

EPA ENFORCEMENT ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

This form was originated by: Lon Ker 1/12/12
Name of Contact person *Date*

in the ORC at 215-814-2656
Office *Phone number*

Non-SF Jud. Order/Consent Decree. DOJ COLLECTS

Administrative Order/
Consent Agreement
FMD COLLECTS PAYMENT

SF Jud. Order/Consent Decree. FMD COLLECTS

This is an original debt

This is a modification

Name of Company making payment: City of York, PA

The Total Dollar Amount of Receivable: \$22,740 + interest of 1%. Total: \$22,853.70
(If in installments, attach schedule of amounts and respective due dates)

The Case Docket Number CWA-2012-093 180 days after effective date

The Site-Specific Superfund Acct. Number

The Designated Regional/HQ Program Office R Gold / WPD

TO BE FILLED OUT BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number _____

If you have any questions call: _____
Name of Contact *Date*

in the Financial Management Office, phone number: _____

JUDICIAL ORDERS: Copies of this form with an attached copy of the front page of the final judicial order should be mailed to:

1. Rosemarie Pacheco
Environmental Enforcement Section
Lands Division, Room 130044
1425 New York Avenue, N.W.
Washington, D.C. 20005
2. Originating Office (ORC)
3. Designated Program Office

ADMINISTRATIVE ORDERS: Copies of this form with an attached copy of the front page of the administrative order should be sent to:

1. Originating Office
2. Designated Program Office
3. Regional Hearing Clerk

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

In the Matter of:

City of York
50 West King Street
York, PA 17401

Respondent.

Proceeding to Assess Class II
Administrative Penalty Under

Docket No. CWA-03-2012-0093

**CONSENT AGREEMENT
AND FINAL ORDER**

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

2012 FEB 16 AM 10:17

RECEIVED

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 York, Pennsylvania ("York" 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 having agreed to settlement of violations of the Clean Water Act by Respondent, this CAFO simultaneously commences and concludes this action pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) & (3).

2. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency ("EPA") is authorized to assess administrative penalties against any person who violates any NPDES permit condition or limitation in an amount not to exceed \$10,000 per day for each day of violation, up to a total penalty amount of \$125,000.

3. Pursuant to the Debt Collection Improvement Act of 1996, codified at 28 U.S.C. § 2461, any person who has violated any NPDES permit condition or limitation after January 30, 1997 is liable for an administrative penalty not to exceed \$11,000 per day for each day of violation occurring between January 30, 1997 and March 15, 2004 up to a total penalty amount of \$137,500.

4. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective March 15, 2004), any person who has violated any NPDES permit condition or

limitation after March 15, 2004 is liable for an administrative penalty not to exceed \$11,000 per day for each day of violation occurring after March 15, 2004 up to a total penalty amount of \$157,500.

5. 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

6. 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.

7. 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. The discharges are subject to specific terms and conditions as prescribed in the permit.

8. 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.

9. City of York (York) is a municipality within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).

10. Respondent is therefore a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

11. “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.

12. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” *Id.* § 122.26(b)(13).

13. The term “municipal separate storm sewer system” or “MS4” includes, *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.” 40 C.F.R. § 122.26(b)(8)(i).

14. 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).

15. Pursuant to 40 C.F.R. §122.32(a)(1), the Pennsylvania Department of Environmental Protection (“PADEP” or “the Department”) has determined that York 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

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

17. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Commonwealth of Pennsylvania to issue NPDES permits in 1978. In 1991, EPA authorized PA to issue General NPDES Permits.

18. On March 9, 2003, PADEP issued a General NPDES Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems a/k/a Authorization to Discharge (“the Permit”). The Permit was scheduled to expire on March 8, 2008, and has been administratively extended since that time, and is currently scheduled to expire on June 11, 2012. 40 Pa.B. 7159 (December 11, 2010).

19. Following issuance of the Permit, Respondent submitted a signed Notice of Intent (“NOI”) to PADEP for coverage under the Permit.

