

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

In the Matter of:	:	
	:	
City of Carbondale	:	Docket No. CWA-03-2020-0105DN
1 North Main Street	:	
Carbondale, Pennsylvania 18407-2356	:	
	:	
Respondent	:	
	:	

ADMINISTRATIVE COMPLIANCE ORDER ON CONSENT

PRELIMINARY STATEMENT

1. This Administrative Compliance Order on Consent (Order) is entered into by the Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (Complainant) and the City of Carbondale, Pennsylvania (Respondent), pursuant to Section 309(a) of the Clean Water Act (the Act), 33 U.S.C. § 1319(a). Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a), authorizes the Administrator of the U.S. Environmental Protection Agency (EPA or the Agency) to issue orders requiring actions as required by this Order. The Administrator has delegated this authority to the Regional Administrator of EPA Region III, who in turn has delegated this authority to the Complainant.

JURISDICTION

2. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
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 any pollutant from a point source to the waters of the United States. The discharges are subject to specific

terms and conditions as prescribed in the permit. Section 402(b) of the Act, 33 U.S. C. § 1342(b) provides that the Administrator may authorize a state to issue NPDES permit.

5. Section 309(a) of the Act, 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 the CWA in a permit issued under Section 402 of the Act, 33 U.S.C. § 1342, he shall issue an Order requiring such person to comply with such requirement.

GENERAL PROVISIONS

6. For the purpose of this proceeding only, Respondent admits each jurisdictional allegation set forth in this Order.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Order or any action relating to enforcement of this Order.
8. Except as provided in Paragraph 6, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
9. By entering into this Order, Respondent does not admit any liability for the civil claims alleged herein.
10. Issuance of this Order is intended to address the violations described herein. EPA reserves the right to commence an 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.
11. EPA 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.
12. 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 Order, following the Effective Date.
13. This Order does not constitute a waiver or modification of the terms or conditions of any permit issued by EPA or the Commonwealth. Compliance with the terms and conditions of this Order does not relieve Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.
14. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
15. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Order.
16. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.
17. By signing this Order, Respondent acknowledges that this Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Order

does not contain any confidential business information or personally identifiable information from Respondent.

18. 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 Respondent to the EPA regarding matters relevant to this Order, including information about respondent's ability to pay a penalty, 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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

19. 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).
20. 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..."
21. 40 C.F.R. § 122.26(b)(13) defines "Storm water" as "storm water runoff, snow melt runoff and surface runoff and drainage."
22. 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."
23. 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

Docket No. CWA-03-2020-0105DN
Administrative Compliance Order on Consent

- State law) having jurisdiction over disposal of . . . storm water. . . .; [and] (ii) Not defined as 'large' or 'medium' municipal separate storm sewer systems.”
24. 40 C.F.R. § 122.26(b)(17) defines the term “Small MS4” as “a small municipal separate storm sewer system.”
 25. Small MS4s are regulated pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p) and the regulations promulgated thereunder.
 26. 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.
 27. 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). . . .”
 28. 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).”
 29. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Commonwealth of Pennsylvania (the Commonwealth) to issue NPDES permits in 1978. In 1991, EPA authorized the Commonwealth to issue General NPDES Permits.
 30. Respondent is a “municipality” within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).
 31. Respondent is therefore a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
 32. Respondent is a city, town, or other public body, created by or pursuant to the laws of the Commonwealth.
 33. At all times relevant to this Order, Respondent owned or operated 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.
 34. At all times relevant to this Order, Respondent owned or operated a “municipal separate storm sewer system” or “MS4”, as that term is defined at 40 C.F.R. § 122.26(b)(8)(i), located in the City of Carbondale, Lackawanna County, Pennsylvania.

Docket No. CWA-03-2020-0105DN
Administrative Compliance Order on Consent

35. At all times relevant to this Order, Respondent owned or operated an MS4 located in the City of Carbondale, Lackawanna County, Pennsylvania, that does not meet the definition of “large municipal separate storm sewer system” or “medium municipal separate storm sewer system”, as those terms are defined at 40 C.F.R. § 122.26(b)(4) and (7), respectfully.
36. At all times relevant to this Order, Respondent owned or operated a regulated “small municipal separate storm sewer system” or “small MS4”, as those terms are defined at 40 C.F.R. § 122.26(b)(16) and (17), respectfully, located in the City of Carbondale, Lackawanna County, Pennsylvania (Carbondale MS4).
37. Pursuant to 40 C.F.R. § 122.32(a)(1), the Carbondale MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census.
38. Pursuant to 40 C.F.R. § 122.32(a)(1), Respondent is required to obtain and implement a NPDES permit regulating discharges from the Carbondale MS4.
39. At all times relevant to this Order, the Carbondale MS4 has discharged stormwater to Fallbrook Creek, Racket Brook Creek and the Lackawanna River and their associated tributaries.
40. Fallbrook Creek, Racket Brook Creek and the Lackawanna River and their associated tributaries are each a "water of the United States" as that term is defined Section 502 of the Act, 33 U.S.C. § 1362.
41. At all times relevant to this Order, the Carbondale MS4 has discharged stormwater to one or more bodies of water which are a "water of the United States", as that term is defined at Section 502 of the Act, 33 U.S.C. § 1362.
42. Fallbrook Creek, Racket Brook Creek and the Lackawanna River and their associated tributaries are each a watershed draining to the Chesapeake Bay.
43. The Carbondale MS4 is a small MS4s located in and discharging to receiving watersheds draining to the Chesapeake Bay.
44. By letter dated September 5, 2012, Respondent, through Respondent’s consultant KBA Engineering, PC, submitted an application for a renewal NPDES MS4 Individual Permit (the 2012 NPDES MS4 Permit Renewal Application), seeking a renewal of a previously issued NPDES MS4 Individual Permit issued to Respondent by PADEP, Permit #132246.
45. As part of the 2012 NPDES MS4 Permit Renewal Application, Michelle Bannon’s name and signature attested to a certification, dated September 5, 2012, which states: “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 gathered and evaluated 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 knowledge of violations.”

Docket No. CWA-03-2020-0105DN
 Administrative Compliance Order on Consent

46. In the 2012 NPDES MS4 Permit Renewal Application, Respondent identified Racket Brook and Fall Brook as two waterbodies that have existing uses as “Stormwater Discharge”.
47. By letter dated February 14, 2013, Respondent, through Respondent’s consultant KBA Engineering, PC, submitted additional documents supporting the 2012 NPDES MS4 Permit Renewal Application (the 2013 NPDES MS4 Permit Renewal Application).
48. Section E of the 2013 NPDES MS4 Permit Renewal Application provides, in relevant part, as follows:

E. Stormwater Management Program (SWMP)		
MS4 operators must implement a written SWMP with BMPs to meet six (6) Minimum Control Measures (MCMs), including measurable goals and a schedule, as part of the application. The SWMP in Appendix A of the Authorization to Discharge meets this requirement.		
Check the boxes next to each Minimum Control Measure in the following table to confirm that the Stormwater Management Program contained in Appendix A will be followed. For any MCM in which the Program in DEP’s version of Appendix A will not be followed, you must revise Appendix A to provide an alternative program that achieves equal or better protection of water quality. In the right-hand column, provide the names of the person(s) responsible for implementing the program for each Minimum Control Measure.		
Minimum Control Measures	Check to indicate that the MS4 Permittee will implement the MCM as provided in DEP’s SWMP (i.e. DEP’s Version of Appendix A)	Name and telephone number of the principal person responsible for implementation.
The permittee will implement the SWMP in Appendix A of the Authorization to Discharge. You must check the box in the center column, and provide the information in the right-hand column.	<input checked="" type="checkbox"/>	Michelle Bannon 570 282-4633
(1) Public Education and Outreach	<input checked="" type="checkbox"/>	Michelle Bannon 570 282-4633
(2) Public Participation and Involvement	<input checked="" type="checkbox"/>	Michelle Bannon 570 282-4633
(3) Illicit Discharge Detection and Elimination	<input checked="" type="checkbox"/>	Michelle bannon 570 282-4633
(4) Construction Site Stormwater Runoff Control, and (5) BMPs #1, #2, and #3 of the MCM for Post-Construction Stormwater Management in New Development and Redevelopment You must check one (1) of the two (2) boxes in the column to the right and fill-in the blanks as indicated. Check the following box if you will implement these MCMs as provided in DEP’s SWMP (i.e. DEP’s Version of Appendix A) <input type="checkbox"/>	<input checked="" type="checkbox"/> MCM #4.A: The permittee will rely on DEP’s statewide program for issuing National Pollutant Discharge Elimination System (NPDES) Permits for Stormwater Discharges Associated with Construction Activities to satisfy all requirements under this MCM #4 and all requirements described under BMPs #1 through #3 of MCM #5 in DEP’s version of Appendix A. In this case, the permittee is not required as a condition of this permit to implement any of the BMPs listed under MCM #4 nor any of the requirements described in first three (3) BMPs listed under MCM #5 in DEP’s version of Appendix A of the Authorization to Discharge. Note: The permittee may not issue any final approvals for development or redevelopment projects that require NPDES permits for discharges of stormwater from construction sites until after DEP or a delegated County Conservation District issues the NPDES Permit for Stormwater Discharges Associated with Construction Activities.	

49. By letter dated April 28, 2014, Respondent, through Respondent's consultant KBA Engineering, PC, submitted additional documents supporting the 2012 NPDES MS4 Permit Renewal Application, including a revised Stormwater Outfall Map and a revised table listing water bodies into which the regulated small MS4 discharge (the 2014 MS4 Permit Application Revisions).
50. In the 2014 MS4 Permit Application Revisions, Respondent identified Racket Brook, Fall Brook and Lackawanna River as three waterbodies that have existing uses as "Stormwater Discharge".
51. On June 15, 2015, PADEP issued the Respondent NPDES Permit No. PAI32246 (the Permit), which states that it became effective on July 1, 2015 and will expire on June 30, 2020 or upon termination of the Permit in writing by PADEP.
52. The Permit was issued under Section 402 of the Act, 33 U.S.C. § 1342.
53. The Permit authorizes discharges of storm water from the Carbondale MS4, only in accordance with the conditions of the Permit.
54. Part A (Storm Water Management Program), Section 2 (Effluent Limitations And Other Requirements For This Individual Permit) of the Permit provides, in relevant part, as follows:
 - a. The permittee shall implement, enforce and report on the Stormwater Management Program (SWMP) as set forth in Appendix A hereto, designed to reduce the discharge of pollutants from the regulated small MS4s to the MEP, to protect water quality and quantity, and to satisfy the appropriate water quality requirements of the Clean Water Act, the Pennsylvania Clean Streams Law, and regulations promulgated thereto.
 - b. The SWMP shall include Best Management Practices (BMPs) to comply with the following six (6) Minimum Control Measures (MCMs) in the following areas:
 1. Public Education and Outreach on Stormwater Impacts
 2. Public Involvement/Participation
 3. Illicit Discharge Detection and Elimination
 4. Construction Site Stormwater Runoff Control
 5. Post-Construction Stormwater Management (PCSM) in New and Re-Development Activities
 6. Pollution Prevention/Good Housekeeping for Municipal Operations
 - c. The SWMP as set forth in Appendix A of this permit contains the approved approach for satisfying each of the six (6) MCMs. The SWMP in Appendix A describes each MCM including BMPs and measurable goals. ...
 - e. The permittee shall ensure that its SWMP, including its stormwater management ordinance(s), is designed to prevent increased loadings of pollutants and to not cause or contribute to a violation of water quality standards by any discharges from its regulated small MS4s (40 CFR 122.4(i), 40 CFR 122.44(d)(1), and 25 Pa. Code Chapters 91-97, 102, and 105).

f. The permittee shall develop and maintain adequate legal authorities to implement all parts of this permit, including the SWMP attached as Appendix A hereto....”

55. Appendix A (Stormwater Management Program) of the Permit states in relevant part: “You are required to satisfy all requirements of this Stormwater Management Program as a condition of this permit during the term of this permit.”
56. On September 7, 2016, PADEP representatives, accompanied by duly-authorized EPA representatives, conducted an inspection and assessment (2016 Office Inspection) of Respondent’s MS4 program (the PADEP/EPA 2016 MS4 Office Inspection).
57. By letter dated September 13, 2016, Respondent, through Respondent’s consultant KBA Engineering, PC, submitted to PADEP a MS4 Annual Progress Report for the reporting period September 29, 2015 through September 29, 2016 (Respondent’s 2016 MS4 Annual Progress Report).
58. By letter, subsequently correctly dated September 15, 2016, PADEP submitted to Respondent PADEP’s MS4 Compliance Inspection Report for the PADEP 2016 MS4 Office Inspection (the PADEP 2016 MS4 Office Inspection Report).
59. By letter dated November 28, 2016, Respondent, through Respondent’s consultant KBA Engineering, PC, provided PADEP with an initial response to the PADEP 2016 MS4 Office Inspection Report (Respondent’s November 2016 Response to PADEP Inspection Report).
60. On January 6, 2017 EPA issued to Respondent an Information Requirement Letter pursuant to Section 308 of the Clean Water Act (CWA), 33 U.S.C. § 1318, (EPA’s January 2017 CWA 308 Information Requirement Letter) requiring the Respondent to provide information about its compliance with the Permit.
61. By letter dated March 31, 2017, Respondent’s representative, Michelle Bannon, City Clerk, submitted an initial response to EPA’s January 2017 CWA 308 Information Requirement Letter (Respondent’s March 2017 Response to EPA’s Information Requirement Letter).
62. By letter dated September 28, 2017, Respondent, through Respondent’s consultant KBA Engineering, PC, submitted to PADEP a MS4 Annual Progress Report for the reporting period September 30, 2016 through September 30, 2017 (Respondent’s 2017 MS4 Annual Progress Report).
63. By letter dated March 30, 2018, EPA issued to Respondent an invitation to meet to discuss several violations of the Permit, which were identified during the PADEP/EPA 2016 MS4 Office Inspection, and provided a summary of certain findings as a result of such inspection and submitted for Respondent’s consideration a proposed Consent Agreement and Final Order and a proposed Administrative Order on Consent for purposes of negotiation (the EPA March 2018 Show Cause Letter).
64. By letter dated July 23, 2018, from Mitchell M. Bannon, City Clerk, Respondent submitted an initial written response, including several enclosures, to the EPA March 2018 Show Cause Letter (Respondent’s July 23, 2018 Submission).

