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

2013 AUG 26 AM 8:53

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In the Matter of:	:	Proceeding to Assess Class II Administrative Penalty Under Section 309(g) of the Clean Water Act
City of Charlottesville	:	Docket No. CWA-03-2013-0127
Respondent	:	CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY

1. This Consent Agreement and Final Order (CAFO) is entered into by the Director, Water Protection Division, United States Environmental Protection Agency, Region III (Complainant) and the City of Charlottesville (Charlottesville, City or Respondent) pursuant to Section 309(g) of the Clean Water Act (CWA or 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 agree to the commencement and conclusion of this CAFO as prescribed by the Consolidated Rules pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3), and having consented to the entry of this CAFO, Respondent agrees to comply with the terms of this CAFO.

2. 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

3. 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.

4. 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.

5. Section 402(p) of the Act, 33 U.S.C. § 1342(p) provides that both discharges from a municipal separate storm sewer system (MS4) and discharges associated with industrial activity may be subject to NPDES permitting requirements.

6. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Commonwealth of Virginia (Commonwealth or Virginia) NPDES program on March 31, 1975. The Virginia Department of Environmental Quality (VADEQ) was authorized to issue general NPDES permits on April 20, 1991. On December 30, 2004, EPA approved the Commonwealth's request to transfer the issuance of general and individual permits for construction and MS4 storm water discharges from VADEQ to the Virginia Department of Conservation and Recreation (VADCR).

7. Pursuant to Section 402(i) of the Act, 33 U.S.C. § 1342(i), EPA retains its authority to take enforcement action in Virginia for NPDES permit violations.

8. The term "municipal separate storm sewer system" or "MS4" is defined, in part, as "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains): (i) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, 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).

9. The term "small municipal separate storm sewer system" or "small MS4" means "all separate storm sewers that are: (i) owned or operated by the United States, a State, city, town, borough . . . or other public body (created by or pursuant to State law) having jurisdiction over disposal of . . . storm water. . . ; [and] (ii) Not defined as "large" or "medium" municipal separate storm sewer systems." 40 C.F.R. § 122.26(b)(16) and (17).

10. Pursuant to 40 C.F.R. § 122.26(a)(9)(i)(A), small MS4s require an NPDES permit if they are required to be regulated pursuant to 40 C.F.R. § 122.32.

11. Pursuant to 40 C.F.R. § 122.32(a)(1), the Commonwealth of Virginia has determined that Charlottesville is a small MS4 located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census, and accordingly requires an NPDES permit.

12. Therefore, Charlottesville is a “small MS4” within the meaning of 40 C.F.R. § 122.26(b)(16).

13. The City’s MS4 is covered under the General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems, General Permit No. VAR04, effective July 9, 2008. Charlottesville’s permit registration number is VAR040051 (MS4 Permit).

14. On March 7 and 8, 2012 representatives of EPA conducted an inspection of Charlottesville’s MS4 program implementation.

15. On November 2, 2012, EPA issued the City of Charlottesville, Virginia Municipal Separate Storm Sewer System (MS4) Program Inspection Report (Inspection Report), which included, in addition to general information regarding the City’s MS4 program and history, twenty (20) observations regarding the City’s MS4 Program related to the requirements of the current MS4 Permit (VAR04, effective July 9, 2008). The Inspection Report included eight (8) attachments (exhibit log, photo log, document log, etc.).

16. The City received a copy of the Inspection Report by electronic mail dated February 27, 2013. The City prepared and submitted an initial response to EPA on the observations on March 8, 2013 and further response on March 25, 2013.

17. Based upon the March 7 and 8, 2012 inspection, EPA documented 20 observations. EPA has identified two categories which it has concluded were violations of the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311. This CAFO directs the City to pay a civil penalty to resolve the violations EPA has identified based upon the Inspection Report.

18. Section II.B.4.a of the MS4 Permit states that “the operator shall develop, implement, and enforce procedures to reduce pollutants in any stormwater runoff to the regulated small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre or equal to or greater than 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act.”

