

3. Pursuant to the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective January 12, 2009), 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 occurring after January 12, 2009 up to a total penalty amount of \$177,500.

II. FINDINGS OF FACT 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. Pursuant to 40 C.F.R. §122.26(a)(3), NPDES Permits must be obtained for all discharges from large and medium municipal separate storm sewer systems ("MS4").
7. Respondent is a municipality within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).
8. Respondent is therefore a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
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." *Id.* § 122.26(b)(13).
11. "Small MS4" means all separate storm sewers that are: (i) Owned or operated by the United States, 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; and (ii) Not defined as "large" or "medium" municipal separate storm sewer systems pursuant to paragraphs (b)(4) and (b)(7) of [40 CFR§ 122.26], or designated under paragraph (a)(1)(v) of [40 CFR§ 122.26]. (iii) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings. 40 C.F.R. § 122.26(b)(16) and (17).

12. GMU is a small MS4 within the meaning of 40 C.F.R. § 122.26(b)(16) and (17).
13. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Commonwealth of Virginia to issue NPDES permits in 1975.
14. On July 9, 2008, VADEQ issued Permit VAR040106 (the “MS4 Permit”) to GMU to govern the discharge of storm water through GMU’s MS4.
15. On November 17 and 18, 2011 EPA conducted an inspection of GMU’s MS4 Program to determine GMU’s compliance with Permit VA0088633.

III. FINDINGS OF VIOLATION

Failure to Submit Annual Reports by Required Date

16. Pursuant to Section II.E.3. of GMU’s Permit, annual reports are due on or before October 1, with a reporting period of July 1 through June 30 of the previous reporting year.
17. Based on the July 9, 2008 effective date of GMU’s Permit, GMU’s first annual report was due on or before October 1, 2009.
18. GMU did not submit its first annual report until January 13, 2010.
19. GMU’s second annual report was due on or before October 1, 2010.
20. GMU submitted its second annual report on March 4, 2011.
21. By failing to submit its annual reports by the required dates, GMU was in violation of GMU’s Permit.

Failure to Adopt a Regulatory Mechanism to Prohibit Non-Stormwater Discharges to the MS4.

22. Pursuant to Section II.B.3.c of GMU’s Permit, GMU’s MS4 Program shall “To the extent allowable under state, tribal or local law or other regulatory mechanism, effectively prohibit, through ordinance, or other regulatory mechanism, non-stormwater discharges into the storm sewer system and implement appropriate enforcement procedures and actions.”
23. During the inspection, GMU’s Land Development Engineer explained to the EPA Inspection Team that GMU had not yet adopted a regulatory mechanism to prohibit non-stormwater discharges to the MS4.
24. By failing to adopt a regulatory mechanism to prohibit non-stormwater discharges to the MS4, GMU was in violation of GMU’s Permit.

Failure to Enact Procedures for Receipt and Consideration of Information Submitted by the Public Regarding Construction Site Stormwater Runoff Control.

25. Pursuant to Section II.B.4.a.(4) of GMU's Permit, the procedures for construction site stormwater runoff control must include "Procedures for receipt and consideration of information submitted by the public."
26. During the Inspection, the EPA Inspection Team requested such procedures for receipt and consideration of information submitted by the public. GMU did not provide the requested information. Further, GMU's Land Development Engineer informed the EPA Inspection Team that GMU had no procedures in place to ensure that the complaints are routed to the group that is responsible for complying with Section II.B.4.a.(4) of GMU's Permit once a complaint is received.
27. By failing to enact procedures for the receipt and consideration of information submitted by the public regarding construction site stormwater runoff control, GMU was in violation of GMU's Permit.
28. Respondent's failure to comply with the Permit by failing to comply with the above requirements violates the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

IV. CONSENT AGREEMENT AND FINAL ORDER

29. Respondent admits the jurisdictional allegations of the Complaint and the Findings of Fact and Conclusions of Law set forth in Section II, above.
30. Respondent neither admits nor denies EPA's Findings of Violation set forth in Section III, above.
31. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.
32. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consents to issuance of this CAFO without adjudication.
33. Each party to this action shall bear its own costs and attorney fees.
34. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.
35. 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.
36. 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 Commonwealth of Virginia regarding this action, and will mail a copy of this document to the appropriate Virginia official.

37. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violations, 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 **twelve thousand dollars (\$12,000)** in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.
38. Respondent shall pay the total civil penalty of **twelve thousand dollars (\$12,000)** within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c). All payments by Respondents shall reference Respondents' name and address, and the Docket Number of this action, CWA-03-2014-0006, Payment shall be made by one of the following methods set forth below:

Payment by check to "United States Treasury":

By regular mail:

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

Contact: (513) 487-2091

By overnight delivery:

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

Contact: (314) 418-1028

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

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
Environmental Protection Agency
Account Number: 310006
CTX Format
Transaction Code 22 - checking

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

On-Line Payments:

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

Additional payment guidance is available at:

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

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

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

-and-

Mark Bolender, Esquire

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

39. 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.
40. 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).

41. 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).
42. This Consent Agreement and the accompanying 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 which EPA determines may present an 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.

43. The penalty specified in Paragraph 38, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

VI. GENERAL PROVISIONS

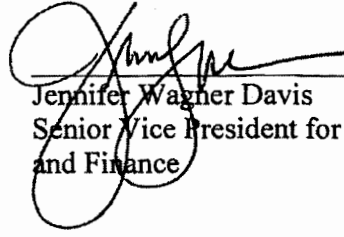
44. Entry of this CAFO is a final settlement of all violations alleged in this CAFO. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO if the EPA obtains evidence that the information and/or representations of the Respondent 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.
45. 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.
46. 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.

VII. PUBLIC NOTICE AND EFFECTIVE DATE

47. This CAFO will be issued after a forty (40) day notice period, execution by an authorized representative of EPA, and filing with the Regional Hearing Clerk. It 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, GEORGE MASON UNIVERSITY:


Date: 3/28/2014



Jennifer Wagner Davis
Senior Vice President for Administration
and Finance

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:


Date: APR 10 2014



Jen M. Capacasa, Director
Water Protection Division
U.S. EPA Region III

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

this 1ST day of July, 2014



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