbance, or earth disturbance on any portion, part, or during any stage of, a larger common plan of development or sale that involves equal to or greater than 1 acre (0.4 hectare) of earth disturbance, shall obtain an individual NPDES Permit or coverage under general NPDES for Stormwater Discharges Associated with Construction Activities prior to commencing the earth disturbance activity.

14. PennDOT has obtained coverage from PA DEP for construction stormwater discharges at numerous highway project sites since PA DEP first issued the PAG-02. Permit coverage for a highway project site extends for a 5-year time period, unless otherwise extended.

15. PennDOT has additionally applied for and been granted permit coverage under individual permits ("Individual Permits") issued by PA DEP for construction stormwater discharges at numerous highway project sites that do not qualify for coverage under the PAG-02.

16. At all times relevant to this Order, PennDOT was required to obtain coverage under the PAG-02 or an Individual Permit for any construction stormwater discharges from highway project sites that involved equal to or greater than 1 acre of earth disturbance, excluding road maintenance activity.

17. Attachment A, incorporated herein by reference, contains a non-exclusive list of highway project sites where PennDOT obtained coverage under the PAG-02 or an Individual Permit.

18. According to PennDOT, it retains contractors to construct its highway projects and requires these contractors to become co-permittees under the PAG-02 or Individual Permit coverage for the project. Furthermore, PennDOT asserts that its agreements with its contractors impose responsibility for complying with the permit terms and conditions on the contractors, including the responsibility to fully implement the required Best Management Practices ("BMPs").

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

20. PA DEP has delegated authority to certain Pennsylvania County Conservation Districts (CCDs) to implement portions of the state's construction stormwater program.

21. EPA and the CCDs have performed inspections of certain PennDOT facilities subject to permit coverage under either the PAG-02 or the individual permits described above, and in Attachment A, on multiple dates since at least 2011. Following some of these inspections, EPA and the CCDs issued inspection reports that identified apparent violations of the PAG-02, the individual permits described above, and the CWA, as described in detail in Attachment A and summarized below.

22. EPA submitted two formal information requests to PennDOT, pursuant to section 308 of the CWA, 33 U.S.C. §1342(i), and PennDOT provided responses to those requests to EPA.

23. EPA sent a letter to PennDOT on March 31, 2016 inviting PennDOT to meet with EPA to confer and resolve PennDOT's potential violations of the Clean Water Act. PennDOT and EPA met on May 24, 2016, June 30, 2016, August 5, 2016 and November 21, 2016.

24. As a result of the information known to EPA from sources including its inspections, the CCD inspection reports, PennDOT's responses to EPA's section 308 inquiries and the information provided to EPA by PennDOT during the meetings described above, EPA concludes that PennDOT violated the terms and conditions of its permit coverages and the CWA by failing to perform self-inspections and recordkeeping and by failing to fully implement BMPs at multiple highway construction sites.

III. VIOLATIONS

Count 1

Failure to perform self-inspections and recordkeeping

25. Part A.2.a of the PAG-02, entitled "Visual Inspections" requires that the Respondent perform self-inspections, at least weekly and after each measurable precipitation event and document each inspection. Specifically, Part A.2.a in the most current version of the PAG-02 states that:

The permittee and co-permittee(s) must ensure that visual site inspections are conducted and documented weekly, and within 24 hours after each measurable stormwater event throughout the duration of construction and until the receipt and

acknowledgement of the NOT by the Department or authorized conservation district. The visual site inspections and reports shall be completed on a form developed by the Department and conducted by qualified personnel, trained and experienced in erosion and sediment control, to ascertain that E&S, PCSM and PPC BMPs are properly constructed and maintained to effectively minimize pollution to the waters of the Commonwealth. A written report of each inspection shall be kept and include at a minimum:

- (1) A summary of site conditions, E&S and PCSM BMPs, implementation and maintenance and compliance actions; and
- (2) The date, time, name and signature of the person conducting the inspection.

