

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103

In the Matter of:	:
	:
NORTH MIDDLETON TOWNSHIP	: U.S. EPA Docket No. CWA-03-2023-0028DN
2051 SPRING ROAD	:
CARLISLE, PA 17013	:
Respondent.	: ADMINISTRATIVE ORDER ON CONSENT
	: PURSUANT TO 33 U.S.C. § 1319(a)
	:
MUNICIPAL SEPARATE STORM	:
SEWER SYSTEM AT	: NPDES PERMIT NO. PAI133532
NORTH MIDDLETON TOWNSHIP	:
MUNICIPAL YARD,	:
	:
Facility.	:

I. PRELIMINARY STATEMENT

1. The United States Environmental Protection Agency (“EPA”) has made the following findings of fact and issues this Administrative Order on Consent (“AOC”) pursuant to the authority vested in the Administrator of EPA under Section 309(a) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(a). The Administrator delegated this authority to the Regional Administrator of EPA Region III, who further delegated it to the Director of the Enforcement & Compliance Assurance Division, EPA Region III.
2. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to him the Administrator finds that any person is in violation of any permit condition or limitation implementing certain sections of the CWA, in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342, he shall issue an order requiring such person to comply with such section or requirement.
3. EPA has jurisdiction over the above-captioned matter, as described in Paragraphs 1 and 2, above.
4. The North Middleton Township (“Respondent”) has agreed to the issuance of this AOC.
5. EPA has consulted with the Commonwealth of Pennsylvania Department of Environmental Protection (“PADEP”) regarding this action and, subsequent to the

Effective Date, EPA will mail a copy of this fully executed AOC to the appropriate PADEP representative.

II. STATUTORY AND REGULATORY BACKGROUND

6. Section 301(a) of the CWA, 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 CWA, 33 U.S.C. § 1342.
7. Section 402 of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA, or a state upon approval by EPA, may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.
8. Pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), EPA authorized the PADEP to issue NPDES permits in the Commonwealth of Pennsylvania.
9. Section 402(p) of the CWA, 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 CWA, 33 U.S.C. § 1342(a).
10. 40 C.F.R. § 122.2 states, in relevant part: “Discharge of a pollutant means: a) any addition of any ‘pollutant’ or combination of pollutants to waters of the United States from any point source. . . . This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. . . .”
11. “Storm water” (or “stormwater”) is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).
12. 40 C.F.R. § 122.26(b)(8)(i) defines the term “municipal separate storm sewer system” or “MS4” as including, inter alia, “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, 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.”
13. 40 C.F.R. § 122.26(b)(16) defines the term “small municipal separate storm sewer system” as “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.”

14. 40 C.F.R. § 122.26(b)(17) defines the term “Small MS4” as “a small municipal separate storm sewer system.”
15. Small MS4s are regulated pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p) and the regulations promulgated thereunder.
16. Pursuant to 40 C.F.R. § 122.26(a)(9)(i), small MS4s require an NPDES permit if they are required to be regulated pursuant to 40 C.F.R. § 122.32.
17. 40 C.F.R. § 122.32(a)(1) states: “(a) Unless you qualify for a waiver under paragraph (c) of this section, you are regulated if you operate a small MS4, including but not limited to systems operated by federal, State, Tribal, and local governments, including State departments of transportation; and: (1) Your small MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census. (If your small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated). . . .”
18. 40 C.F.R. § 122.34(a) provides: “General requirements. For any permit issued to a regulated small MS4, the NPDES permitting authority must include permit terms and conditions to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. Terms and conditions that satisfy the requirements of this section must be expressed in clear, specific, and measurable terms. Such terms and conditions may include narrative, numeric, or other types of requirements (e.g., implementation of specific tasks or best management practices (BMPs), BMP design requirements, performance requirements, adaptive management requirements, schedules for implementation and maintenance, and frequency of actions).”
19. Pursuant to its authority under the CWA and the NPDES program approval, in 2015, PADEP first issued NPDES Stormwater Discharges From Small Municipal Separate Storm Sewer Systems (MS4s) General Permit (PAG-13) (the “MS4 General Permit”) that authorized the discharge of stormwater from small MS4s. PADEP renewed this General Permit on March 16, 2018. The MS4 General Permit will expire on June 30, 2023. In order to be eligible for general permit coverage, a regulated MS4 has to submit a Notice of Intent (“NOI”) to PADEP.
20. On September 16, 2017, Respondent submitted an NOI to PADEP seeking coverage for North Middleton Township and its Municipal Yard, located at 2051 Spring Road, Carlisle, North Middleton Township, Cumberland County, Pennsylvania 17013 (“Facility”), under the MS4 General Permit. On June 28, 2018, PADEP granted coverage for the Facility under the MS4 General Permit and issued NPDES Permit No. PAI133532. This coverage became effective on July 1, 2018, and is set to expire on June 30, 2023.