65. By electronic mail submission dated July 24, 2018, Respondent, through Respondent's consultant KBA Engineering, PC, submitted to EPA a link to electronically stored documents constituting a supplemental response to the EPA March 2018 Show Cause Letter (Respondent's July 24, 2018 Response to EPA's Information Requirement Letter).
66. Based upon a review of information available to EPA, on and subsequent to July 1, 2015, Respondent failed to comply with requirements of the Permit, federal regulations set forth at 40 CFR Part 122.34 and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

**Findings Relating to Respondent's Failure to Comply With The Permit Requirements
Pertaining to Developing and Maintaining a Map of The MS4**

67. The allegations of Paragraphs 1 through 66 of this Consent Agreement are incorporated herein by reference.
68. 40 CFR § 122.34(b)(3) states, in relevant part: "(i) The permit must identify the minimum elements and require the development, implementation, and enforcement of a program to detect and eliminate illicit discharges (as defined at §122.26(b)(2)) into the small MS4. At a minimum, the permit must require the permittee to: (A) Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all waters of the United States that receive discharges from those outfalls; ..."
69. The Permit at Appendix A, MCM # 3 (Illicit Discharge Detection and Elimination) provides in relevant part: "The following are the requirements for MCM #3 that are included in the Federal Regulations ... Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and locations of all surface waters of the Commonwealth that receive discharges from those outfalls..."
70. The Permit at Appendix A, MCM # 3 (Illicit Discharge Detection and Elimination), BMP #2 provides in relevant part: "Develop and maintain a map of your regulated small MS4. The map must also show the location of all outfalls and the locations and names of all surface waters of the Commonwealth (e.g., creek, stream, pond, lake, basin, swale, channel) that receive discharges from those outfalls..."
71. The Permit at Appendix A, MCM # 3 (Illicit Discharge Detection and Elimination), BMP #3 provides in relevant part: "In conjunction with the map(s) created under BMP #2 (either on the same map or on a different map), new permittees shall show, and renewal permittees shall update, the entire storm sewer collection system, including roads, inlets, piping, swales, catch basins, channels, basins, and any other features of the permittee's storm sewer system, including municipal boundaries and/or watershed boundaries."
72. The PADEP 2016 MS4 Office Inspection Report indicates that, at the time of the 2016 Office Inspection, September 7, 2016, Respondent did not have a "map of all outfalls, receiving waters, stormwater collection system, swales, basins, etc."
73. Respondent's 2016 MS4 Annual Progress Report, among other information, indicates: a) Respondent had completed a map(s) of all outfalls and receiving waters of Respondent's storm sewer system, b) the map at issue was last updated or revised on 8/22/2016, c) the total number of discharge points in Respondent's storm sewer system that discharge

directly to surface waters is thirty (30), d) Respondent had completed a map that includes roads, inlets piping, swales, catch basins, channels, basins, municipal boundaries and watershed boundaries and that such map was on the same map as for outfalls and receiving waters and e) the date of the last update of such map was submitted to DEP on 8/22/2016.

74. Respondent's November 2016 Response to PADEP Inspection Report states in relevant part: "A 2016(sic)/2016 ANNUAL/PROGRESS Report was sent to DEP on 9/13/2016. MCMs 1,2,3&6 were addressed in that document. The MCMs are obviously dynamic measures and will be expanded and upgraded as the Carbondale City MS4 program moves forwards."
75. Respondent's 2017 MS4 Annual Progress Report, among other information, indicates: a) Respondent had completed a map(s) of all outfalls and receiving waters of Respondent's storm sewer system, b) the map at issue was last updated or revised on 3/22/2017, c) the total number of discharge points in Respondent's storm sewer system that discharge directly to surface waters is thirty (30), d) Respondent had completed a map that includes roads, inlets piping, swales, catch basins, channels, basins, municipal boundaries and watershed boundaries and that such map was on the same map as for outfalls and receiving waters and e) the date of the last update of such map was submitted to DEP on 3/22/2017.
76. Respondent's March 2017 Response to EPA's Information Requirement Letter states in relevant part: "Enclosed is an updated map of the Carbondale stormwater system showing the features required by MCM#3, BMPs #2 & #3. Although this mapping is in Autocad format, the consultant recently purchased ArcView in order to produce more accurate mapping. The ArcView system will require periodic updates which will be completed as new information becomes available. Carbondale City further plans to enhance the mapping by developing an electronic format system of clicking on an outfall or drain and retrieving current data such as a photo or recent maintenance information..."
77. The map submitted as an enclosure to Respondent's March 2017 Response to EPA's Information Requirement Letter did not include the following information: the location and names of swales, catch basins, channels and basins.
78. On and subsequent to September 7, 2016, Respondent failed to develop and maintain a map of Respondent's regulated small MS4 showing the location of all outfalls and the locations and names of all surface waters of the Commonwealth (e.g., creek, stream, pond, lake, basin, swale, channel) that receive discharges from those outfalls or a map showing Respondent's entire storm sewer collection system, including roads, inlets, piping, swales, catch basins, channels, basins, and any other features of the Respondent's storm sewer system, including municipal boundaries and/or watershed boundaries.
79. Respondent's failure, on and subsequent to September 7, 2016, to develop and maintain a map of Respondent's regulated small MS4 showing the location of all outfalls and the locations and names of all surface waters of the Commonwealth (e.g., creek, stream, pond, lake, basin, swale, channel) that receive discharges from those outfalls or a map showing Respondent's entire storm sewer collection system, including roads, inlets, piping, swales, catch basins, channels, basins, and any other features of the Respondent's storm sewer system, including municipal boundaries and/or watershed boundaries is a

violation of Appendix A, MCM # 3 (Illicit Discharge Detection and Elimination) of the Permit, 40 C.F.R. § 122.34(b) and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

Findings Relating to Respondent's Failure to Comply With The Permit Requirements Pertaining to a Written Program to Detect and Eliminate Illicit Discharges Into The MS4

80. The allegations of Paragraphs 1 through 79 of this Consent Agreement are incorporated herein by reference.
81. 40 CFR Part 122.34(b)(3)(i) provides, in relevant part, that: “(i) The permit must identify the minimum elements and require the development, implementation, and enforcement of a program to detect and eliminate illicit discharges (as defined at §122.26(b)(2)) into the small MS4. At a minimum, the permit must require the permittee to: ... (C) Develop and implement a plan to detect and address non-storm water discharges, including illegal dumping, to the system...”
82. The Permit at Appendix A, MCM #3: Illicit Discharge Detection and Elimination (IDD&E) provides in relevant part: “... Develop, implement, and enforce a program to detect and eliminate illicit discharges into the MS4...”
83. The Permit at Appendix A, MCM #3, BMP #1 provides in relevant part:
- “(Permittee) shall develop and implement a written program for the detection, elimination, and prevention of illicit discharges into your regulated MS4s. Your program shall include dry weather field screening of outfalls for non-stormwater flows and sampling of dry weather discharges for selected chemical and biological parameters. Test results shall be used as indicators of possible discharge sources. The program shall include the following:
- a. Procedures for identifying priority areas. These are areas with a higher likelihood of illicit discharges, illicit connections, or illegal dumping. Priority areas may include areas with older infrastructure, a concentration of high-risk activities, or past history of water pollution problems.
 - b. Procedures for screening outfalls in priority areas during varying seasonal and meteorological conditions.
 - c. Procedures for identifying the source of an illicit discharge when a contaminated flow is detected at a regulated small MS4 outfall.
 - d. Procedures for eliminating an illicit discharge.
 - e. Procedures for assessing the potential for illicit discharges caused by the interaction of sewage disposal systems (e.g., on-lot septic systems, sanitary piping) with storm-drain systems.
 - f. Mechanisms for gaining access to private property to inspect outfalls (e.g., land easements, consent agreements, search warrants).
 - g. Procedures for program documentation, evaluation and assessment.”
84. The PADEP 2016 MS4 Office Inspection Report indicates that, at the time of the 2016 Office Inspection, September 7, 2016, Respondent did not have the following: an “Illicit

Discharge and Elimination (IDD&E) Program (written plan)”, an “Outfall inspection and illicit discharge tracking system” or a “Complaint tracking system for illicit discharges”.

85. The PADEP 2016 MS4 Office Inspection Report included the following relevant written comments: “An outfall inspection and illicit discharge tracking system was not in place. Please develop and implement a tracking system w/in 60 days of this report”; “A complaint tracking system for illicit discharges was not in place. Please implement a means of tracking stormwater complaints.”; “Stormwater sampling and monitoring records were not in place.”
86. Respondent’s 2016 MS4 Annual Progress Report, among other information, indicated the following relevant information: a) Respondent completed and submitted a written IDD&E program to DEP on “8/22/2016”; b) Respondent did not at the time of such report use the “Outfall Reconnaissance Inventory / Sample Collection Field sheet; c) Respondent did not attach a copy of an inventory and sample collection fields sheet as directed, d) during the reporting period, Respondent did not distribute IDD&E information to public employees, businesses, and the general public; e) in response to the question “Is there a well-publicized method for employees, businesses and the public to report stormwater pollution incidents?”, Respondent replied “Yes” and added the comment “See Complaint Form” and f) in response to the question “Do you maintain documentation of all responses, action taken, and the time required to take action?”, Respondent replied “Yes.”
87. Respondent’s November 2016 Response to PADEP Inspection Report states in relevant part: “An Outfall Inspection and Illicit Discharge Tracking System is in place. City DPW employees have been advised to be cognizant of suspicious discharges and to document and investigate them when found. As Carbondale’s consultant, KBA will assist in testing and identifying illicit discharges. When such a discharge is discovered, action to eliminate it will be undertaken. A complaint form and IDD&E Form will track the investigation and resolution of these discharges.”
88. Respondent’s March 2017 Response to EPA’s Information Requirement Letter states in relevant part: “Carbondale City has an Illicit Detection and Elimination Program (IDDE) and a copy is enclosed. The IDDE plan lists priority screening areas and measures which will be implemented if illicit discharges are found.”
89. Respondent’s March 2017 Response to EPA’s Information Requirement Letter states in relevant part: “During the last 4 years, all of the city’s outfalls have been visually screened. Those outfalls exhibiting dry weather flows, #6, #7, & #13 are visually screened each year for signs of color, turbidity, sheen, floating or submerged solids, odor, and other adversities. Only one of the screening (#13) showed any indication that further testing was necessary. PADEP was involved in that screening several years ago and it was determined that a restaurant was discharging kitchen waste (grease) into a storm drain. That problem was resolved and grease is no longer flowing into the river.”
90. Respondent’s March 2017 Response to EPA’s Information Requirement Letter states in relevant part: “A complaint hotline through KBA Engineering has been set up. Carbondale residents have been advised in both a public meeting and on the Carbondale Facebook that there is a reporting mechanism for perceived problems. There have been no complaints to date, but when they do occur, they will be documented on the CITIZEN

COMPLAINT ILLICIT DISCHARGE REPORTING FORM, be investigated and properly recorded. Carbondale also has developed a simplified CARBONDALE CITY IDD&E REPORT for city employees to complete should they receive a complaint. A copy of that form is enclosed...”

91. Respondent’s March 2017 Response to EPA’s Information Requirement Letter included as an enclosure a form titled: “Illicit discharge Field Screening Program Data Collection Form.”
92. Subsequent to March 31, 2017, Respondent’s written program for the detection, elimination, and prevention of illicit discharges into Respondent’s regulated MS4s did not include the following information:
 - a. Procedures for identifying priority areas. These are areas with a higher likelihood of illicit discharges, illicit connections, or illegal dumping.
 - b. Procedures for screening outfalls in priority areas during varying seasonal and meteorological conditions.
 - c. Procedures for identifying the source of an illicit discharge when a contaminated flow is detected at a regulated small MS4 outfall.
 - d. Procedures for eliminating an illicit discharge.
 - e. Procedures for assessing the potential for illicit discharges caused by the interaction of sewage disposal systems (e.g., on-lot septic systems, sanitary piping) with storm-drain systems.
 - f. Mechanisms for gaining access to private property to inspect outfalls (e.g., land easements, consent agreements, search warrants).
 - g. Procedures for program documentation, evaluation and assessment.
93. On and subsequent to September 7, 2016, Respondent failed to develop and implement a written program for the detection, elimination, and prevention of illicit discharges into Respondent’s regulated MS4 system in accordance with Appendix A, MCM #3 (Illicit Discharge Detection and Elimination (IDD&E)) of the Permit.
94. Respondent’s failure, on and subsequent to September 7, 2016, to develop and implement a written program for the detection, elimination, and prevention of illicit discharges into Respondent’s regulated MS4 system in accordance with Appendix A, MCM #3 (Illicit Discharge Detection and Elimination (IDD&E)) of the Permit is a violation of the Permit, 40 C.F.R. § 122.34(b) and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

Findings Relating to Respondent’s Failure to Comply With The Permit Requirements Pertaining to an Inventory of Post-Construction Stormwater Management Best Management Practices

95. The allegations of Paragraphs 1 through 94 of this Consent Agreement are incorporated herein by reference.
96. Permit at Appendix A, MCM #5 (Post-Construction Stormwater Management (PCSM) in New and Re-Development Activities), BMP #6, Measurable Goal 2 provides in relevant part:

“BMP #6: Ensure adequate Operation and Maintenance (O&M) of all post-construction stormwater management (best management practices) BMPs (PCSM BMPs) installed at all qualifying development or redevelopment projects (including those owned or operated by the permittee).