26. Self-inspection and reporting requirements, substantially equivalent to those set forth in Part A.2.a of the contemporaneous version of the PAG-02 are contained in the Individual Permits, identified in Attachment A.

27. As set forth in Paragraph 24 above, and elaborated herein, EPA concludes that the self-inspection and record keeping requirements of the PAG-02 and the applicable Individual Permits, as described in Attachment A, were not fully satisfied, on at least 191 occasions, as summarized below:

Montgomery County, SR 202, Section 65N. Respondent failed to develop/maintain records of inspections on at least 50 occasions during the time period of March of 2012-October of 2013, including the following dates: 3/6/12; 4/20/12; 5/14/12 (report completed late); 5/31/12 (report completed late); and 10/1/12; 10/24/12. Moreover, six reports prepared by PennDOT were undated and unsigned. Additionally, according to PennDOT's 308 response, the site was active until 10/31/13. PennDOT provided no self-inspection reports for the time period from 12/1/12 through 10/31/13.

Pike County, SR 201. Respondent failed to develop/maintain records of inspections on 15 occasions during the time period of January of 2012-October of 2012, on or about the following dates: 1/16/12; 2/10/12; 2/17/12; 3/21/12; 6/22/12; 7/6/12; 8/13/12; 9/20/12; 9/28/12; 10/1/12; 10/4/12; 10/12/12; 10/19/12; 10/25/12; and 10/31/12.

Washington County, I70, Section Y20. Respondent failed to develop/maintain records of inspections on 49 occasions during the time period of January of 2012-December of 2013, on or about the following dates: 1/12/12; 1/19/12; 3/14/12; 3/26/12; 4/ 2/12; 5/3/12; 5/25/12; 6/4/12; 6/13/12; 7/6/12; 7/23/12; 7/30/12; 9/3/12; 9/6/12; 9/10/12; 9/20/12; 11/14/12; 12/6/12; 12/12/12; 12/19/12; 1/17/13; 1/30/13; 2/6/13; 3/7/13; 3/20/13; 4/18/13; 4/26/13; 5/9/13; 5/27/13; 5/30/13; 6/27/13; 7/2/13; 7/12/13; 7/29/13; 8/21/13;

9/20/13; 10/8/13; 10/18/13; 10/25/13; 11/1/13; 11/8/13; 11/15/13; 11/19/13; 11/28/13; 12/6/13; 12/13/13; 12/16/13; 12/23/13; and 12/31/13.

Berks County, SR 183 & SR 222. Respondent failed to develop/maintain records of inspections on 17 occasions during the time period of January 2012-August 2013 on or about the following dates: 1/23/12; 5/7/12; 5/28/12; 7/6/12; 7/13/12; 7/25/12; 8/7/12; 8/16/12; 12/11/12; 12/31/12; 2/12/13; 3/18/13; 6/12/13; 7/15/13; 8/9/13; 8/14/13 and 8/30/13.

Lehigh County, SR 2045, Section 01B. Respondent failed to develop/maintain records of inspections on 9 occasions during the time period of February 2012 to October 2012 on or about the following dates: 2/11/12; 5/3/12; 7/3/12; 9/13/12; 9/20/12; 9/23/12; 10/4/12; 10/9/12; and 10/18/12.

Lehigh County, RT 309, Section 7S. Respondent failed to develop/maintain records of inspections on 12 occasions during the time period of January of 2013-July of 2013 on or about the following dates: 1/14/13; 1/17/13; 2/11/13; 2/21/13; 3/14/13; 3/20/13; 4/15/13; 4/22/13; 5/1/13; 5/30/13; 6/12/13; and 7/3/13.

Lehigh County, SR 145 & RT 22. Respondent failed to develop/maintain records of inspections on 23 occasions during the time period of June of 2012 – February of 2013 on or about the following dates: 6/22/12; 7/5/12; 8/2/12; 8/16/12; 8/31/12; 9/5/12; 9/28/12; 10/4/12; 10/12/12; 10/19/12; 10/26/12; 11/2/12; 11/9/12; 11/16/12; 11/23/12; 11/30/12; 12/7/12; 12/14/12; 1/13/13; 1/18/13; 2/1/13; 2/8/13 and 2/15/13.

