

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION III

1650 Arch Street

Philadelphia, Pennsylvania 19103-2029

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U.S. DEPARTMENT OF JUSTICE
ENVIRONMENTAL PROTECTION AGENCY
PHILADELPHIA, PA

In the Matter of:

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

Charles County, Maryland
200 Baltimore Street
La Plata, Maryland 20646

Docket No. CWA-03-2015-0013

**CONSENT AGREEMENT
AND FINAL ORDER**

Respondent.

I. PRELIMINARY STATEMENT AND STATUTORY AUTHORITY

1. This Consent Agreement is entered into by the Director, Water Protection Division, United States Environmental Protection Agency, Region III ("EPA", "Agency", or "Complainant") and Charles County, Maryland (the "County" or "Respondent") pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22. The parties have agreed to settlement of violations of the Clean Water Act ("CWA" or "Act") by Respondent. This Consent Agreement and Final Order ("CAFO") concludes this action pursuant to 40 C.F.R. §§ 22.18 and 22.31.

2. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the Administrator of the 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 of the EPA has delegated this authority to the Regional Administrator of EPA, Region III, who in turn has delegated this authority to the Water Protection Division Director.

3. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (28 U.S.C. § 2461), and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, violations that are assessed penalties under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), subject the violator to civil penalties in an amount not to exceed \$177,500 per proceeding for violations that occurred between January 12, 2009 and December 6, 2013 and \$187,500 per proceeding for violations that occurred after December 6, 2013.

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

4. 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.
5. 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 or may authorize states to issue such permits. The discharges are subject to specific terms and conditions as prescribed in the permit.
6. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.2 and 122.26 provide that, with some exceptions not relevant here, storm water discharges are “point sources” subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).
7. Respondent is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
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.
9. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).
10. The term “municipal separate storm sewer system” (“MS4”) includes, “a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.” 40 C.F.R. § 122.26(b)(8)(i).
11. An NPDES permit is required for discharges from an MS4 serving a population of 100,000 or more, Section 402(p)(2)(D) of the Act, 33 U.S.C. § 1342(p) 92)(D); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.

12. At all times relevant to this CAFO, Respondent has owned and/or operated an MS4 as that term is defined in 40 C.F.R. § 122.26(b)(8).
13. Respondent's MS4 is located within the geographic boundaries of Charles County.
14. Charles County encompasses a total area of approximately 292,960 acres and has a population of approximately 150,592 people.
15. Stormwater from Charles County discharges to a number of water bodies, including the Mattawoman Creek, Zekiah Swamp, Port Tabacco Creek and the Potomac River, in addition to numerous small tributaries and streams, which are considered "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2; 40 C.F.R. § 122.2.
16. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Commonwealth of Maryland to issue NPDES permits on September 5, 1974.
17. The Maryland Department of the Environment ("MDE") issued to Respondent an NPDES MS4 Discharge Permit No. MD 0068365 which became effective on July 31, 2002 (hereinafter the "MS4 Permit").
18. The expiration date of the MS4 Permit was July 31, 2007; however, the MS4 Permit has been administratively extended pending a final decision on the renewal application.
19. On June 25-26, 2013, a compliance inspection team composed of EPA staff and authorized representatives of EPA conducted an inspection and reviewed records to determine Respondent's compliance with its MS4 program ("the MS4 Inspection").
20. EPA prepared the Charles County MS4 Program Inspection Report ("the Inspection Report"), which included, in addition to general information regarding Respondent's MS4 program and history, multiple observations regarding Respondent's MS4 Program related to the requirements of the MS4 Permit.
21. Respondent received a copy of the Inspection Report on October 28, 2013, to which it prepared and submitted a response to EPA on December 27, 2013.

III. FINDINGS OF VIOLATION

Failure to Inspect all Stormwater Management Facilities Triennially

22. Part III.E.1 of the Permit requires the County to conduct preventative maintenance inspections of all stormwater management facilities within its development district at least on a triennial basis.

23. At the time of inspection the County had failed to inspect at least 214 stormwater management facilities within its development district within the triennial period.

24. Respondent's failure to inspect all of its stormwater management facilities triennially constitutes a violation of the 2002 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

IV. CONSENT AGREEMENT AND FINAL ORDER

25. For the purposes of this proceeding:

- a. Respondent admits the jurisdictional allegations of the Complaint;
- b. Respondent neither admits nor denies the specific factual allegations set forth in the Complaint;
- c. Respondent consents to the assessment of the civil penalty (the "Civil Penalty") set forth herein;
- d. Respondent agrees to undertake all actions required by this Consent Agreement;
- e. Respondent hereby expressly waives its right to contest the allegations set forth in the Complaint at a hearing under Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. 1319(g)(2)(B); and
- f. Respondent waives its right to appeal this Final Order under Section 309(g)(8)(B) of the CWA, 33 U.S.C. 1319(g)(8)(B).

26. Each party to this action shall bear its own costs and attorney fees.

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

28. The parties agree that settlement of this matter is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.

29. 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.

30. 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 **twenty-five thousand dollars (\$25,000)** in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.

31. Respondent shall pay the total administrative civil penalty of **twenty-five thousand dollars (\$25,000)** 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, i.e., CWA-03-2015-0013.

Payment by check to "United States Treasury":

By regular mail:

U.S. EPA Region III
Cincinnati Finance Center
Box 979077
St. Louis, MO 63197-9000
Contact: 513-487-2091

By overnight delivery:

U.S. Environmental Protection Agency
Government Lock Box 979077
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

Contacts for ACH:
John Schmid (202-874-7026)
Jesse White (301-887-6548)
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-

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

32. 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.

33. The following notice concerns interest and late penalty 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, 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 payments as required herein or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

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

34. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which 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).

35. 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 Administrative Law Judge pursuant to the Order of Designation dated November 3, 2014.

36. The penalty specified in Paragraph 30 shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

37. 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 the 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, the EPA may have under law or equity in such event.

38. 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.

39. 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.

V. PUBLIC NOTICE AND EFFECTIVE DATE

40. This CAFO will become final and effective thirty (30) days after issuance. Payment of the civil penalty assessed in this CAFO is due thirty (30) days after the effective date.

FOR RESPONDENT, CHARLES COUNTY:

Date: 4.21.15

By: Peter F. Murphy
Peter F. Murphy, President
Board of Charles County Commissioners

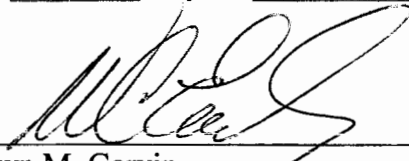
FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 6/22/15

Dominique Juckerhoff
Jon M. Capocasa, Director
Water Protection Division

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

this _____ day of _____, 2014



Shawn M. Garvin
Regional Administrator
U.S. EPA Region III

JUL 1 2015

In Re: Charles County, Maryland
Docket No. CWA-03-2015-0013

CERTIFICATE OF SERVICE

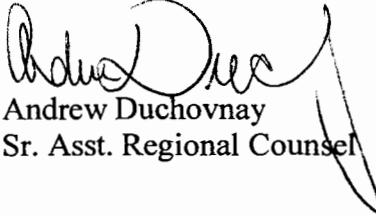
I certify that on this date I caused to be sent by first class mail a copy of this "Consent Agreement and Final Order," to the following persons:

Matthew Clagett, Esq.
Associate County Attorney
Office of the County Attorney
P.O. Box 2150
200 Baltimore Street
La Plata, Maryland 20646

and a copy delivered by hand to:

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

Date: 3/25/2015


Andrew Duchovnay
Sr. Asst. Regional Counsel