Measurable Goal - 2: An inventory of PCSM BMPs shall be developed by permittees and shall be continually updated during the term of coverage under the permit as development projects are reviewed, approved, and constructed. This inventory shall include all PCSM BMPs installed since March 10, 2003 that discharge directly or indirectly to your regulated small MS4s. The inventory also should include PCSM BMPs discharging to the regulated small MS4 system that may cause or contribute to violation of water quality standard. The inventory shall include:

- a. All PCSM BMPs that were installed to meet requirements in NPDES Permits for Stormwater Discharges Associated with Construction Activities approved since March 10, 2003.
- b. The exact location of the PCSM BMP (e.g., street address);
- c. Information (e.g., name, address, phone number(s)) for BMP owner and entity responsible for BMP Operation and Maintenance (O&M), if different from BMP owner;
- d. The type of BMP and the year it was installed;
- e. Maintenance required for the BMP type according to the Pennsylvania Stormwater BMP Manual or other manuals and resources;
- f. The actual inspection/maintenance activities for each BMP;
- g. An assessment by the permittee if proper (operation and maintenance) occurred during the year and if not, what actions the permittee has taken, or shall take, to address compliance with O&M requirements...”

97. The PADEP 2016 MS4 Office Inspection Report indicates that, at the time of the 2016 Office Inspection, September 7, 2016, Respondent did not have “an inspection program ensuring stormwater BMPs are properly operated and maintained.”
98. The PADEP 2016 MS4 Office Inspection Report includes the following relevant written comments: “MS4 did not have an inspection plan/program ensuring stormwater BMPs are properly operated (and) maintained. An appropriate plan shall be in place w/in 60 days of receipt of this report.”
99. Respondent’s 2016 MS4 Annual Progress Report, includes, among other information, the following responses or absence of a response to the following inquiries relevant to the Permit at Appendix A, MCM #5 (Post-Construction Stormwater Management (PCSM) in New and Re-Development Activities), BMP #6, Measurable Goal 2:

“2. “If you are not a new permittee, did you complete and submit your written inspection program to ensure that stormwater BMPs are properly operated and maintained to DEP?” Respondent checked the “No” box.

“3. How do you ensure that stormwater BMPs are properly operated and maintained? Explain if you rely on means other than municipal inspections to ensure adequate O&M (consistent with your stormwater ordinance).” Respondent replied: “RELY ON LCCD TO MAKE INSPECTIONS”

“4. Date that inspection program was last reviewed or updated:” Respondent provided no information.

“5. Total number of sites with PCSM BMPs installed as of the date of this report:” Respondent provided no information.

“6. Total number of sites inspected during this reporting period:” Respondent provided no information.

“7. Number of sites found to have PCSM BMP deficiencies:” Respondent provided no information.

“8. Number of enforcement actions taken during this reporting period:” Respondent provided no information.

100. Respondent’s November 2016 Response to the PADEP Inspection Report states in relevant part: “Inspection Plan. This of course, is something currently being conducted by the Lackawanna County Conservation District. When the Stormwater Management Ordinance is adopted, inspections will be part of the ordinance.”
101. Respondent’s March 2017 Response to EPA’s Information Requirement Letter states in relevant part: “An inventory of PCSM BMPs is also handled by LDDC. Carbondale is aware of all BMPs that discharge to the municipal MS4 system and can itemize them on a list, however the upcoming ordinance may rely on the LCCD to continue what they are doing in (sic) behalf of the city, and there may be a duplication of effort. It is the city’s understanding that such an inventory, if maintained by LCCD, is an acceptable tracking method.”
102. Respondent’s 2017 MS4 Annual Progress Report, includes, among other information, the following responses or absence of a response to the following inquiries relevant to the Permit at Appendix A, MCM #5 (Post-Construction Stormwater Management (PCSM) in New and Re-Development Activities), BMP #6, Measurable Goal 2:
 - “2. “If you are not a new permittee, did you complete and submit your written inspection program to ensure that stormwater BMPs are properly operated and maintained to DEP?” Respondent checked the “Yes” box.

“If Yes, provide the latest submission date:” Respondent provided no information.
 - “3. How do you ensure that stormwater BMPs are properly operated and maintained? Explain if you rely on means other than municipal inspections to ensure adequate O&M (consistent with your stormwater ordinance).” Respondent replied: “RELY ON LCCD TO MAKE INSPECTIONS”

“4. Date that inspection program was last reviewed or updated: April 17, 2017”

“5. Total number of sites with PCSM BMPs installed as of the date of this report: LCCD has this info.”

“6. Total number of sites inspected during this reporting period: LCCD has this info.”

“7. Number of sites found to have PCSM BMP deficiencies: LCCD has this info.”

“8. Number of enforcement actions taken during this reporting period: LCCD has this info.”

103. Respondent’s 2016 MS4 Annual Progress Report and 2017 MS4 Annual Progress Report, includes no information in response to the following information requirement: “Provide a summary of notices, intergovernmental agreements and other relevant documents if the permittee is relying on another governmental entity to satisfy any of its permit obligations”.
104. Subsequent to July 1, 2015, Respondent failed to develop and update an inventory of PCSM BMPs in accordance with the requirements of the Permit as set forth at Appendix A, MCM #5 (Post-Construction Stormwater Management (PCSM) in New and Re-Development Activities), BMP #6, Measurable Goal 2.
105. Respondent’s failure, subsequent to July 1, 2015, to develop and update an inventory of PCSM BMPs in accordance with the requirements of the Permit at Appendix A, MCM #5 (Post-Construction Stormwater Management (PCSM) in New and Re-Development Activities), BMP #6, Measurable Goal 2 is a violation of the Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

Findings Relating to Respondent’s Failure to Comply With The Permit Requirements Pertaining to Pollution Prevention And Good Housekeeping For Municipal Operations

106. The allegations of Paragraphs 1 through 105 of this Consent Agreement are incorporated herein by reference.
107. 40 CFR Part 122.34(b)(6) provides in relevant part that “(i) The permit must identify the minimum elements and require the development and implementation of an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, the State, Tribe, or other organizations, the program must include employee training to prevent and reduce storm water pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and storm water system maintenance.”
108. The Permit at Appendix A, MCM #6 (Pollution Prevention/Good Housekeeping for Municipal Operations) provides in relevant part: “Develop and 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...”

109. The Permit at Appendix A, MCM #6 (Pollution Prevention/Good Housekeeping for Municipal Operations), BMP #1 and the related Measurable Goal provides:

BMP #1: Identify and document all facilities and activities that are owned or operated by the permittee and have the potential for generating stormwater runoff to the regulated small MS4. This includes activities conducted by contractors for the permittee. Activities may include the following: street sweeping; snow removal/deicing; inlet/outfall cleaning; lawn/grounds care; general storm sewer system inspections and maintenance/repairs; park and open space maintenance; municipal building maintenance; new construction and land disturbances; right-of-way maintenance; vehicle operation, fueling, washing and maintenance; and material transfer operations, including leaf/yard debris pickup and disposal procedures. Facilities can include streets; roads; highways; parking lots and other large paved surfaces; maintenance and storage yards; waste transfer stations; parks; fleet or maintenance shops; wastewater treatment plants; stormwater conveyances (open and closed pipe); riparian buffers; and stormwater storage or treatment units (e.g., basins, infiltration/filtering structures, constructed wetlands, etc.).

Measurable Goal: By the end of the first year of permit coverage, new permittees shall identify and document all types of municipal operations, facilities and activities and land uses that may contribute to stormwater runoff within areas of municipal operations that discharge to the regulated small MS4. Renewal permittees should have completed this list during the previous permit term. For all permittees, this information shall be reviewed and updated each year of permit coverage, as needed. Part of this effort shall include maintaining a basic inventory of various municipal operations and facilities.

110. The Permit at Appendix A, MCM #6 (Pollution Prevention/Good Housekeeping for Municipal Operations), BMP #2 and the related Measurable Goal provide:

BMP #2: Develop, implement and maintain a written operation and maintenance (O&M) program for all municipal operations and facilities that could contribute to the discharge of pollutants from the regulated small MS4s, as identified under BMP #1. This program (or programs) shall address municipally owned stormwater collection or conveyance systems, but could include other areas (as identified under BMP #1). The O&M program(s) should stress pollution prevention and good housekeeping measures, contain site-specific information, and address the following areas:

- a. Management practices, policies, procedures, etc. shall be developed and implemented to reduce or prevent the discharge of pollutants to your regulated small MS4s. You should consider eliminating maintenance-area discharges from floor drains and other drains if they have the potential to discharge to storm sewers.

- b. Maintenance activities, maintenance schedules, and inspection procedures to reduce the potential for pollutants to reach your regulated small MS4s. You also should review your procedures for maintaining your stormwater BMPs.
- c. 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, and salt / sand (anti-skid) storage locations and snow disposal areas.
- d. Procedures for the proper disposal of waste removed from your regulated small MS4s and your municipal operations, including dredge spoil, accumulated sediments, trash, household hazardous waste, used motor oil, and other debris.

Measurable Goal: During the first year of permit coverage, new permittees shall develop and implement a written O&M program that complies with BMPs #1 and #2. Renewal permittees shall continue to implement their existing program. All permittees shall review the O&M program annually, edit as necessary, and continue to implement during every year of permit coverage.

111. The Permit at Appendix A, MCM #6 (Pollution Prevention/Good Housekeeping for Municipal Operations), BMP #3 and the related Measurable Goal provide in relevant part: “Develop and implement an employee training program that addresses appropriate topics to further the goal of preventing or reducing the discharge of pollutants from municipal operations to your regulated small MS4s. ... Training topics should include operation, inspection, maintenance and repair activities associated with any of the municipal operations / facilities identified under BMP #1. Training should cover all relevant parts of the permittee’s overall stormwater management program that could affect municipal operations, such as illicit discharge detection and elimination, construction sites, and ordinance requirements.

Measurable Goal - 1: ... All permittees shall review the training program annually, edit it as necessary, and continue to implement it during every year of permit coverage.

Measurable Goal - 2: Your employee training shall occur at least annually (i.e., during each permit coverage year) and shall be fully documented in writing and reported in your periodic reports. Documentation shall include the date(s) of the training, the names of attendees, the topics covered, and the training presenter(s).” The PADEP 2016 MS4 Office Inspection Report indicates that, at the time of the 2016 Office Inspection, September 7, 2016, the following information related to MCM #6 (Pollution Prevention/Good Housekeeping for Municipal Operations) requirements, included in the Permit at Attachment A, was not available: “Written Operation & Maintenance Plan for municipal facilities addressing housekeeping” and “Written employee training program.”

112. The PADEP 2016 MS4 Office Inspection Report includes the following relevant written comments: “MS4 did not have a written operation and maintenance plan for municipal facilities addressing house keeping (sic) or a written employee training program. Please submit both within 60 days of the receipt of this report.”

113. Respondent's 2016 MS4 Annual Progress Report, includes, among other information, the following responses or absence of a response to the following inquiries relevant to the Permit at Appendix A, MCM #6 (Pollution Prevention/Good Housekeeping for Municipal Operations), BMP #1 and the related Measurable Goal:
- "1. Have you identified all facilities and activities owned and operated by the permittee that have the potential to generate stormwater runoff into the MS4?" Respondent selected the Yes response.
 - "2. When was the inventory last reviewed? 8/22/2016
 - 3. When was it last updated? 8/22/2016
 - 4. How many new facilities and/or activities were added to this inventory during this reporting period? 0"
114. Respondent's 2016 MS4 Annual Progress Report, includes, among other information, the following responses or absence of a response to the following inquiries relevant to the Permit at Appendix A, MCM #6 (Pollution Prevention/Good Housekeeping for Municipal Operations), BMP #2 and the related Measurable Goal:
- "2. If you are not a new permittee, did you complete and submit your written O&M program to DEP?" Respondent selected the "No" response.
 - "3. Date of last review or update to O&M program:" Respondent did not provide any information.
115. Respondent's 2016 MS4 Annual Progress Report, includes, among other information, the following responses or absence of a response to the following inquiries relevant to the Permit at Appendix A, MCM #6 (Pollution Prevention/Good Housekeeping for Municipal Operations), BMP #3 and the related Measurable Goals:
- "1. For new permittees only, attach the written training program to the first Annual Report.
 - 2. If you are not a new permittee, did you complete and submit your written training program to DEP? (Respondent selected the "No" Response)
If Yes, provide the latest submission date:
 - 3. Date of last review or update to training program: (No information was provided)
 - 4. Identify the date(s) of employee training, the names of attendees, the topics covered, and the training presenters: (No information was provided)"
116. Respondent's November 2016 Response to PADEP Inspection Report states in relevant part: "O&M Plan. Attached is a plan for employees to check and maintain municipal owned facilities which could contribute to stormwater runoff. City employees have always maintained these entities and the plan will simply document procedures already being conducted."
117. Respondent's November 2016 Response to PADEP Inspection Report includes a single page enclosure titled "Operation and Maintenance Plan for Carbondale City Owned Facilities", which identifies eleven properties and does not include the following information required pursuant to Appendix A, MCM #6, BMP #2 of the Permit for each identified area: a) Management practices, policies or procedures