20. Following receipt of the NOI, PADEP notified Respondent that it was approved for coverage under the Permit.

21. The Permit authorizes discharges of storm water from Respondent’s MS4 to the Coduros Creek, Willis Run and Mill Creek and associated tributaries, but only in accordance with the conditions of the Permit.

22. The Coduros Creek, Willis Run and Mill Creek and associated tributaries, to which storm water flows and, at all times relevant to this Order, has flowed from the MS4, are each a “water of the United States” as that term is defined at 40 C.F.R. § 122.2.

23. On December 2, 2002, PADEP published a guidance document entitled “Municipal Separate Storm Sewer System (MS4) Stormwater Management Program Protocol,” 3900-PM-WM0100h (Dec. 2, 2002), <http://www.ejlibrary.dep.state.pa.us/dsweb/Get/Document-54734/3900-PM-WM0100h.pdf> (“the Protocol”).

24. The Permit, Part A.3., requires Permittees to either: (a) implement the Protocol; or (b) develop and implement their own stormwater management program.

25. The Permit, Part A.3., establishes that for Permittees that choose to implement the Protocol, the Protocol becomes a part of the Permit coverage and requirements.

26. Upon information and belief, Respondent chose to implement the Protocol.

27. Therefore, the Protocol has become part of the Permit coverage and requirements for Respondent as established under Part A.3. of the Permit, and the Permittee must comply with the Protocol.

28. Part C.2. of the Permit requires the Permittee to submit Annual Reports to PADEP to report on stormwater management activities performed during the permit year. The Permit further requires the Annual Reports to be in the format required by the Department, see <http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-73109/03%203930-PM-WM0100u%202009%20Form.pdf>. The Annual Report Form is incorporated into the Permit.

29. On March 31, 2010, EPA issued an Administrative Order to Respondent for separate violations of the Permit.

30. On June 8 and 9, 2010, duly-authorized EPA representatives conducted an inspection (including a file review) of Respondent's MS4 program (hereinafter referred to as "the Inspection").

III. VIOLATIONS

Minimum Control Measure #3: Illicit Discharge Detection and Elimination

31. The Permit (Part A.2) and the Protocol (pp. 14-19) require the Respondent to implement and enforce a program to detect and eliminate illicit discharges into the MS4 through, *inter alia*, the following activities: (i) conducting field screening for illicit dischargers.

32. The June 8 and 9, 2010 inspection revealed that Respondent had failed to comply with the Permit, including the Protocol, by not implement and enforcing a program to detect and eliminate illicit discharges into the MS4 through, *inter alia*, the following activities: (i) conducting field screening for illicit dischargers.

33. Respondent's failure to comply with the Permit, including the Protocol, by failing to implement and enforce a program to eliminate illicit discharges in the MS4 violates the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Minimum Control Measure #4: Construction Stormwater Runoff Management

34. The Permit (Part A.2) and the Protocol (pp. 20-26) require the Respondent to implement and enforce a program to reduce pollution in any stormwater runoff to the MS4 from construction activities that result in a land disturbance of greater than or equal to one acre through, *inter alia*, the following activities: (i) enacting an ordinance (or revising an existing one) containing requirements for the review and approval of an erosion and sediment (E&S) control plan as prerequisite for building permits.

35. The June 8 and 9, 2010 inspection revealed that Respondent had failed to comply with the Permit, including the Protocol, by not implementing and enforcing a program to reduce pollution in any stormwater runoff to the MS4 from construction activities that result in a land disturbance of greater than or equal to one acre through, *inter alia*, the following activities: (i) enacting an ordinance (or revising an existing one) containing requirements for the review and approval of an E&S control plan as prerequisite for building permits.

36. Respondent's failure to comply with the Permit, including the Protocol, by failing to implement and enforce a program to reduce pollution in any stormwater runoff to the MS4 from construction activities that result in a land disturbance of greater than or equal to one acre violates the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Minimum Control Measure #5: Post-Construction Stormwater Runoff Management

37. The Permit (Part A.2) and the Protocol (pp. 23-26) require the Respondent to implement and enforce a program to reduce pollution in any stormwater runoff to the MS4 from new development and redevelopment that result in a land disturbance of greater than or equal to one acre through, *inter alia*, the following activities: (i) ensuring installation of post-construction BMPs as designed; and (ii) ensuring long-term operation and maintenance of BMPs.