III. GENERAL PROVISIONS

21. For the purpose of this proceeding only, Respondent admits each jurisdictional allegation set forth in this AOC.
22. Except as provided in Paragraph 21, above, Respondent neither admits nor denies the specific factual allegations set forth in Section IV (FINDINGS OF FACT AND CONCLUSIONS OF LAW) of this AOC, below.
23. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution or enforcement of this AOC.
24. The provisions of this AOC shall apply to and be binding upon the Respondent and its officers, directors, employees, contractors, agents, trustees, successors and assigns of the Respondent.
25. Respondent shall bear its own costs and attorney's fees in connection with this proceeding and associated with the implementation or enforcement of this AOC, including any costs related to resolution of any dispute arising regarding this AOC.
26. Issuance of this AOC is intended to address the violations described 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. EPA also reserves any existing rights and remedies available to it under the CWA, 33 U.S.C. §1311, et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction. Further, EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this AOC, following the Effective Date, as defined below.
27. This AOC does not constitute a waiver or modification of the terms or conditions of any permit issued to Respondent. Nothing in this AOC shall relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This AOC does not constitute a waiver, suspension or modification of the requirements of the Act, 33 U.S.C. § 1251 et seq., or any regulations promulgated thereunder.
28. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that either Respondent may have with respect to any issue of fact or law set forth in this AOC, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
29. EPA reserves all existing inspection authority otherwise available to EPA pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, or pursuant to any other statute.

30. 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 AOC and to execute and legally bind the party.
31. By signing this AOC, Respondent acknowledges that this AOC may be available to the public and represents that, to the best of Respondent’s knowledge and belief, this AOC does not contain any confidential business information or personally identifiable information from Respondent.
32. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission, true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by either Respondent to the EPA regarding matters relevant to this AOC are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

33. Respondent is a “municipality” within the meaning of Section 502(4) of the CWA, 33 U.S.C. § 1362(4).
34. Respondent is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
35. At all times relevant herein, upon information and belief, Respondent has owned or operated, and continues to own and operate, a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) that discharges to waters of the United States.
36. At all times relevant herein, upon information and belief, Respondent owned or operated, and continues to own or operate, a “municipal separate storm sewer system” or “MS4”, as that term is defined at 40 C.F.R. § 122.26(b)(8)(i), in its maintenance yard, located at 2051 Spring Road, Carlisle, North Middleton Township, Cumberland County, Pennsylvania 17013 (defined above as the “Facility”).
37. At all times relevant to this AOC, Respondent’s MS4 discharged stormwater to Conodoguinet Creek, Alexander Spring Run, and Wertz Run and their associated tributaries.
38. Conodoguinet Creek, Alexander Springs Run, and Wertz Run are “waters of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

39. On April 19, 2022, duly authorized representatives of EPA conducted an inspection of Respondent’s Facility and MS4 program (“2022 MS4 Inspection”) to assess compliance with the MS4 General Permit.
40. Following the 2022 MS4 Inspection, the EPA representatives prepared an inspection report, dated May 12, 2022 (“Inspection Report”), which included multiple observations regarding Respondent’s compliance with the requirements of the MS4 General Permit. EPA sent a copy of the Inspection Report to the Respondent on May 13, 2022.
41. On August 23, 2022, EPA sent a Notice of Potential Violations and Opportunity to Confer letter (“NOPVOC”) to the Respondent, communicating alleged violations of the CWA and the MS4 General Permit observed during the Inspection.
42. EPA received the Respondent’s response to the Opportunity to Confer letter on September 21, 2022.