- which are implemented to reduce or prevent the discharge of pollutants to Respondent's MS4, b) maintenance activities, maintenance schedules, and inspection procedures to reduce the potential for pollutants to reach Respondent's regulated small MS4s, c) 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, and salt / sand (anti-skid) storage locations and snow disposal areas, d) procedures for the proper disposal of waste removed from your regulated small MS4s and your municipal operations, including dredge spoil, accumulated sediments, trash, household hazardous waste, used motor oil, and other debris.
118. Respondent's March 2017 Response to EPA's Information Requirement Letter states in relevant part: "A copy of the Carbondale O&M Plan is enclosed. The plan includes a list of all municipally owned facilities and respective maintenance measures. Carbondale also utilizes a street sweeper to reduce pollutants which otherwise would flow into the river."
119. Respondent's March 2017 Response to EPA's Information Requirement Letter states in relevant part: Carbondale DPW staff receives on the job training. If a multi-municipal authority is set up to handle MS4 requirements, training sessions will be provided by KBA Engineering for all DPW employees. Meanwhile, Carbondale City has an Employee MS4 Training Plan. A copy of the plan is attached. See Tab #35".
120. Respondent's single page Employee MS4 Training Plan, included in Respondent's March 2017 Response to EPA's Information Requirement Letter, failed to cover all relevant parts of Respondent's overall stormwater management program that could affect municipal operations, including but not limited to construction sites, and ordinance requirements.
121. Respondent's 2017 MS4 Annual Progress Report, includes, among other information, the following responses or absence of a response to the following inquiries relevant to the Permit at Appendix A, MCM #6 (Pollution Prevention / Good Housekeeping), BMP #1 and the related Measurable Goal:
- "1. Have you identified all facilities and activities owned and operated by the permittee that have the potential to generate stormwater runoff into the MS4?" Respondent selected the Yes response.
 - "2. When was the inventory last reviewed? 3/15/2017
 - 3. When was it last updated? 3/15/2017
 - 4. How many new facilities and/or activities were added to this inventory during this reporting period? 0"
122. Respondent's 2017 MS4 Annual Progress Report, includes, among other information, the following responses or absence of a response to the following inquiries relevant to the Permit at Appendix A, MCM #6 (Pollution Prevention/Good Housekeeping for Municipal Operations), BMP #2 and the related Measurable Goal:
- "2. If you are not a new permittee, did you complete and submit your written O&M program to DEP?" Respondent selected the "Yes" response.

“If Yes, provide the latest submission date:” Respondent did not provide any information.

“3. Date of last review or update to O&M program:” Respondent did not provide any information.

123. Respondent’s 2017 MS4 Annual Progress Report, includes, among other information, the following responses or absence of a response to the following inquiries relevant to the Permit at Appendix A, MCM #6 (Pollution Prevention/Good Housekeeping for Municipal Operations), BMP #3 and the related Measurable Goals:
 - “1. For new permittees only, attach the written training program to the first Annual Report.
 2. If you are not a new permittee, did you complete and submit your written training program to DEP? (Respondent selected the “Yes” Response)
If Yes, provide the latest submission date: (No information was provided)
 3. Date of last review or update to training program: 4/17/2017
 4. Identify the date(s) of employee training, the names of attendees, the topics covered, and the training presenters: Monthly meetings of all DPW employees cover SW info on Facebook and new SW issues.”
124. Respondent’s July 24, 2018 Response to EPA’s Information Requirement Letter included, among other information, a document entitled “Good Housekeeping / Pollution Prevention Plan, City of Carbondale, Lackawanna, PA, May 2018” (Respondent’s 2018 Good Housekeeping / Pollution Prevention Plan).
125. Respondent’s 2018 Good Housekeeping / Pollution Prevention Plan did not include all information required pursuant to Appendix A, MCM #6 (Pollution Prevention/Good Housekeeping for Municipal Operations), BMP #1 and #2 of the Permit.
126. Subsequent to July 1, 2015, Respondent failed to develop and implement an employee training program that covers all relevant parts of the permittee’s overall stormwater management program that could affect municipal operations, such as illicit discharge detection and elimination, construction sites, and ordinance requirements.
127. Subsequent to July 1, 2015, Respondent failed to identify and document all facilities and activities that are owned or operated by the permittee and have the potential for generating stormwater runoff to Respondent’s regulated small MS4.
128. Subsequent to July 1, 2015, Respondent’s written operation and maintenance program for municipal operations and facilities that could contribute to the discharge of pollutants from Respondent’s regulated small MS4s failed to include the following information: a) management practices, policies or procedures to reduce or prevent the discharge of pollutants to your regulated small MS4s, b) maintenance activities, maintenance schedules or inspection procedures to reduce the potential for pollutants to reach Respondent’s MS4s, c) 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, and salt / sand (anti-skid) storage locations or snow disposal areas, d) procedures for the proper disposal of waste removed from Respondent's MS4s and Respondent's municipal operations, including dredge spoil, accumulated sediments, trash, household hazardous waste, used motor oil, or other debris.
129. Subsequent to July 1, 2015, Respondent failed to develop, implement and maintain a written operation and maintenance (O&M) program for all municipal operations and facilities that could contribute to the discharge of pollutants from Respondent's regulated small MS4s, as identified under Appendix A, MCM #6 (Pollution Prevention/Good Housekeeping for Municipal Operations), BMP #2 of the Permit.
130. During January 1, 2016 through December 31, 2017, Respondent failed to fully document in writing and report in the submitted periodic reports the date(s) of the training, the names of attendees, the topics covered, and the training presenter(s).
131. Subsequent to July 1, 2015, Respondent failed to develop and implement an employee training program that covers all relevant parts of the permittee's overall stormwater management program that could affect municipal operations, including but not limited to illicit discharge detection and elimination, construction sites, and ordinance requirements.
132. Respondent's failure, subsequent to July 1, 2015, to: a) fully document and report specific information pertaining to Respondent's required training program, b) develop and implement an employee training program that covers all relevant parts of the permittee's overall stormwater management program that could affect municipal operations, including, but not limited to, illicit discharge detection and elimination, construction sites, and ordinance requirements, c) identify and document all facilities and activities that are owned or operated by the permittee and have the potential for generating stormwater runoff to Respondent's regulated small MS4 or d) develop, implement and maintain a written operation and maintenance (O&M) program for all municipal operations and facilities that could contribute to the discharge of pollutants from Respondent's regulated small MS4s, as identified under Appendix A, MCM #6 (Pollution Prevention/Good Housekeeping for Municipal Operations) of the Permit is a violation of the Permit, 40 C.F.R. § 122.34(b) and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

ORDER FOR COMPLIANCE

133. Pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any condition or limitation which implements Section 1342 of the Act, the Administrator shall issue an order requiring such person to comply with such condition or limitation.
134. Therefore, this _____ day of _____, 2020, Respondent is hereby ORDERED, pursuant to Section 309(a) of the CWA, 33 U.S.C. §1319(a), and CONSENTS to the issuance of this Order.
135. Respondent shall undertake and complete all necessary tasks to seek compliance with the requirements set forth in the Permit to develop, implement, and enforce an SWMP

designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act and Pennsylvania Clean Streams Law, in accordance with the Permit and the Act. Within one-hundred twenty (120) days of the Effective Date of this Order, Respondent shall:

- a. Develop and submit, electronically or in another agreed upon format, for EPA's review, in accordance with Paragraph 138 of this Order, revised MS4 maps with all the permit required features consistent with the requirements of 40 C.F.R. § 122.34(b)(3)(ii)(A) and the Permit, Appendix A, MCM #3. Among other information, the revised maps shall include all information in the previously provided maps and also include the entire storm sewer collection system, including the locations and name of each road, inlet, piping, swale, catch basin, channel, basin, and any other feature of the permittee's storm sewer system, including each municipal boundary and/or watershed boundary. The name, location and size of each existing inlet, swale, catch basin, channel or basin shall be clearly marked on any such revised map.
- b. Develop and submit for EPA's review, in accordance with Paragraph 138 of this Order, a written program for the detection, elimination, and prevention of illicit discharges (IDD&E Program) into Respondent's NPDES Municipal Separate Storm Sewer System consistent with the Permit, Appendix A, MCM #3 (Illicit Discharge Detection and Elimination), BMP #1. The submitted IDD&E Program shall include:
 - i. Procedures and schedules for dry weather field screening of outfalls for non-stormwater flows;
 - ii. Procedures and schedules for sampling of dry weather discharges for selected chemical and biological parameters;
 - iii. Procedures for identifying priority areas. For purposes of this Order, "priority areas" are areas with a higher likelihood of illicit discharges, illicit connections, or illegal dumping. Priority areas may include areas with older infrastructure, a concentration of high-risk activities, or past history of water pollution problems;
 - iv. Procedures for screening outfalls in priority areas during varying seasonal and meteorological conditions;
 - v. Procedures for identifying the source of an illicit discharge when a contaminated flow is detected at a regulated small MS4 outfall;
 - vi. Procedures for eliminating an illicit discharge;
 - vii. Procedures for assessing the potential for illicit discharges caused by the interaction of sewage disposal systems (e.g., on-lot septic systems, sanitary piping) with storm-drain systems;
 - viii. Mechanisms for gaining access to private property to inspect outfalls (e.g., land easements, consent agreements, search warrants);
 - ix. Procedures for program documentation, evaluation and assessment; and,
 - x. The "Outfall Reconnaissance Inventory/Sample Collection Field Sheet" included in Appendix A of the Permit.

- c. Develop and submit for EPA's review, in accordance with Paragraph 138 of this Order, an inventory of all Post-Construction Stormwater Management (PCSM) Control Measures or BMP for each Qualifying Development or Redevelopment Project (including those owned or operated by the Respondent), completed subsequent to January 1, 2006 (PCSM Control Measures Inventory). Such PCSM Control Measures Inventory shall be consistent with and meet the requirements set forth at MCM #5 (Post-Construction Stormwater Management (PCSM) in New and Re-Development Activities), BMP #6, Measurable Goal #2 of the Permit. For each such project, such inventory shall, at a minimum, identify:
 - i. The exact location of the property where the Qualifying Development or Redevelopment Project is located;
 - ii. For each privately owned property subject to this inventory, the date the Stormwater Management Best Management Practices (SWM BMP) Operation and Maintenance (O&M) Agreement between the Landowner and the Municipality was recorded at the Office of the Recorder of Deeds for the Municipality and the identification of the Deed Book and Page of such recording,
 - iii. Information (e.g., name, address, phone number(s)) for BMP owner and entity responsible for BMP Operation and Maintenance (O&M), if different from BMP owner;
 - iv. All PCSM BMPs that were installed to meet requirements in NPDES Permits for Stormwater Discharges Associated with Construction Activities approved since March 10, 2003 or for any other reason.
 - v. The exact location of each PCSM BMP (e.g., street address);
 - vi. The type of BMP and the year it was installed;
 - vii. Maintenance required for the BMP type according to the Pennsylvania Stormwater BMP Manual or other manuals and resources;
 - viii. The dates of each inspection for each BMP, including each inspection conducted in accordance with Section 138-31 (Inspection), Chapter 138 of the Carbondale City Code (Stormwater Management) (see Attachment A);
 - ix. The location of each inspection report;
 - x. The dates of each operation and maintenance activities for each BMP; and
 - xi. An assessment by the permittee if proper operation and maintenance occurred during the year and if not, what actions the permittee has taken, or shall take, to address compliance with O&M requirements.
- d. Develop and submit for EPA's review, in accordance with Paragraph 138 of this Order, a written PCSM BMP Inspection Program to ensure that each control measure or BMPs identified in the PCSM Control Measures Inventory is properly operated and maintained and that Articles V (Operation and Maintenance) through VIII (Enforcement and Penalties) of Chapter 138 of the Carbondale City Code (Stormwater Management) (see Attachment A) are implemented and enforced.
- e. Develop and submit for EPA's review, in accordance with Paragraph 138 of this Order, a Pollution Prevention and Good Housekeeping Operations and Maintenance Program (Pollution Prevention/Good Housekeeping O&M Plan) program for Respondent's municipal operations that is consistent with and meets

the requirements set forth in SWMP Permit Appendix A, MCM #6 (Pollution Prevention/Good Housekeeping for Municipal Operations), BMPs #1, #2 and #3. includes a training plan, syllabus and any other training material Such Pollution Prevention/Good Housekeeping O&M Plan shall include, but not be limited to, the following information:

- i. an identification and documentation of all facilities that are owned or operated by Respondent and have the potential for generating stormwater runoff to the MS4, including an identification and documentation of the impact to the MS4 storm sewer system and the waterway to which the facility discharges,
- ii. an identification and documentation of all types of municipal operations, activities and land uses that may contribute to stormwater runoff within areas of Respondent's municipal operations that discharge to the MS4 including an identification and documentation of the impact to the MS4 storm sewer system and the waterway(s) affected by such operation, activity or land use;
- iii. for each identified facility, land use, activity or operation, an operations and maintenance program containing site-specific information and identifying specific pollution prevention and good housekeeping measures addressing the following areas:
 - a. Management practices, policies and procedures shall be developed and implemented to reduce or prevent the discharge of pollutants to the MS4s, including eliminating maintenance-area discharges from floor drains and other drains that have the potential to discharge to storm sewers.
 - b. Maintenance activities, maintenance schedules, and inspection procedures to reduce the potential for pollutants to reach your regulated small MS4s, including procedures for maintaining any stormwater BMPs.
 - c. 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, and salt / sand (anti-skid) storage locations and snow disposal areas.
 - d. Procedures for the proper disposal of waste removed from the MS4s and any municipal operations, including dredge spoil, accumulated sediments, trash, household hazardous waste, used motor oil, and other debris.
- iv. A training program consistent with the requirements of Appendix A, MCM #6 (Pollution Prevention/Good Housekeeping for Municipal Operations), BMP #3 of the Permit, including the related Measurable Goals.