Montgomery County, SR 202, Section 711. Respondent failed to develop/maintain records of inspections on 16 occasions during the time period of January of 2012 to November of 2012 on or about the following dates: 1/6/12; 1/25/12; 3/5/12; 3/23/12; 5/4/12; 5/14/12; 7/17/12; 7/30/12; 8/2/12; 8/16/12; 9/6/12; 9/10/12; 9/20/12; 10/1/12; 10/24/12; and 11/15/12.

28. The failure to perform self-inspections and/or recordkeeping are violations of Part A.2.a of PAG-02 and the relevant sections of the Individual Permits, and are therefore violations of Sections 301 and 402 of the CWA.

Count 2
Failure to implement BMPs

29. Part A.1.b of the most current version of PAG-02, entitled “Applicable Effluent Limitations” requires that:

Activities covered under this permit must comply with applicable effluent limitations established in 25 Pa. Code Chapters 91, 92a, 93, 96, 102, and 105 and any applicable federal law or regulation, including the effluent guidelines for construction at 40 CFR Part 450.

30. 40 CFR Section 450.21, requires that regulated construction-related point sources implement erosion and sediment controls, soil stabilization, dewatering, and pollution prevention activities.

31. 25 Pa. Code Section 102.4 requires the installation and maintenance of BMPs, including inlet protection, silt socks, stormwater management basins, maintaining the limits of disturbance, the containment of concrete wash water and rock entrance controls.

32. 25 Pa. Code Section 102.22 requires site stabilization activities.

33. Applicable Effluent Limitations, similar to those set forth in Part A.1.b are contained in the Individual Permits described in paragraph 14, above, and in the permits specifically identified in Attachment A.

34. As set forth in Paragraph 24 above, and elaborated herein, EPA concludes that the BMP requirements set forth in the Applicable Effluent Limitations, as required by PAG02 and the applicable Individual Permits, were not fully satisfied. While PennDOT contracted with others to fully implement the BMPs required by the permits as described in paragraph 18 above, EPA concludes that PennDOT nonetheless remained obligated to implement the BMPs and is liable for the failure of the BMPs to be fully implemented. As summarized below, and described more fully in Attachment A, EPA concludes that the Applicable Effluent Limitations were violated on at least 18 occasions:

Washington County, I70/I79 on or about: 10/11/13; 11/20/13; and 5/6/14;

Washington County, SR 519 on or about: 3/2/15; 3/19/15; 6/25/15; and 3/3/16;

Lehigh County, RT 309, Section 07S, on or about: 7/29/13; 5/19/15;

Luzerne County, Airport Beltway, on or about: 3/6/13;

Lehigh County, RT 22 and SR 145, on or about: 2/13/13; 2/21/13; 6/28/13; 11/27/13; 5/1/14; and 5/19/14;

Armstrong County, Theater Road, on or about: 5/4/15; and 5/28/15.

35. These failures to fully comply with the Applicable Effluent Limitations are violations of Part A.1.b of PAG-02 and the relevant sections of the Individual Permits, and are therefore violations of Sections 301 and 402 of the CWA.

III. GENERAL PROVISIONS

36. For the purpose of this proceeding:
- a. Respondent admits the jurisdictional allegations set forth in this CAFO;
 - b. Except as provided in Paragraph 36.a, above, Respondent neither admits nor denies the Allegations of Fact set forth in this CAFO;
 - c. Respondent agrees to undertake all actions required by this Consent Agreement and Final Order;
 - d. 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 this Consent Agreement and Final Order.

37. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this Consent Agreement and Final Order.

38. 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 Consent Agreement and Final Order without adjudication.

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

40. The provisions of this Consent Agreement and Final Order shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.

41. 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 Final Order is the most appropriate means of resolving this matter.