38. The June 8 and 9, 2010 inspection revealed that Respondent had failed to comply with the Permit, including the Protocol, by not implementing and enforcing a program to reduce pollution in any stormwater runoff to the MS4 from new development and redevelopment that result in a land disturbance of greater than or equal to one acre through, *inter alia*, the following activities: (i) ensuring installation of post-construction BMPs as designed; and (ii) ensuring long-term operation and maintenance of BMPs.

39. Respondent's failure to comply with the Permit, including the Protocol, by failing to implement and enforce a program to reduce pollution in any stormwater runoff to the MS4 from new development and redevelopment through post-construction controls violates the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Minimum Control Measure #6: Pollution Prevention/Good Housekeeping For Municipal Operations

40. The Permit (Part A.2) and the Protocol (pp. 27-31) require the Respondent to implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations through, *inter*

alia, the following activities: (i) inspect and clean catch basins; and (ii) train municipal employees in pollution prevention and good housekeeping.

41. The June 8 and 9, 2010 inspection revealed that Respondent had failed to comply with the Permit, including the Protocol, by not implementing an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations through, *inter alia*, the following activities: (i) inspect and clean catch basins; and (ii) train municipal employees in pollution prevention and good housekeeping.

42. Respondent's failure to comply with the Permit, including the Protocol, by failing to implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations violates the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

IV. CONSENT AGREEMENT AND FINAL ORDER

43. Respondent admits the Findings of Fact and Conclusions of Law set forth in Section II, above, and waives any defenses it might have as to jurisdiction and venue.

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

45. 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.

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

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

48. 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.

49. 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 Pennsylvania regarding this action, and will mail a copy of this document to the appropriate Pennsylvania official.

50. 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-two thousand, seven-hundred, forty dollars (\$22,740) in full and final settlement of EPA's claims for civil penalties for the violations alleged herein. In addition to the civil penalty amount of \$22,740, Respondent shall also pay interest on such penalty in the amount of \$113.70 (calculated at one-percent per annum simple interest) for a total payment of \$22,853.70. The payment must be made no later than one-hundred eighty (180) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c). Respondents may avoid the assessment of interest in connection with such civil penalty as described herein by paying the entire civil penalty no later than thirty (30) calendar days after the effective date of this CAFO.

51. 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 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:
AD 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-

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

52. 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.

53. 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).

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).

54. 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 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.

55. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondent's violation of any applicable provision of law.

56. The penalty specified in Paragraph 51, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

57. 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.

58. 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.

59. 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. EFFECTIVE DATE

60. Pursuant to 40 C.F.R. § 22.45, this CAFO shall be issued after a 40-day public notice period has concluded. This CAFO will become final 30 days after issuance, 33 U.S.C. § 1319(g)(4), and will become effective on that same date, 40 C.F.R. § 22.31(b).

FOR RESPONDENT, CITY OF YORK, PENNSYLVANIA:

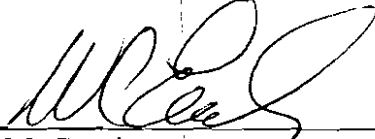
By: C. Kim Bracey
Name: C. Kim Bracey
Title: Mayor, City of York

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Jon Capacasa
Jon Capacasa, Director
Water Protection Division

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

this 15th day of February, 2012.




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

CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below I filed the original *Consent Agreement and Final Order* with the EPA Region III Regional Hearing Clerk. I also hereby certify that, on the same date, I sent a hard copy of the foregoing document to the following person via First Class mail:

Mark S. Elion
Assistant City Solicitor
City of York, Pennsylvania
50 West King Street
York, PA 17401

Dated: Feb. 16, 2012


Lori G. Kier
Senior Assistant Regional Counsel (3RC20)
EPA Region III
1650 Arch Street
Philadelphia, PA 19103
(215) 814-2656
kier.lori@epa.gov