PROCEDURES FOR SUBMISSIONS

136. All documents required by this Order 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 _____
Title _____

137. Any submission or communication relating to this Order shall be submitted via mail and electronic transmission to:

Chuck Schadel (3ED32)
Enforcement and Compliance Assurance Division
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Schadel.chuck@epa.gov

138. Review of Submissions:

- a. For each submission required pursuant to this Order, except for any Quarterly Status Report, EPA will in writing: (i) approve the submission in whole or in part; (ii) approve the submission upon specified conditions; (iii) modify the submission to cure any deficiencies; (iii) disapprove the submission, in whole or in part, or (iv) any combination of the above.
- b. If the submission is approved, Defendant shall take all actions required by the approved submission, in accordance with the schedules and requirements set forth in such approved submission or EPA's written notification of approval. If the submission is conditionally approved or approved only in part, Defendant shall, upon written direction from EPA, take all actions required by any approved portion of the submission that EPA determines is technically severable from any disapproved portion.
- c. If the submission is disapproved in whole or in part, Respondent shall, within thirty (30) calendar days or such other time as EPA determines appropriate, correct all deficiencies and resubmit the disapproved portion of such submission for approval, in accordance with this Order.
- d. After review of any document resubmitted in accordance with Paragraph 138.c., above EPA will notify Respondent in writing that such resubmission is approved,

disapproved or revised in whole or part. Any such determination shall be made by EPA in its unreviewable discretion. If the resubmission is approved, in whole or in part, Respondent shall proceed in accordance with Paragraph 138.b., above. If any portion of such resubmission is disapproved, EPA may again require Respondent to correct any deficiencies, in accordance with Paragraph 138.c., above, or EPA may revise such document and correct any deficiencies and notify Respondent to take all actions required by such revised resubmission.

139. Extension of Time Request Based on Force Majeure Event

- a. "Force Majeure Event", for purposes of this Order, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent or Respondent's contractor(s), that delays or prevents the performance of any obligation under this Order subsequent to Respondent exercising best efforts to fulfill the obligation(s) at issue. The requirement that Respondent exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force Majeure Event and best efforts to address the effects of any such event: (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay. Unanticipated or increased costs or expenses associated with the performance of Respondent's obligations under this Order or Respondent's financial inability to perform any obligation under this Order shall not constitute circumstances beyond Respondent's control nor serve as the basis for an extension of time under this Order.
- b. If at any time during the implementation of this Order, any Force Majeure Event occurs that may delay the performance of any obligation under this Order, including implementation of an EPA approved plan or schedule, Respondent shall, within three (3) calendar days of determining that such event may delay the performance of such obligation, provide to EPA a written request for an extension of time to comply with any such obligation (Extension of Time Request). Such Extension of Time Request shall include, at a minimum, the following information for each specific obligation(s) for which an extension of time is sought:
 - i. The specific obligation(s) for which an extension of time is sought, including each applicable deadline;
 - ii. A detailed explanation and description of the Force Majeure Event at issue and the reasons for the requested extension of time, including all supporting documentation;
 - iii. The amount of time for which an extension of time is sought;
 - iv. A detailed description of all actions taken to prevent or minimize the amount of time for which an extension of time is sought, including a detailed description of Respondent's best efforts to fulfill the obligation;
 - v. A detailed description, including a schedule for implementation, of all actions to be taken to prevent or mitigate the amount of time for which an extension is sought and the effect of any delay on any other obligation pursuant to this Order;

- vi. A statement as to whether, in the opinion of Respondent, the Force Majeure Event at issue may cause or contribute to an endangerment to public health, welfare, or the environment; and,
- vii. A statement as to whether EPA's March 26, 2020 Memorandum "COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program" is relevant to the Force Majeure Event at issue. If such memo is applicable to such event, the following information shall be included:
 - a) a detailed explanation supporting a finding that such memo is applicable to such request;
 - b) A detailed statement identifying how the COVID-19 pandemic is directly related to such requested extension of time;
 - c) A detailed statement of the decisions and actions taken in response to the COVID-19 pandemic to ensure compliance with this Order, including best efforts to comply with this Order; and
 - d) the information specified under Subpart A of EPA's March 26, 2020 Memorandum "COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program".
- c. Respondent shall be deemed to know of the occurrence of, or reasonable likelihood of an occurrence of, any circumstance or event that may delay the performance of any obligation under this Order of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known.
- d. Any Extension of Time Request shall be submitted in accordance with this Order and shall be subject to the procedures for review of submissions as set forth in this Order.
- e. EPA may, in its unreviewable discretion, approve or disapprove any Extension of Time Request.
- f. EPA's approval, including conditional approval, of any Extension of Time Request shall not, of itself extend the time for performance of any other obligation not explicitly addressed in such approval.
- g. Failure to comply with the above requirements may preclude Respondent from asserting any claim of Force Majeure or other related defense for non-compliance with the terms of this Order for the time period such non-compliance is related to a reportable event.

TERMINATION OF ORDER

- 140. Subsequent to EPA approval of all submissions required pursuant to Paragraph 135 of this Order, Respondent shall submit to EPA a Request for Termination of this Order.
- 141. EPA reserves the right to unilaterally terminate this Order in its unreviewable discretion.
- 142. EPA shall provide Respondent with written notification of termination of this Order.

OTHER APPLICABLE LAWS

143. Nothing in this Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and 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 Order 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.

RESERVATION OF RIGHTS

144. 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 reserves any rights and remedies available to it under the Act, 33 U.S.C. §§ 1251 et seq., the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Order after its effective date.

PARTIES BOUND

145. This Order shall apply to and be binding upon the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Order on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Order and to legally bind Respondent to the terms and conditions of this Order.

EFFECTIVE DATE

146. This ORDER is effective after receipt by Respondent, or Respondent's counsel, of a fully executed document.

SO ORDERED:

Date: May 5, 2020

KAREN
MELVIN

Digitally signed by
KAREN MELVIN
Date: 2020.05.05
16:28:25 -04'00'

Karen Melvin
Director, Enforcement
& Compliance Assurance Division
U.S. EPA Region III

AGREED TO BY RESPONDENT:

City of Carbondale, Pennsylvania

Date: 4/21/20


Name: JUSTIN M. TAYLOR
Title: MAYOR



*Introduced by:
Mr. Thomas Voglhw, Councilman*

***City of Carbondale,
Lackawanna County, Pennsylvania***

FILE OF THE COUNCIL NO. 03; 2017

*AN ORDINANCE AMENDING CHAPTER 138 OF THE CARBONDALE CITY CODE ENTITLED STORM
WATER MANAGEMENT.*

NOW, THEREFORE, Be it ordained, by the Council of the City of Carbondale and it is hereby
ordained by and with the authority of the same as follows:

**City of Carbondale
Storm Water Management Ordinance**

Section 138-1.	Short Title
Section 138-2.	Statement of Findings
Section 138-3.	Purpose
Section 138-4.	Statutory Authority
Section 138-5.	Applicability
Section 138-6.	Repealer
Section 138-7.	Severability
Section 138 8.	Compatibility with Other Requirements
Section 138-9.	Erroneous Permit
Section 138-10	Waivers

Article II - Definitions

Article III - Stormwater Management Standards

Section 138-11.	General Requirements
Section 138-12.	Exemptions
Section 138-13.	Volume Controls
Section 138-14.	Rate Controls
Section 138-15	Riparian Buffers

Article IV - Stormwater Management Site Plan Requirements

Section 138-16.	Plan Requirements
Section 138-17.	Plan Submission
Section 138-18.	Plan Review
Section 138-19.	Modification of Plans
Section 138-20.	Resubmission of Disapproved SWM Site
Plans Section 138-21.	Authorization to Construct and Term of Validity
Section 138-22.	As-Built Plans, Completion Certificate and Final Inspection

Article V - Operation and Maintenance

Section 138-23. Responsibilities of Developers and Landowners
Section 138-24. Operation and Maintenance Agreements

Article VI - Fees and Expenses

Section 138-25. General

Article VII - Prohibitions

Section 138-26. Prohibited Discharges and Connections
Section 138-27. Roof Drains and Sump Pumps
Section 138-28. Alteration of SWM BMPs

Article VIII - Enforcement and Penalties

Section 138-29. Right-of-Entry
Section 138-30. Inspection
Section 138-31. Enforcement
Section 138-32. Suspension and Revocation
Section 138-33. Penalties
Section 138-34. Appeals

Article IX - References

Appendix A - Operation and Maintenance Agreement

ARTICLE I - GENERAL PROVISIONS

Section 138-1. Short Title

This Ordinance shall be known and may be cited as the City of Carbondale Stormwater Management Ordinance."

Section 138-2. Statement of Findings

The Council for the City of Carbondale finds that:

A. Inadequate management of accelerated runoff of stormwater resulting from development throughout a watershed increases runoff volumes, flows and velocities, contributes to erosion and sedimentation, overtaxes the carrying capacity of streams and storm sewers, greatly increases the cost of public facilities to carry and control stormwater, undermines flood plain management and flood control efforts in downstream communities, reduces groundwater recharge, threatens public health and safety, and increases nonpoint source pollution of water resources.

B. A comprehensive program of stormwater management (SWM), including reasonable regulation of development and activities causing accelerated runoff, is fundamental to the public health, safety, and welfare and the protection of people of the Commonwealth, their resources, and the environment.

C. Stormwater is an important water resource that provides groundwater recharge for water supplies and supports the base flow of streams.

D. The use of green infrastructure and low impact development (LID) are intended to address the root cause of water quality impairment by using systems and practices which use or mimic natural processes to: 1) infiltrate and recharge, 2) evapotranspire, and/or 3) harvest and use precipitation near where it falls to earth. Green infrastructure practices and LID contribute to the restoration or maintenance of pre-development hydrology.

E. Federal and state regulations require certain municipalities to implement a program of stormwater controls.

These municipalities are required to obtain a permit for stormwater discharges from their separate storm sewer systems under the National Pollutant Discharge Elimination System (NPDES) program.

Section 138-3. Purpose

The purpose of this Ordinance is to promote health, safety, and welfare within the City of Carbondale and its watershed by minimizing the harms and maximizing the benefits described in Section 138-2 of this Ordinance, through provisions designed to:

A. Meet legal water quality requirements under state law, including regulations at 25 Pa. Code 93 to protect, maintain, reclaim, and restore the existing and designated uses of the waters of this Commonwealth.

B. Preserve natural drainage systems.

C. Manage stormwater runoff close to the source, reduce runoff volumes and mimic predevelopment hydrology.

D. Provide procedures and performance standards for stormwater planning and management.

E. Maintain groundwater recharge to prevent degradation of surface and groundwater quality and to otherwise protect water resources.

F. Prevent scour and erosion of stream banks and streambeds.

G. Provide proper operation and maintenance of all stormwater best management practices (BMPs) that are implemented within the municipality.

H. Provide standards to meet NPDES permit requirements.

Section 138-4. Statutory Authority

The City of Carbondale is empowered to regulate land use activities that affect runoff by the authority of the Act of July 31, 1968, P.L. 805, No. 247, The Pennsylvania Municipalities Planning Code, as amended, and/or the Act of October 4, 1978, P.L. 864 (Act 167), 32 P.S. Section 680.1, et seq., as amended, The Stormwater Management Act.

Section 138-5. Applicability

All regulated activities and all activities that may affect stormwater runoff, including land development and earth disturbance activity, are subject to regulation by this Ordinance.

Section 138-6. Repealer

Any other ordinance provision(s) or regulation of the municipality inconsistent with any of the provisions of this Ordinance is hereby repealed to the extent of the inconsistency only.

Section 138-7. Severability

In the event that a court of competent jurisdiction declares any section or provision of this Ordinance invalid, such decision shall not affect the validity of any of the remaining provisions of this Ordinance.

Section 138-8. Compatibility with Other Requirements

Approvals issued and actions taken under this Ordinance do not relieve the applicant of the responsibility to secure required permits or approvals for activities regulated by any other code, law, regulation or ordinance.

Section 138-9. Erroneous Permit

Any permit or authorization issued or approved based on false, misleading or erroneous information provided by an applicant is void without the necessity of any proceedings for revocation. Any work undertaken or use established pursuant to such permit or other authorization is unlawful. No action may be taken by a board, agency or employee of the Municipality purporting to validate such a violation.

Section 138-10. Waivers

A. If the City of Carbondale determines that any requirement under this Ordinance cannot be achieved for a particular regulated activity, the Municipality may, after an evaluation of alternatives, approve measures other than those in this Ordinance, subject to Section 138-10, paragraphs Band C.

B. Waivers or modifications of the requirements of this Ordinance may be approved by the City if enforcement will exact undue hardship because of peculiar conditions pertaining to the land in question, provided that the modifications will not be contrary to the public interest and that the purpose of the Ordinance is preserved. Cost or financial burden shall not be considered a hardship. Modification may be considered if an alternative standard or approach will provide equal or better achievement of the purpose of the Ordinance. A request for modifications shall be in writing and accompany the Stormwater Management Site Plan submission. The request shall provide the facts on which the request is based, the provision(s) of the Ordinance involved and the proposed modification.