COUNT I

Discharge of Non-Stormwater Discharges

43. The MS4 General Permit, at page 3, authorizes “the discharge of stormwater to surface waters from regulated small MS4s.”
44. On page 3 of the MS4 General Permit, pertaining to Discharges Not Authorized by this General Permit, the MS4 General Permit provides: “The following discharges are not authorized under the PAG-13 General permit, and DEP may deny coverage under the General Permit when one or more of the following conditions exist: 1. The discharge, individually or in combination with other similar discharges, is or has the potential to be a contributor of pollution as defined in the Pennsylvania Clean Streams Law. . . .”
45. Article I, Section 1 of the Pennsylvania Clean Streams Law defines “pollution” to mean “contamination of any waters of the Commonwealth such as will create or is likely to create a nuisance or to render such waters harmful, detrimental, or injurious to public health, safety or welfare, or to domestic, municipal, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life, including but not limited to such contamination by alteration of the physical, chemical or biological properties of such waters, or changes in temperature, taste, color or odor thereof, or the discharge of any liquid, gaseous, radioactive, solid or other substances into such waters.”
46. Page 5 of the 2022 revised North Middleton Township Operations and Management Plan states “Washwater discharged to the floor trench drains flows to an oil water separator which then discharges to an onsite constructed wetland.”
47. At the time of the Inspection of the Facility, Township personnel informed the EPA Inspection Team that trench drains in the garage and an inlet around an outdoor fueling station were sending flows to an oil/water separator and grit separator before discharging to an onsite constructed wetland that is used for capturing and storing stormwater discharges. Discharges from this wetland would eventually flow to Conodoguinet Creek.

These discharges would contain stormwater and pollutants. The MS4 General Permit does not authorize these discharges.

48. Therefore, by installing and operating a stormwater collection system which discharges to wetlands without separating out pollutants, Respondent was potentially discharging non-stormwater discharges from its Facility into its MS4 system.
49. Based on the above assertions and allegations, EPA concludes that Respondent failed to comply with requirements in its MS4 General Permit by allowing the potential discharge of non-stormwater pollutants from its Facility into the MS4 system from at least April 19, 2022 to at least November 22, 2022, in violation of the MS4 General Permit and Section 301 of the CWA.

Count II

MCM 6 - Pollution Prevention & Good Housekeeping for Municipal Operations

50. Part C.I.B.6.b. of the MS4 General Permit, containing MCM 6, best management practice (BMP) 2, states: “Develop, implement and maintain a written [operations and maintenance] program for all operations that could contribute to the discharge of pollutants from the regulated small MS4, as identified under BMP #1. This program shall address stormwater collection or conveyance systems within the regulated MS4. The written [operations and maintenance] program shall stress pollution prevention and good housekeeping measures, contain site-specific information, and include the following: ... Controls for reducing or eliminating the discharge of pollutants from streets, roads, highways, municipal parking lots, maintenance and storage yards, waste transfer stations, fleet or maintenance shops with outdoor storage areas, salt / sand (anti-skid) storage locations and snow disposal areas...”
51. Page 7 of the Revised April 2022 North Middleton Operations and Maintenance Manual informs the Township that “All solid salt and deicing materials are stored inside the covered salt storage area at the public works facility.”
52. At the time of the Inspection of the Facility, a small amount of salt was observed outside of the salt storage area. More specifically, salt stains were observed on the pavement leading to the entrance of the salt shed, where they were potentially exposed to stormwater transport.
53. Based on the above assertions and allegations, EPA concludes that Respondent failed to properly implement its operations and maintenance program by not conducting necessary maintenance activities required by and identified in its Operations and Maintenance Manual, and therefore failed to reduce the potential for pollutants to reach the regulated small MS4.
54. Based on the above assertions and allegations in Paragraphs 1 through 53, above, Respondent failed to comply with the terms and conditions of the MS4 General Permit and, therefore, has violated Section 301 of the CWA, 33 U.S.C. § 1311.