IV. CIVIL PENALTY

42. 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 one hundred thousand dollars (**\$100,000**) within ninety (90) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c).

43. The civil penalty amount set forth in Paragraph 37, 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).

44. Respondent shall pay the civil penalty amount described in Paragraph 37, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 39 through 44 of this Order, 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:

Andrew Duchovnay
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

45. 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.

46. 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 ninety (90) 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).

47. 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.

48. 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).

49. The penalty specified in Paragraph 37 shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

V. APPLICABLE LAWS

50. 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

51. 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.

52. Entry of this CAFO is a final settlement of all violations alleged in this CAFO. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information provided and/or representations made by the Respondent to the Complainant concerning the matter at issue 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

53. 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

54. 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

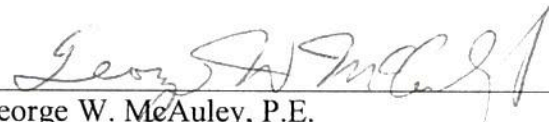
55. Pursuant to 40 C.F.R. § 22.45(b), this CAFO shall be issued after a 40-day public notice period is concluded. This CAFO will become final and effective thirty (30) days after it is filed with the Regional Hearing Clerk, pursuant to Section 309(g)(5) of the Act, 33 U.S.C. § 1319(g)(5), or until a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

X. ENTIRE AGREEMENT

56. 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.

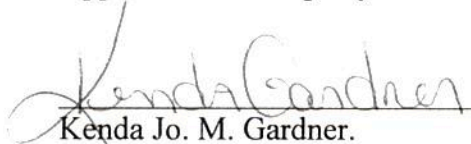
XI. FINAL ORDER

FOR RESPONDENT, PENNSYLVANIA DEPARTMENT OF TRANSPORTATION.:

BY: 
George W. McAuley, P.E.
Deputy Secretary for Highway Administration

DATE: 5/7/18

Approved as to Legality and Form:


Kenda Jo. M. Gardner.
Deputy Chief Counsel, Real Property Division
DJB 5/8/18

DATE: 5/7/18

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

SO ORDERED:

Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, is sue the attached Final Order.

Catherine R. McManis for

Dominique Lueckenhoff, Acting Director
Water Protection Division
U.S. Environmental Protection Agency

8/14/2018

Date

[THE REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]

**ATTACHMENT A
PENNDOT-VIOLATION SUMMARY TABLE**

COUNT 1: Failure to perform self-inspections and/or recordkeeping.

Based on PennDOT's response to the 308 Information Request Letter, EPA has identified the violations identified in the table below.

County/Site (Coverage Approval Date)	Evidence (Self-inspection reports missing from PennDOT's 308 Responses)
Berks County SR 183 & SR 222 <u>PAG2-0006-09-021</u> (Oct 27, 2009)	Chapter 102.8. There are 17 missing reports.
Lehigh County/ SR 2045-Section 01B- <u>PAI-0239-10-001</u> (June 2, 2010)	Chapter 102.8. There are 9 missing reports.
Lehigh County Rt 309 Sec 75- <u>PAI-0239-11-020</u> (Sept. 5, 2012)	Chapter 102.8. There are 12 missing reports.
Lehigh Vounty SR 145 & Rt 22- <u>PAG 02-0039-12-009</u> (Aug. 24, 2012)	Chapter 102.8. There are 23 missing reports.
Montgomery County/ SR202-Section 711 <u>PAG2-0046-07-076-1</u> (Jan. 31, 2008)	Chapter 102.8. There are 16 missing reports.
Montgomery County/ SR202-Section 65N <u>PAG02-0046-041-62</u> (Feb. 9, 2009)	Chapter 102.8. There are 50 missing reports.
Pike County SR 2001 Sec <u>PAI 025-2060-11</u> (Jan. 2, 2009)	Chapter 102.8. There are 15 missing reports.
Washington County/170-Section Y20 <u>PAI-0563-09-002</u> (Feb. 16, 2010)	Chapter 102.8. There are 49 missing reports.