C. No waiver or modification of any regulated stormwater activity involving earth disturbance greater than or equal to one acre may be granted by the Municipality unless that action is approved in advance by the Department of Environmental Protection (DEP) or the delegated county conservation district.

ARTICLE I - DEFINITIONS

For the purposes of this Ordinance, certain terms and words used herein shall be interpreted as follows:

A. Words used in the present tense include the future tense; the singular number includes the plural, and the plural number includes the singular; words of masculine gender include feminine gender; and words of feminine gender include masculine gender.

B. The word "includes" or "including" shall not limit the term to the specific example but is intended to extend its meaning to all other instances of like kind and character.

C. The words "shall" and "must" are mandatory; the words "may" and "should" are permissive.

These definitions do not necessarily reflect the definitions contained in pertinent regulations or statutes, and are intended for this Ordinance only.

Agricultural Activity - Activities associated with agriculture such as agricultural cultivation, agricultural operation, and animal heavy use areas. This includes the work of producing crops including tillage, land clearing, plowing, disking, harrowing, planting, harvesting crops or pasturing and raising of livestock and installation of conservation measures. Construction of new buildings or impervious area is not considered an agricultural activity.

Applicant - A landowner, developer, or other person who has filed an application to the municipality for approval to engage in any regulated activity at a project site in the municipality.

Best Management Practice (BMP) - Activities, facilities, designs, measures, or procedures used to manage stormwater impacts from regulated activities, to meet state water quality requirements, to promote groundwater recharge, and to otherwise meet the purposes of this Ordinance. Stormwater BMPs are commonly grouped into one of two broad categories or measures: "structural" or "non-structural." In this Ordinance, non-structural BMPs or measures refer to operational and/or behavior-related practices that attempt to minimize the contact of pollutants with stormwater runoff, whereas structural BMPs or measures are those that consist of a physical device or practice that is installed to capture and treat stormwater runoff. Structural BMPs include, but are not limited to, a wide variety of practices and devices, from large-scale retention ponds and constructed wetlands, to small-scale underground treatment systems, infiltration facilities, filter strips, low impact design, bioretention, wet ponds, permeable paving, grassed swales, riparian or forested buffers, sand filters, detention basins, and manufactured devices. Structural stormwater BMPs are permanent appurtenances to the project site.

Conservation District - A conservation district, as defined in Section 3(c) of the Conservation District Law (3 P. S. § 851 (c)) that has the authority under a delegation agreement executed with DEP to administer and enforce all or a portion of the regulations promulgated under 25 Pa. Code 102.

Design Storm - The magnitude and temporal distribution of precipitation from a storm event measured in probability of occurrence (e.g., a 5-year storm) and duration (e.g., 24 hours) used in the design and evaluation of stormwater management systems. Also see Return Period.

Detention Volume - The volume of runoff that is captured and released into the waters of the Commonwealth at a controlled rate.

DEP - The Pennsylvania Department of Environmental Protection.

Development Site (Site) - See Project Site.

Disturbed Area - An unstabilized land area where an earth disturbance activity is occurring or has occurred.

Earth Disturbance Activity - A construction or other human activity which disturbs the surface of the land, including, but not limited to: clearing and grubbing; grading; excavations; embankments; road maintenance; building construction; and the moving, depositing, stockpiling, or storing of soil, rock, or earth materials.

Erosion - The natural process by which the surface of the land is worn away by water, wind, or chemical action.

Existing Condition - The dominant land cover during the 5-year period immediately preceding a proposed regulated activity.

FEMA - Federal Emergency Management Agency.

Floodplain - Any land area susceptible to inundation by water from any natural source or delineated by applicable FEMA maps and studies as being a special flood hazard area. Also includes areas that comprise Group 13 Soils, as listed in Appendix A of the Pennsylvania DEP Technical Manual for Sewage Enforcement Officers (as amended or replaced from time to time by DEP).

Floodway - The channel of the watercourse and those portions of the adjoining floodplains that are reasonably required to carry and discharge the 100-year flood. Unless otherwise specified, the boundary of the floodway is as indicated on maps and flood insurance studies provided by FEMA. In an area where no FEMA maps or studies have defined the boundary of the 100-year floodway, it is assumed--absent evidence to the contrary--that the floodway extends from the stream to 50 feet from the top of the bank of the stream.

Forest Management/Timber Operations - Planning and activities necessary for the management of forestland. These include conducting a timber inventory, preparation of forest management plans, silvicultural treatment, cutting budgets, logging road design and construction, timber harvesting, site preparation, and reforestation.

Green Infrastructure - Systems and practices that use or mimic natural processes to infiltrate, evapotranspire, or reuse stormwater on the site where it is generated.

Hydrologic Soil Group (HSG) - Infiltration rates of soils vary widely and are affected by subsurface permeability as well as surface intake rates. Soils are classified into four HSGs (A, B, C, and D) according to their minimum infiltration rate, which is obtained for bare soil after prolonged wetting. The NRCS defines the four groups and provides a list of most of the soils in the United States and their group classification. The soils in the area of the development site may be identified from a soil survey report that can be obtained from local NRCS offices or conservation district offices. Soils become less pervious as the HSG varies from A to D (NRCS^{1,2}).

Impervious Surface (Impervious Area) - A surface that prevents the infiltration of water into the ground. Impervious surfaces (or areas) shall include, but not be limited to: roofs; additional indoor living spaces, patios, garages, storage sheds and similar structures; and any new streets or sidewalks. Decks, parking areas, and driveway areas are not counted as impervious areas if they do not prevent infiltration.

Karst - A type of topography or landscape characterized by surface depressions, sinkholes, rock pinnacles/uneven bedrock surface, underground drainage, and caves. Karst is formed on carbonate rocks, such as limestone or dolomite.

Land Development (Development) - Inclusive of any or all of the following meanings: (i) the improvement of one lot or two or more contiguous lots, tracts, or parcels of land for any purpose involving (a) a group of two or more buildings or (b) the division or allocation of land or space between or among two or more existing or prospective occupants by means of, or for the purpose of streets, common areas, leaseholds, condominiums, building groups, or other features; (ii) any subdivision of land; (iii) development in accordance with Section 503(1.1) of the PA Municipalities Planning Code.

Low Impact Development (LID) - Site design approaches and small-scale stormwater management practices that promote the use of natural systems for infiltration, evapotranspiration, and reuse of rainwater. LID can be applied to new development, urban retrofits, and revitalization projects. LID utilizes design techniques that infiltrate, filter, evaporate, and store runoff close to its source. Rather than rely on costly large-scale conveyance and treatment systems, LID addresses stormwater through a variety of small, cost-effective landscape features located on-site.

Municipality - City of Carbondale, Lackawanna County, Pennsylvania.

NRCS - USDA Natural Resources Conservation Service (previously SCS).

Peak Discharge - The maximum rate of stormwater runoff from a specific storm event.

Pervious Area - Any area not defined as impervious.

Project Site - The specific area of land where any regulated activities in the municipality are planned, conducted, or maintained.

Qualified Professional - Any person licensed by the Pennsylvania Department of State or otherwise qualified by law to perform the work required by this Ordinance.

Regulated Activities - Any earth disturbance activities or any activities that involve the alteration or development of land in a manner that may affect stormwater runoff.

Regulated Earth Disturbance Activity - Activity involving earth disturbance subject to regulation under 25 Pa. Code 92, 25 Pa. Code 102, or the Clean Streams Law.

Retention Volume/Removed Runoff - The volume of runoff that is captured and not released directly into the surface waters of this Commonwealth during or after a storm event.

Return Period - The average interval, in years, within which a storm event of a given magnitude can be expected to occur one time. For example, the 25-year return period rainfall would be expected to occur on average once every 25 years; or stated in another way, the probability of a 25-year storm occurring in any one year is 0.04 (i.e., a 4% chance).

Riparian Buffer - A permanent area of trees and shrubs located adjacent to streams, lakes, ponds and wetlands.

Runoff - Any part of precipitation that flows over the land.

Sediment - Soils or other materials transported by surface water as a product of erosion.

State Water Quality Requirements - The regulatory requirements to protect, maintain, reclaim, and restore water quality under Title 25 of the Pennsylvania Code and the Clean Streams Law.

Stormwater - Drainage runoff from the surface of the land resulting from precipitation or snow or ice melt.

Stormwater Management Facility - Any structure, natural or man-made, that, due to its condition, design, or construction, conveys, stores, or otherwise affects stormwater runoff. Typical stormwater management facilities include, but are not limited to: detention and retention basins; open channels; storm sewers; pipes; and infiltration facilities.

Stormwater Management Site Plan - The plan prepared by the developer or his representative indicating how stormwater runoff will be managed at the development site in accordance with this Ordinance. **Stormwater Management Site Plan** will be designated as **SWM Site Plan** throughout this Ordinance.

Subdivision - As defined in The Pennsylvania Municipalities Planning Code, Act of July 31, 1968, P.L. 805, No. 247.

USDA - United States Department of Agriculture.

Waters of this Commonwealth - Any and all rivers, streams, creeks, rivulets, impoundments, ditches, watercourses, storm sewers, lakes, dammed water, wetlands, ponds, springs, and all other bodies or channels of conveyance of surface and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth.

Watershed - Region or area drained by a river, watercourse, or other surface water of this Commonwealth.

Wetland - Areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, and similar areas.

ARTICLE III - STORMWATER MANAGEMENT STANDARDS

Section 138-11. General Requirements

A. For all regulated activities, unless preparation of an SWM Site Plan is specifically exempted in Section 138.12:

1. Preparation and implementation of an approved SWM Site Plan is required.
2. No regulated activities shall commence until the municipality issues written approval of an SWM Site Plan, which demonstrates compliance with the requirements of this Ordinance.

B. SWM Site Plans approved by the municipality, in accordance with Section 138.21, shall be on site throughout the duration of the regulated activity.

C. The municipality may, after consultation with DEP, approve measures for meeting the state water quality requirements other than those in this Ordinance, provided that they meet the minimum requirements of, and do not conflict with, state law including, but not limited to, the Clean Streams Law.

D. For all regulated earth disturbance activities, erosion and sediment control BMPs shall be designed, implemented, operated, and maintained during the regulated earth disturbance activities (e.g., during construction) to meet the purposes and requirements of this Ordinance and to meet all requirements under Title 25 of the Pennsylvania Code and the Clean Streams Law. Various BMPs and their design standards are listed in the *Erosion and Sediment Pollution Control Program Manual* (E&S Manual³), No. 363-2134-008, as amended and updated.

E. Impervious areas:

1. The measurement of impervious areas shall include all of the impervious areas in the total proposed development even if development is to take place in stages.
2. For development taking place in stages, the entire development plan must be used in determining conformance with this Ordinance.
3. For projects that add impervious area to a parcel, the total impervious area on the parcel is subject to the requirements of this Ordinance; except that the volume controls in Section 138-13 and the peak rate controls of Section 138-14 do not need to be retrofitted to existing impervious areas that are not being altered by the proposed regulated activity.

F. Stormwater flows onto adjacent property shall not be created, increased, decreased, relocated, or otherwise altered without written notification to the adjacent property owner(s). Such stormwater flows shall be subject to the requirements of this Ordinance.

G. All regulated activities shall include such measures as necessary to:

1. Protect health, safety, and property.
2. Meet the water quality goals of this Ordinance by implementing measures to:
 - 2.a. Minimize disturbance to floodplains, wetlands, and wooded areas.
 - 2.b. Maintain or extend riparian buffers.
 - 2.c. Avoid erosive flow conditions in natural flow pathways.
 - 2.d. Minimize thermal impacts to waters of this Commonwealth.
 - 2.e. Disconnect impervious surfaces by directing runoff to pervious areas, wherever possible.
3. Incorporate methods described in the *Pennsylvania Stormwater Best Management Practices Manual* (BMP Manual⁴).

H. The design of all facilities over karst shall include an evaluation of measures to minimize adverse effects.

I. Infiltration BMPs should be spread out, made as shallow as practicable, and located to maximize use of natural on-site infiltration features while still meeting the other requirements of this Ordinance.

J. Normally dry, open top, storage facilities should completely drain both the volume control and rate control capacities over a period of time not less than 24 and not more than 72 hours from the end of the design storm.

K. The design storm volumes to be used in the analysis of peak rates of discharge should be obtained from the latest version of the Precipitation-Frequency Atlas of the United States, National Oceanic and Atmospheric Administration (NOAA), National Weather Service, Hydrometeorological Design Studies Center, Silver Spring, Maryland.

NOAA's Atlas 14⁵ can be accessed at: <http://hdsc.nws.noaa.gov/hdsc/pfds/>.

L. For all regulated activities, SWM BMPs shall be designed, implemented, operated, and maintained to meet the purposes and requirements of this Ordinance and to meet all requirements under Title 25 of the Pennsylvania Code, the Clean Streams Law, and the Storm Water Management Act.

M. Various BMPs and their design standards are listed in the BMP Manual⁴.

Section 138-12. Exemptions

A. Regulated activities that result in cumulative earth disturbances less than (Enter no more than one acre. A more restrictive area may be entered.) are exempt from the requirements in Section 138-13, Section 138-14, and Article IV of this ordinance.

B. Agricultural activity is exempt from the SWM Site Plan preparation requirements of this Ordinance provided the activities are performed according to the requirements of 25 Pa. Code Chapter 102.

C. Forest management and timber operations are exempt from the SWM Site Plan preparation requirements of this Ordinance provided the activities are performed according to the requirements of 25 Pa. Code Chapter 102.