19. Section II.B.6 of the MS4 Permit requires the City “develop and implement an operation and maintenance program consistent with the MS4 Program Plan that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations...The operator shall identify, implement, evaluate and modify, as necessary, BMPs to meet the following pollution prevention/good housekeeping for municipal operations measurable goals: a. Operation and maintenance programs including activities, schedules, and inspection procedures shall include provisions and controls to reduce pollutant discharges into the regulated small MS4 and receiving surface waters; b. Illicit discharges shall be eliminated from storage yards, fleet or maintenance shops, outdoor storage areas, rest areas, waste transfer stations, and other municipal facilities; c. Waste materials shall be disposed of properly; d. Materials that are soluble or erodible shall be protected from exposure to

precipitation; e. Materials, including but not limited to fertilizers and pesticides, that have the potential to pollute receiving surface waters shall be applied according to manufacturer's recommendations; and f. For state agencies with lands where nutrients are applied, nutrient management plans shall be developed and implemented in accordance with the requirements of §10.1-104.4 of the Code of Virginia.”

III. EPA FINDINGS OF VIOLATION

20. EPA observed several stormwater control deficiencies at the public and private construction sites it visited during the March 7 and 8, 2012 inspection. These identified deficiencies included, among others, inadequate inlet protections, unmaintained silt fences, and sediment tracking observed on the roadway adjacent to an active construction site's entrance.

21. At the time of the inspection, EPA observed several stormwater control measure deficiencies at the municipally-owned sites it visited during the March 7 and 8, 2012 inspection. The identified deficiencies included, among others, multiple locations where silt fencing was inadequately installed, including around a stormwater inlet structure.

22. Based upon the inspection, EPA has concluded that Respondent's failures to: 1) identify and implement, evaluate and modify as necessary, BMPs to eliminate illicit discharges from storage yards, fleet or maintenance shops, and other outdoor storage areas; and 2) develop, implement, and enforce procedures to reduce pollutants in any stormwater runoff to the regulated small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre, violate the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

IV. CONSENT AGREEMENT AND FINAL ORDER

23. For the purpose of this proceeding, Respondent admits the jurisdictional allegations set forth in this CAFO.

24. For the purpose of this proceeding, Respondent neither admits nor denies the factual allegations and conclusions of law set forth in this CAFO.

25. Respondent waives any defenses it might have as to jurisdiction, its right to contest the allegations through hearing or otherwise, and its right to appeal the proposed final order accompanying the consent agreement.

26. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.

27. Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this CAFO pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consents to issuance of this CAFO without adjudication.

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

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

30. 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.

31. By entering into this CAFO, the City does not admit any liability for the civil claims alleged herein.

32. 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.

33. 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-six thousand dollars (\$26,000) in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.

34. Respondent shall pay the total administrative civil penalty in the Paragraph 33 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.

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 Eric Volck (513-487-2105)

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: Eric Volck (513-487-2105)

By Wire Transfer:

Federal Reserve Bank of New Lancaster
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New Lancaster, 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):

PNC Bank
ABA = 051036706
Environmental Protection Agency
Account Number: 310006
CTX Format
Transaction Code 22 - checking
808 17th Street, NW
Washington, D.C. 20074

Contact for ACH: John Schmid (202-874-7026)

On-Line Payments:

The On-Line Payment Option, available through the Dept. of Treasury, can be accessed
from the information below:

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-

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

35. 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 other issue, not included in this CAFO, 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.

36. 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).

37. 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

FOR RESPONDENT, CITY OF Charlottesville:

Date: 7-02-13

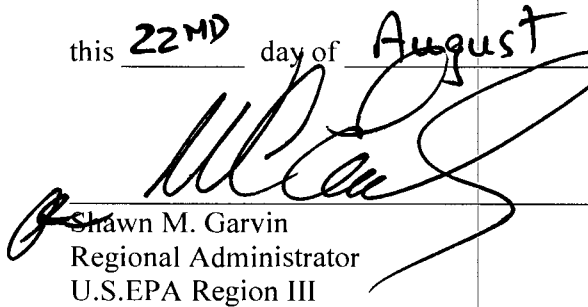
By: Maurice Jones

Name: MAURICE JONES

Title: CITY MANAGER

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

this 22ND day of August, 2013


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

City of Charlottesville
Docket No. CWA-03-2013-0127

CERTIFICATE OF SERVICE

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

Kristel F. Riddervold
Environmental Administrator
Department of Public Works
City of Charlottesville, Virginia
305 4th Street N.W.
Charlottesville, Virginia 22903

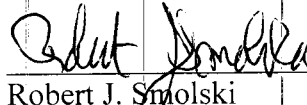
and the original and a copy delivered by hand to:

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

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

Ginny Snead, P.E.
Virginia Department of Environmental Quality
629 East Main Street
P.O. Box 1105
Richmond, Virginia 23218

Date: August 26, 2013


Robert J. Smolski
Senior Assistant Regional Counsel