TOTAL: 191

COUNT 2: Failure to fully comply with the Applicable Effluent Limitations.

SITE (Coverage Approval Date)	EVIDENCE
Armstrong County-Theater Road- <u>PAG 02-000312002</u> (May 15, 2012)	<p>5/4/15-Chapter 102.4-Failure to implement BMPs including, but not limited to, silt socks.</p> <p>Chapter 102.22-Failure to stabilize, including, but not limited to, inactive areas.</p> <p>5/28/15-Chapter 102.4-Failure to implement BMPs including, but not limited to, silt socks.</p> <p>Chapter 102.22-Failure to stabilize, including but not limited to, inactive areas.</p>
Lehigh County-Rt 22 & SR 145- <u>PAG 02-0039-12-009</u> (Aug. 24, 2012)	<p>2/13/13 - Chapter 102.4-Failure to maintain BMPs, including, but not limited to, silt fence and rock construction entrances.</p> <p>-Chapter 102.22-Failure to stabilize, including, but not limited to, inactive areas.</p> <p>2/21/13- Chapter 102.22-Failure to stabilize, including, but not limited to, slopes, swales and inactive areas.</p> <p>-Chapter 102.4 -Failure to maintain BMPs, including, but not limited to, silt fence and rock construction entrances.</p> <p>6/28/13 - Chapter 102.4- Failure to maintain BMPs, including, but not limited to, silt fence and stone check dams.</p> <p>- Chapter 102.22-Failure to stabilize, including, but not limited to, stockpiles and swales.</p> <p>11/27/13- Chapter 102.4 -Failure to install BMPs, including, but not limited to, silt fence and rock construction entrances.</p> <p>- Chapter 102.4 -Failure to maintain BMPs, including, but not limited to, silt fence, rock construction entrances and inlet filters.</p> <p>- Chapter 102.4 -Failure to implement BMPs, including, but not limited to, the sequence of construction.</p> <p>- Chapter 102.22- Failure to stabilize, including, but not limited to, swales and inactive areas.</p>

<p>Lehigh County-Rt 22 & SR 145-PAG 02-0039-12-009 (Aug. 24, 2012)</p>	<p>5/1/14 - Chapter 102.4 - Failure to install BMPs, including, but not limited to, rock inlets and silt fence. - Chapter 102.22-Failure to stabilize, including, but not limited to, swales and inactive areas. - Chapter 102.4 -Failure to maintain BMPs, including, but not limited to, silt fence and rock construction entrances. 5/19/14- Chapter 102.4 -Failure to maintain BMPs, including, but not limited to, silt fence and rock construction entrances. Chapter 102.22- Failure to stabilize, including, but not limited to, swales and inactive areas.</p>
<p>Lehigh County-Rt 309 Sec 075-PAI 0239 11 020 (Sept. 5, 2012)</p>	<p>7/29/13-Chapter 102.22-Failure to stabilize, including, but not limited to, inactive areas. Chapter 102.4-Failure to implement BMPs, including, but not limited to, maintaining the limits of disturbance of construction and containment for concrete wash water. Chapter 102.4-Failure to install BMPs including, but not limited to, compost socks. Chapter 102.4 Failure to maintain BMPs, including, but not limited to, inlet protection and rock entrance control. 5/19/15-Chapter 102.22-Failure to stabilize, including, but not limited to, rain gardens and slopes.</p>
<p>Luzerne County-Airport Beltway PAI 02 4010 009 (Oct. 20, 2011)</p>	<p>3/6/13-Chapter 102.4-Failure to install BMPs, including, but not limited to, rock filters, Chapter 102.22-Failure to stabilize, including, but not limited to, swales.</p>
<p>Washington County I70/I79 South Junction-PAI 05 6310 004 (May 11, 2011)</p>	<p>10/11/13 - Chapter 102.4-Failure to maintain BMPs, including, but not limited to, inlet protection. Chapter 102.4-Failure to implement BMPs, including, but not limited to, silt socks. 11/20/13 - Chapter 102.22-Failure to stabilize, including, but not limited to, slopes. Chapter 102.4-Failure to implement BMPs, including, but not limited to, inlet protection. Chapter 102.4-Failure to maintain BMPs, including, but not limited to, silt sock traps. 5/6/14- Chapter 102.4-Failure to maintain BMPs including, but not limited to, inlet protection. Chapter 102.4-Failure to maintain BMPs, including, but not limited to, swale matting.</p>
<p>Washington County SR 519-PAI 05 6312 007 (Oct. 1, 2013)</p>	<p>3/2/15 - Chapter 102.4-Failure to implement BMPs, including, but not limited to, maintaining the limits of disturbance of construction. Chapter 102.4-Failure to install BMPs including, but not limited to, install stormwater management basins. 3/19/15 - Chapter 102.4-Failure to implement BMPs, including, but not limited to, maintaining the limits of disturbance of construction. Chapter 102.4-Failure to install BMPs, including, but not limited to, silt socks. 6/25/15 - Chapter 102.4-Failure to maintain effective BMPs, including, but not limited to, compost socks. 3/3/16 - Chapter 102.4-Failure to install BMPs, including, but not limited to, stormwater management basins. Chapter 102.4-Failure to maintain BMPs, including, but not limited to, stormwater management basins</p>
<p>York County / SR 083-South Junction PAR 10 Y622 (Nov 22, 2002)</p>	<p>1/26/12 - Chapter 102.22- Failure to stabilize, including, but not limited to, slopes.</p>