D. Exemptions from any provisions of this Ordinance shall not relieve the applicant from the requirements in Sections 138-11. D. through K

E. The Municipality may deny or revoke any exemption pursuant to this Section at any time for any project that the Municipality believes may pose a threat to public health and safety or the environment.

Section 138-13. Volume Controls

The green infrastructure and low impact development practices provided in the BMP Manual⁴ shall be utilized for all regulated activities wherever possible. Water volume controls shall be implemented using the *Design Storm Method* in Subsection A or the *Simplified Method* in Subsection B below. For regulated activity areas equal or less than one acre that do not require hydrologic routing to design the stormwater facilities, this Ordinance establishes no preference for either methodology; therefore, the applicant may select either methodology on the basis of economic considerations, the intrinsic limitations on applicability of the analytical procedures associated with each methodology and other factors.

A. The *Design Storm Method* (CG-1 in the BMP Manual⁴) is applicable to any size of regulated activity. This method requires detailed modeling based on site conditions.

1. Do not increase the post-development total runoff volume for all storms equal to or less than the 2-year 24-hour duration precipitation.

2 For modeling purposes:

- 2.a Existing (predevelopment) non-forested pervious areas must be considered meadow in good condition.
- 2.b (Twenty percent (20%) of existing impervious area, when present, shall be considered meadow in good condition in the model for existing conditions.

B. The *Simplified Method* (CG-2 in the BMP Manual⁴) provided below is independent of site conditions and should be used if the *Design Storm Method* is not followed. This method is not applicable to regulated activities greater than one acre or for projects that require design of stormwater storage facilities. For new impervious surfaces:

- 1. Stormwater facilities shall capture at least the first two (2) inches of runoff from all new impervious surfaces.
- 2. At least the first one inch of runoff from new impervious surfaces shall be permanently removed from the runoff flow, i.e., it shall not be released into the surface waters of this Commonwealth. Removal options include reuse, evaporation, transpiration, and infiltration.
- 3. Wherever possible, infiltration facilities should be designed to accommodate infiltration of the entire permanently removed runoff; however, in all cases at least the first 0.5 inch of the permanently removed runoff should be infiltrated.
- 4. This method is exempt from the requirements of Section 138-14, Rate Controls.

Section 138-14. Rate Controls

A. For areas not covered by a release rate map from an approved Act 167 Stormwater Management Plan:

Post-development discharge rates shall not exceed the pre-development discharge rates for the 1-, 2-, 5-, 10-, 25-, 50-, and 100-year, 24-hour storm events. If it is shown that the peak rates of discharge indicated by the post-development analysis are less than or equal to the peak rates of discharge indicated by the pre-development analysis for 1-, 2-, 5-, 10-, 25-, 50-, and 100-year, 24-hour storms, then the requirements of this section have been met. Otherwise, the applicant shall provide additional controls as necessary to satisfy the peak rate of discharge requirement.

B. For areas covered by a release rate map from an approved Act 167 Stormwater Management Plan:

For the 1-, 2-, 5-, 10-, 25-, 50-, and 100-year, 24-hour storm events, the post-development peak discharge rates will follow the applicable approved release rate maps. For any areas not shown on the release rate maps, the post-development discharge rates shall not exceed the pre-development discharge rates.

D. established under 25 Pa. Code Chapter 73

Section 138-14. Technical Design Criteria - Basins

- A. Hydrologic times of concentration shall be computed using the procedures described in Technical Release 55 (TR-55) or as amended.
- B. All stormwater detention basins shall be designed to safely discharge the 100 year peak discharge through an emergency spillway with a minimum of one (1) foot of freeboard above the spillway outflow elevation, and all other outlets in a manner that will not damage the integrity of the basin. The emergency spillway shall be designed to convey the entire 100 year peak discharge assuming that the emergency spillway is the only operable basin outlet device.
- C. All stormwater basins, except those designed to retain water or special vegetation as part of best management practices, shall be designed to completely drain within 24 hours. Allowances for best

management practices shall be made if they are designed in accordance with the publication, Pennsylvania Stormwater Best Management Practices Manual (BMP Manual), December 30, 2006 or as amended.

D. Earth fill embankments shall be designed using the following minimum standards:

1. The height of the embankment should not exceed twelve (12) feet. The height is measured from the lowest elevation within the basin to the top of the embankment.

2. The minimum top width of the embankments shall be as follows:

<u>Height (Feet)</u>	<u>Width (Feet)</u>
0-5	5
5-12	10

3. The side slopes shall not exceed 2 feet horizontal to 1 foot vertical for fill or cut slopes.

4. Fill slopes shall be constructed with an impervious core (cut off trench) to prevent seepage through the embankment areas.

5. All pipes through embankments shall be constructed with anti-seep collars. The design of such collars shall be in accordance with the design procedure and detail specifications in Erosion and Sediment Pollution Control Manual (PA DEP, 2012), or as amended.

E. Trash racks may be required at basin outlet structures. These trash racks shall be designed in accordance with recommendations provided in Erosion and Sediment Pollution Control Manual (PA DEP, March 2012), or as amended.

F. Riser outlet structures (where required) shall be constructed on a foundation to prevent floating and movement of the outlet structure due to water and frost action.

G. Trees and shrubs shall not be planted along the embankments of stormwater basins.

H. The City reserves the right to require fencing around stormwater basins where, in their opinion or the opinion of the City Engineer, such protection is warranted.

Section 138-15. Technical Design Criteria - Conveyance Systems

A. Stormwater conveyance systems (such as storm sewers and swales) shall be designed for the 25 year design storm event.

B. The Rational Method may be used to compute peak runoff for drainage areas involving less than 100 acres. The Soil Conservation Service (SCS) Unit Hydrograph Method or Technical Release 55 (TR-55) should be used to compute runoff rates for drainage areas involving more than 100 acres. Rainfall data for TR-55 and the SCS Unit Hydrograph method shall be obtained from the PennDOT Storm Intensity-Duration-Frequency data for the area from PennDOT Drainage Manual, Publication 584, or as amended, Chapter 7, Appendix A.

C. Detailed hydraulic design computations shall be provided for all storm pipes. Recommended Hydraulic computational procedures are described in detail in PennDOT Drainage Manual, Publication 584 (2010 Edition), or as amended.

- D. Energy dissipaters shall be placed at the outlets of all 1m pipes. Design computations shall be submitted for all proposed energy dissipaters. Recommended design procedures are described in Erosion and Sediment Control Program Manual (PADEP, March 2012), or as amended.
- E. Drainage swales shall be designed in accordance with procedures described in PennDOT Drainage Manual, Publication 584 (2010 Edition), or as amended and Erosion and Sediment Control Program Manual (PADEP, March 2012), or as amended.
- F. Detailed hydraulic computations shall be provided for 1m water inlet grates. Recommended Hydraulic computational procedures are described in detail in PennDOT Drainage Manual, Publication 584 (2010 Edition), or as amended.
- G. Design water surface elevations in 1m water inlets shall be at least six (6) inches below the grate elevation to allow for proper flow of 1m water into the proposed inlets.
- H. Profile drawings shall be required for all stormwater conveyance systems.
- I. An engineering evaluation of existing stormwater facilities may be required by the City, City Engineer, or other regulatory agency as part of the proposed storm water facility design.

ARTICLE IV - STORMWATER MANAGEMENT (SWM) SITE PLAN REQUIREMENTS

Section 138-17. Plan Requirements

The following items shall be included in the SWM Site Plan:

A. Appropriate sections from the municipal's Subdivision and Land Development Ordinance, and other applicable local ordinances, shall be followed in preparing the SWM Site Plans. In instances where the Municipality lacks Subdivision and Land Development regulations, the content of SWM Site Plans shall follow the county's Subdivision and Land Development Ordinance.

B. The Municipality shall not approve any SWM Site Plan that is deficient in meeting the requirements of this Ordinance. At its sole discretion and in accordance with this Article, when a SWM Site Plan is found to be deficient, the municipality may either disapprove the submission and require a resubmission, or in the case of minor deficiencies, the Municipality may accept submission of modifications.

C. Provisions for permanent access or maintenance easements for all physical SWM BMPs, such as ponds and infiltration structures, as necessary to implement the Operation and Maintenance (O&M) Plan discussed in paragraph E.9 below.

D. The following signature block for the municipality:

"(Municipal official or designee), on this date (Signature date), has reviewed and hereby certifies that the SWM Site Plan meets all design standards and criteria of the Municipal Ordinance No. 03; 2017."

E. The SWM Site Plan shall provide the following information:

1. The overall stormwater management concept for the project.
2. A determination of site conditions in accordance with the BMP Manual⁴. A detailed site evaluation shall be completed for projects proposed in areas of carbonate geology or karst topography, and other environmentally sensitive areas, such as brownfields.
3. Stormwater runoff design computations and documentation as specified in this Ordinance, or as otherwise necessary to demonstrate that the maximum practicable measures have been taken to meet the requirements of this Ordinance, including the recommendations and general requirements in Section 138-11.
4. Expected project time schedule.
5. A soil erosion and sediment control plan, where applicable, as prepared for and submitted to the approval authority.
6. The effect of the project (in terms of runoff volumes, water quality, and peak flows) on surrounding properties and aquatic features and on any existing stormwater conveyance system that may be affected by the project.
7. Plan and profile drawings of all SWM BMPs, including drainage structures, pipes, open channels, and swales.
8. SWM Site Plan shall show the locations of existing and proposed on-lot wastewater facilities and water supply wells.
9. The SWM Site Plan shall include an O&M Plan for all existing and proposed physical stormwater management facilities. This plan shall address long-term ownership and responsibilities for O&M as well as schedules and costs for O&M activities.

Section 138-18. Plan Submission

Five copies of the SWM Site Plan shall be submitted as follows:

1. (Typically two) copies to the municipality.
2. (Typically one) copy to the municipal engineer (when applicable).
3. (Typically one) copy to the County Conservation District.
4. (Typically one) copy to the County Planning Commission/Office.

Reduced copies can be approved by the City if directly submitted to the Lackawanna County Planning Commission and Lackawanna Soil and Conservation District.

Section 138-19. Plan Review

A SWM Site Plans shall be reviewed by the municipality for consistency with the provisions of this Ordinance.

B. The Municipality shall notify the applicant in writing within 45 days whether the SWM Site Plan is approved or disapproved. If the SWM Site Plan involves a Subdivision and Land Development Plan, the notification shall occur within the time period allowed by the Municipalities Planning Code (90 days). If a longer notification period is provided by other statute, regulation, or ordinance, the applicant will be so notified by the municipality.

C. If the Municipality disapproves the SWM Site Plan, the Municipality will state the reasons for the disapproval in writing. The Municipality also may approve the SWM Site Plan with conditions and, if so, shall provide the acceptable conditions for approval in writing.

Section 138-20. Modification of Plans

A modification to a submitted SWM Site Plan that involves a change in SWM BMPs or techniques, or that involves the relocation or redesign of SWM BMPs, or that is necessary because soil or other conditions are not as stated on the SWM Site Plan as determined by the Municipality shall require a resubmission of the modified SWM Site Plan in accordance with this Article.

Section 138-21. Resubmission of Disapproved SWM Site Plans

A disapproved SWM Site Plan may be resubmitted, with the revisions addressing the Municipality's concerns, to the Municipality in accordance with this Article. The applicable review fee must accompany a resubmission of a disapproved SWM Site Plan.

Section 138-22. Authorization to Construct and Term of Validity

The Municipality's approval of an SWM Site Plan authorizes the regulated activities contained in the SWM Site Plan for a maximum term of validity of 5 years following the date of approval. The Municipality may specify a term of validity shorter than 5 years in the approval for any specific SWM Site Plan. Terms of validity shall commence on the date the Municipality signs the approval for an SWM Site Plan. If an approved SWM Site Plan is not completed according to Section 407 within the term of validity, then the Municipality may consider the SWM Site Plan disapproved and may revoke any and all permits. SWM Site Plans that are considered disapproved by the Municipality shall be resubmitted in accordance with Section 138-20 of this Ordinance.

Section 138-23. As-Built Plans, Completion Certificate, and Final Inspection

A. The developer shall be responsible for providing as-built plans of all SWM BMPs included in the approved SWM Site Plan. The as-built plans and an explanation of any discrepancies with the construction plans shall be submitted to the Municipality.

B. The as-built submission shall include a certification of completion signed by a qualified professional verifying that all permanent SWM BMPs have been constructed according to the approved plans and specifications. The latitude and longitude coordinates for all permanent SWM BMPs must also be submitted, at the central location of the BMPs. If any licensed qualified professionals contributed to the construction plans, then a licensed qualified professional must sign the completion certificate.

C. After receipt of the completion certification by the Municipality, the Municipality may conduct a final inspection.

ARTICLE V - OPERATION AND MAINTENANCE

Section 138-24. Responsibilities of Developers and Landowners

A The Municipality shall make the final determination on the continuing maintenance responsibilities prior to final approval of the SWM Site Plan. The municipality may require a dedication of such facilities as part of the requirements for approval of the SWM Site Plan. Such a requirement is not an indication that the municipality will accept the facilities. The municipality reserves the right to accept or reject the ownership and operating responsibility for any portion of the stormwater management controls.

B Facilities, areas, or structures used as SWM BMPs shall be enumerated as permanent real estate appurtenances and recorded as deed restrictions or conservation easements that run with the land.

C. The O&M Plan shall be recorded as a restrictive deed covenant that runs with the land.

D. The Municipality may take enforcement actions against an owner for any failure to satisfy the provisions of this Article.