V. COMPLIANCE ORDER

Therefore, Respondent is hereby ORDERED, pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), to conduct, and consents to conduct, the following activities:

55. Within thirty (30) days of the Effective Date of this AOC, the Respondent shall provide to EPA for review a Corrective Action Plan (“CAP”), which meets the requirements set forth in this AOC. The CAP shall include, at a minimum, plans and a schedule for completion of each of the following:
 - a. Conversion of the existing separator located adjacent to the fueling station into a holding tank so that flows from the Facility floor drains and the inlet adjacent to the fuel station are contained and do not discharge to the adjacent wetland.
 - b. Training and implementation of best management practices to prevent stored salt from leaving the salt shed and promptly addressing salt that escapes the storage area so that salt does not enter the MS4.
56. The schedule to implement the corrective actions identified in the CAP shall not exceed twelve (12) months from the Effective Date of this AOC.
57. EPA will review the CAP and procedures, and make a determination of completeness and adequacy, based on the requirements described in Paragraphs 55-56. If EPA determines that the CAP or procedures are not complete or adequate, EPA shall notify Respondent in writing and Respondent shall resubmit an updated CAP or procedures within fourteen (14) days of Respondent’s receipt of EPA’s notice. Upon a determination of completeness as provided in writing by EPA to the Respondent, Respondent will implement the CAP in full and commence implementation of the procedures.
58. Respondent shall submit a notice to EPA within thirty (30) days after all work as identified in and required by the CAP has been completed.

VI. PROCEDURES FOR SUBMISSIONS

59. All documents required to be submitted by this AOC and any Request for Termination shall be accompanied by a certification signed by a responsible officer, as defined in 40 CFR § 122.22(d), that reads as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signed _____
 Name: _____
 Title: _____
 Date: _____

- 60. Respondent may assert a business confidentiality claim covering part or all of the information which this AOC requires it to submit to EPA, but only to the extent and only in the manner described in Part 2 Subpart B of Title 40 of the C.F.R. The EPA will disclose information submitted under a confidentiality claim only as provided in Part 2 Subpart B of Title 40 of the C.F.R. If, at the time any information is submitted to EPA, the Respondent submitting such information does not assert a confidentiality claim, EPA may make the submitted information available to the public without further notice to the Respondent.
- 61. Unless otherwise directed in writing, Respondent shall submit any submission or written communication, including any accompanying data, relating to this AOC via email:

Email: weisel.angela@epa.gov

Ms. Angela Weisel
 NPDES Enforcement
 Enforcement and Compliance Assurance Division
 U.S. EPA, Region III

All information submitted shall be submitted in a widely recognized electronic format.

VII. CERTIFICATION OF COMPLIANCE AND REQUEST FOR TERMINATION OF AOC

- 62. Upon completion of all AOC Compliance Order items required pursuant to this AOC and determination of completeness of each item required by Section V of the AOC (Compliance Order), Respondent shall submit to EPA a Certification of Compliance and Request for Termination of this AOC. Such certification and request shall include:
 - a. a certification that Respondent has maintained compliance with this AOC for the term of this AOC; and
 - b. all necessary documentation, including photo documentation as appropriate, to support a finding that Respondent has complied with Section V (Compliance Order) of this AOC.
- 63. If, following review of any Certification of Compliance and Request for Termination of this AOC, EPA agrees that Respondent has adequately complied with all requirements of this AOC, then EPA may, in its unreviewable discretion, provide written notification of termination of this AOC.

- 64. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of the actions in Section V (Compliance Order), Paragraphs 55 - 58; and Section VI (Procedures for Submissions), Paragraphs 59 - 61 is restitution, remediation, or required to come into compliance with the law.

VIII. AOC MODIFICATIONS

- 65. Any request to modify the terms of, or parties to, this AOC shall be submitted, in writing, by Respondent to EPA and shall be subject to review and approval by EPA, in its sole and unreviewable discretion. Respondent’s submission of a written request for modification of this AOC shall not relieve Respondent of any obligation under this AOC and shall have no effect on EPA’s statutory or regulatory authority to enforce the terms of this AOC, in its sole and unreviewable discretion.

IX. EFFECTIVE DATE

- 66. This AOC will become effective upon the Respondent’s receipt of a fully-executed copy of this AOC.

FOR NORTH MIDDLETON TOWNSHIP

By: 
NAME: Robert A. Reisinger
TITLE: Supervisor
Date: 2/16/23

SO ORDERED:

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY

By:

[Electronic Signature and Date]

Karen Melvin

Director, Enforcement & Compliance Assurance
Division

U.S. Environmental Protection Agency, Region III

[Digital Signature and Date]
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III