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In the Matter of:

*Pennsylvania Department of
Transportation*

Respondent.

EPA Docket No. CWA-03-2018-0032

U.S. EPA-REGION 3-RHC
FILED-29AUG2018PM2:11

**Proceeding under Section 309(g) of the
Clean Water Act**

FINAL ORDER

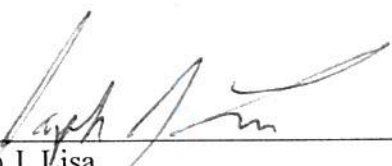
Complainant, Acting Director of the Water Protection Division, U.S. Environmental Protection Agency, Region III, and Respondent, the Pennsylvania Department of Transportation, have executed a document entitled Consent Agreement, which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules of Practice), 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 consideration of, *inter alia*, the statutory factors set forth in Section 309(d) of the Clean Water Act ("CWA"), 33 U.S.C. § 309(d).

NOW, THEREFORE, PURSUANT TO Section 309 of the CWA, 33 U.S.C. Section 309(g), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of One Hundred Thousand dollars (\$100,000), in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is thirty (30) days after this Final Order is filed with the Regional Hearing Clerk, pursuant to 33 U.S.C. §1319(g)(5).

Aug 29, 2019
Date



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

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

In the Matter of:)
)
) Docket No. CWA-03-2018-0032
)
Pennsylvania Department of)
Transportation)
1101 South Front Street) Proceeding under Section 309(a) of the Clean
Harrisburg, PA 17104) Water Act, 33 U.S.C § 1319(a)
)
RESPONDENT)

CERTIFICATE OF SERVICE

I certify that on AUG 29 2018, the original and one (1) copy of foregoing *Consent Agreement and Final Order*, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the same to each of the following persons, in the manner specified below, at the following addresses:

Copy served via **Certified Mail, Return Receipt Requested, Postage Prepaid**, to:

Neal Brofee, Esq.
Governor's Office of General Counsel
Department of Transportation
Office of Chief Counsel
Real Property Division
P.O.Box 8212
Harrisburg, PA 17105-8212

Copy served via **Hand Delivery or Inter-Office Mail** to:

Andrew Duchovnay
Senior Assistant Regional Counsel
Office of Regional Counsel (3RC20)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(Attorney for Complainant)

Dated: AUG 29 2018

Bevin Esposito
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III