Section 138-25 Operation and Maintenance Agreements

A Prior to final approval of the SWM Site Plan, the property owner shall sign and record an Operation and Maintenance (O&M) Agreement (see Appendix A) covering all stormwater control facilities which are to be privately owned.

1. The owner, successor and assigns shall maintain all facilities in accordance with the approved maintenance schedule in the O&M Agreement.

2. The owner shall convey to the Municipality conservation easements to assure access for periodic inspections by the Municipality and maintenance, as necessary.

3. The owner shall keep on file with the Municipality the name, address, and telephone number of the person or company responsible for maintenance activities; in the event of a change, new information shall be submitted by the owner to the Municipality within ten (10) working days of the change.

B. The owner is responsible for operation and maintenance (O&M) of the SWM BMPs. If the owner fails to adhere to the O&M Agreement, the Municipality may perform the services required and charge the owner appropriate fees. Nonpayment of fees may result in a lien against the property.

Performance Guarantee

For SWM Site Plans that involve subdivision and land development, the applicant shall provide a financial guarantee to the Municipality for the timely installation and proper construction of all stormwater management controls as required by the approved SWM Site Plan and this Ordinance in accordance with the provisions of Sections 509, 510, and 511 of the Pennsylvania Municipalities Planning Code.

ARTICLE VI - FEES AND EXPENSES

Section 138-26. General

The Municipality may include all costs incurred in the review fee charged to an applicant. The review fee may include, but not be limited to, costs for the following:

- A. Administrative/clerical processing.
- B. Review of the SWM Site Plan.
- C. Attendance at meetings.
- D. Inspections.

ARTICLE VII - PROHIBITIONS

Section 138-27. Prohibited Discharges and Connections

A. Any drain or conveyance, whether on the surface or subsurface, that allows any non-stormwater discharge including sewage, process wastewater, and wash water to enter a regulated small MS4 or to enter the surface waters of this Commonwealth is prohibited.

B. No person shall allow, or cause to allow, discharges into a regulated small MS4, or discharges into waters of this Commonwealth, which are not composed entirely of stormwater, except (1) as provided in paragraph C below and (2) discharges authorized under a state or federal permit.

C. The following discharges are authorized unless they are determined to be significant contributors to pollution a regulated small MS4 or to the waters of this Commonwealth:

1. Discharges or flows from firefighting activities.
2. Discharges from potable water sources including water line flushing and fire hydrant flushing, if such discharges do not contain detectable concentrations of Total Residual Chlorine (TRC).
3. Non-contaminated irrigation water, water from lawn maintenance, landscape drainage and flows from riparian habitats and wetlands.
4. Diverted stream flows and springs.
5. Non-contaminated pumped ground water and water from foundation and footing drains and crawl space pumps.
6. Non-contaminated HVAC condensation and water from geothermal systems.
7. Residential (i.e., not commercial) vehicle wash water where cleaning agents are not utilized.
8. Non-contaminated hydrostatic test water discharges, if such discharges do not contain detectable concentrations of TRC.

D. In the event that the municipality or DEP determines that any of the discharges identified in Subsection C significantly contribute pollutants to a regulated small MS4 or to the waters of this Commonwealth, the municipality or DEP will notify the responsible person(s) to cease the discharge.

Section 138-28. Roof Drains and Sump Pumps

Roof drains and sump pumps shall discharge to infiltration or vegetative BMPs wherever feasible.

Section 138-29. Alteration of SWM BMPs

No person shall modify, remove, fill, landscape, or alter any SWM BMPs, facilities, areas, or structures that were installed as a requirement of this Ordinance without the written approval of the Municipality.

ARTICLE VIII - ENFORCEMENT AND PENALTIES

Section 138-30. Right of Entry

Upon presentation of proper credentials, the municipality or its designated agent may enter at reasonable times upon any property within the municipality to inspect the condition of the stormwater structures and facilities in regard to any aspect regulated by this Ordinance.

Section 138-31. Inspection

The landowner or the owner's designee (including the Municipality for dedicated and owned facilities) shall inspect SWM BMPs, facilities and/or structures installed under this Ordinance according to the following frequencies, at a minimum, to ensure the BMPs, facilities and/or structures continue to function as intended:

1. Annually for the first 5 years.
2. Once every 3 years thereafter.
3. During or immediately after the cessation of a 10-year or greater storm.

Inspections should be conducted during or immediately following precipitation events. A written inspection report shall be created to document each inspection. The inspection report shall contain the date and time of the inspection, the individual(s) who completed the inspection, the location of the BMP, facility or structure inspected, observations on performance, and recommendations for improving performance, if applicable. Inspection reports shall be submitted to the Municipality within 30 days following completion of the inspection.

Section 138-32. Enforcement

A. It shall be unlawful for a person to undertake any regulated activity except as provided in an approved SWM Site Plan, unless specifically exempted in Section 138-12.

B. It shall be unlawful to violate Section 138-29 of this Ordinance.

C. Inspections regarding compliance with the SWM Site Plan are a responsibility of the Municipality.

Section 138-33. Suspension and Revocation

A. Any approval or permit issued by the Municipality pursuant to this Ordinance may be suspended or revoked for:

1. Non-compliance with or failure to implement any provision of the approved SWM Site Plan or O&M Agreement.
2. A violation of any provision of this Ordinance or any other applicable law, ordinance, rule, or regulation relating to the Regulated Activity.
3. The creation of any condition or the commission of any act during the Regulated Activity which constitutes or creates a hazard, nuisance, pollution, or endangers the life or property of others.

B. A suspended approval may be reinstated by the Municipality when:

1. The Municipality has inspected and approved the corrections to the violations that caused the suspension.

2 The Municipality is satisfied that the violation has been corrected.

C. An approval that has been revoked by the Municipality cannot be reinstated. The applicant may apply for a new approval under the provisions of this Ordinance.

D. If a violation causes no immediate danger to life, public health, or property, at its sole discretion, the Municipality may provide a limited time period for the owner to correct the violation. In these cases, the Municipality will provide the owner, or the owner's designee, with a written notice of the violation and the time period allowed for

ARTICLE IX - REFERENCES

- 1 U.S. Department of Agriculture, National Resources Conservation Service (NRCS). *National Engineering Handbook*. Part 630: Hydrology, 1969-2001. Originally published as the *National Engineering Handbook*, Section 4: Hydrology. Available from the NRCS online at <http://www.nrcs.usda.gov/>.
- 2 U.S. Department of Agriculture, Natural Resources Conservation Service. 1986. *Technical Release 55: Urban Hydrology for Small Watersheds*, 2nd Edition. Washington, D.C.
- 3 Pennsylvania Department of Environmental Protection. No. 363-0300-002 (December 2006), as amended and updated. *Pennsylvania Stormwater Best Management Practices Manual*. Harrisburg, PA.
- 4 Pennsylvania Department of Environmental Protection. No. 363-2134-008 (March 31, 2012), as amended and updated. *Erosion and Sediment Pollution Control Program Manual*. Harrisburg, PA.
- 5 U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, Hydrometeorological Design Studies Center. 2004-2006. *Precipitation-Frequency Atlas of the United States, Atlas 14*, Volume 2, Version 3.0, Silver Spring, Maryland. Internet address: <http://hdsc.nws.noaa.gov/hdsc/pfds/>.

APPENDIX A

OPERATION AND MAINTENANCE (O&M) AGREEMENT STORMWATER MANAGEMENT BEST MANAGEMENT PRACTICES (SWM BMPs)

THIS AGREEMENT, made and entered into this day of ____, 20__, by and between ____ (hereinafter the "Landowner"), and ____, County, Pennsylvania (hereinafter "Municipality");

WITNESS ETH

WHEREAS, the Landowner is the owner of certain real property as recorded by deed in the land records of ____ County, Pennsylvania, Deed Book _____ at page ____, (hereinafter "Property").

WHEREAS, the Landowner is proceeding to build and develop the Property; and

WHEREAS, the SWM BMP Operation and Maintenance (O&M) Plan approved by the Municipality (hereinafter referred to as the "O&M Plan") for the property identified herein, which is attached hereto as Appendix A and made part hereof, as approved by the Municipality, provides for management of stormwater within the confines of the Property through the use of BMPs; and

WHEREAS, the Municipality, and the Landowner, his successors and assigns, agree that the health, safety, and welfare of the residents of the Municipality and the protection and maintenance of water quality require that on-site SWM BMPs be constructed and maintained on the Property; and

WHEREAS, the Municipality requires, through the implementation of the SWM Site Plan, that SWM BMPs as required by said SWM Site Plan and the Municipal Stormwater Management Ordinance be constructed and adequately operated and maintained by the Landowner, successors, and assigns.

NOW, THEREFORE, in consideration of the foregoing promises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The Landowner shall construct the BMPs in accordance with the plans and specifications identified in the SWM Site Plan.
2. The Landowner shall operate and maintain the BMPs as shown on the SWM Site Plan in good working order in accordance with the specific operation and maintenance requirements noted on the approved O&M Plan.
3. The Landowner hereby grants permission to the Municipality, its authorized agents and employees, to enter upon the property, at reasonable times and upon presentation of proper credentials, to inspect the BMPs whenever necessary. Whenever possible, the Municipality shall notify the Landowner prior to entering the property.
4. In the event the Landowner fails to operate and maintain the BMPs per paragraph 2, the Municipality or its representatives may enter upon the Property and take whatever action is deemed necessary to maintain said BMP(s). It is expressly understood and agreed that the Municipality is under no obligation to maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the Municipality.
5. In the event the Municipality, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Landowner shall reimburse the Municipality for all expenses (direct and indirect) incurred within 10 days of receipt of invoice from the Municipality.
6. The intent and purpose of this Agreement is to ensure the proper maintenance of the on-site BMPs by the Landowner; provided, however, that this Agreement shall not be deemed to create any additional liability of any party for damage alleged to result from or be caused by stormwater runoff.

7. The Landowner, its executors, administrators, assigns, and other successors in interests, shall release the Municipality from all damages, accidents, casualties, occurrences, or claims which might arise or be asserted against said employees and representatives from the construction, presence, existence, or maintenance of the BMP(s) by the Landowner or Municipality.

8. The Municipality intends to inspect the BMPs at a minimum of once every three years to ensure their continued functioning.

This Agreement shall be recorded at the Office of the Recorder of Deeds of _____ County, Pennsylvania, and shall constitute a covenant running with the Property and/or equitable servitude, and shall be binding on the Landowner, his administrators, executors, assigns, heirs, and any other successors in interests, in perpetuity.

ATTEST:

WITNESS the following signatures and seals:

(SEAL)

For the Municipality:

For the Landowner:

ATTEST:

_____ (City, Borough, Township)

County of _____, Pennsylvania

I _____, a Notary Public in and for the county and state aforesaid, whose commission expires on the ___ day of _____, 20___, do hereby certify that _____ whose name(s) is/are signed to the foregoing Agreement bearing date of the ___ day _____, 20___, has acknowledged the same before me in my said county and state.

GIVEN UNDER MY HAND THIS _____ day of _____, 20___.

NOTARY PUBLIC

(SEAL)

the owner to correct the violation, If the owner does not correct the violation within the allowed time period, the municipality may revoke or suspend any, or all, applicable approvals and permits pertaining to any provision of this Ordinance.

Section 138-34. Penalties

- A Anyone violating the provisions of this Ordinance shall be guilty of a summary offense, and upon conviction, shall be subject to a fine of not more than \$300 for each violation, recoverable with costs. Each day that the violation continues shall be a separate offense and penalties shall be cumulative.
- B In addition, the municipality may Institute injunctive, mandamus, or any other appropriate action or proceeding at law or in equity for the enforcement of this Ordinance. Any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent Injunctions, mandamus, or other appropriate forms of remedy or relief.

Section 138-35. Appeals

- A Any person aggrieved by any action of the Municipality or its designee, relevant to the provisions of this Ordinance, may appeal to the Municipality within 30 days of that action,
- B Any person aggrieved by any decision of the Municipality, relevant to the provisions of this Ordinance, may appeal to the County Court of Common Pleas in the county where the activity has taken place within 30 days of the Municipality's decision.

ORDAINED AND ENACTED THIS 11th day of April, 2017,

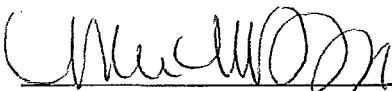
FIRST READING: March 20, 2017

SECOND READING: April 17, 2017

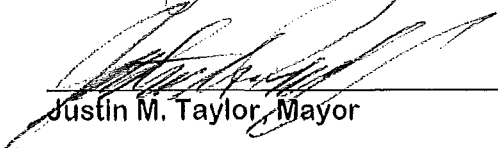
ATTEST: City of Carbondale



Dr. Joseph Marzocco, Council President



Michele M. Bannon, City Clerk



Justin M. Taylor, Mayor

**CITY OF CARBONDALE
NOTICE OF ZONING ORDINANCE AMENDEMENTS**

The Council for the City of Carbondale will conduct a Regular Meeting to discuss amendments to Chapter 138 of the Carbondale City Code entitled Storm Water Management. The public will be permitted to comment at said meeting to be held on Monday, April 17, 2017 at 6:00 PM, Carbondale City Hall, One North Main Street, Carbondale, PA 18407. Council will act on said ordinance at a Regular Meeting of Council scheduled that same evening.

Copies of the proposed full text of the amendment is available for public inspection during regular working hours at the Office of the City Clerk, located on the Second Floor of City Hall, One North Main Street, Carbondale.

The public is invited and encouraged to attend to offer comments.

Michele M. Bannon, City Clerk

