

**BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III**

In The Matter of:

City of Carbondale
1 North Main Street
Carbondale, Pennsylvania 18407-2356

Respondent.

Proceeding Under Section 309(a) of the
Clean Water Act, 33 U.S.C. § 1319(a)

ADMINISTRATIVE ORDER FOR
COMPLIANCE
Docket. No. CWA-03-2022-0026DN

I. STATUTORY AUTHORITY

1. This Administrative Order for Compliance (Order) is issued to the City of Carbondale, PA, (Respondent) pursuant to the authority vested in the United States Environmental Protection Agency (EPA) by Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a) (CWA or Act). 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 compliance when Administrator finds a person has violated certain requirement of the Act. The Administrator has delegated this authority to the Regional Administrator of EPA Region III, who in turn has delegated this authority to the Director, Enforcement and Compliance Assurance Division, EPA Region III.

II. STATUTORY AND REGULATORY PROVISIONS

2. 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 NPDES program under Section 402 of the Act, 33 U.S.C. § 1342.
3. 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, stormwater discharges are “point sources” subject to NPDES permitting requirements under Section 402(a) of the CWA, 33 U.S.C. § 1342(a).
4. 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...”
5. 40 C.F.R. § 122.26(b)(13) defines “Storm water” as “storm water runoff, snow melt runoff and surface runoff and drainage.”
6. 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.”

7. 40 C.F.R. § 122.26(b)(16) defines the term “small municipal separate storm sewer system” as “all separate storm sewers that are: (i) Owned or operated by the United States, a State, city, town, borough . . . or other public body (created by or pursuant to State law) having jurisdiction over disposal of . . . storm water; [and] (ii) Not defined as ‘large’ or ‘medium’ municipal separate storm sewer systems.”
8. 40 C.F.R. § 122.26(b)(17) defines the term “Small MS4” as “a small municipal separate storm sewer system.”
9. Small MS4s are regulated pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p) and the regulations promulgated thereunder.
10. Pursuant to 40 C.F.R. § 122.26(a)(9)(i), discharges from any small MS4 require coverage by a NPDES permit if such MS4 is regulated pursuant to 40 C.F.R. § 122.32.
11. 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). . . .”
12. 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).”
13. 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.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

14. Stormwater runoff is generated when precipitation, from rain and snowmelt events, flows over land or impervious surfaces and does not percolate into the ground. As the runoff flows over land or impervious surfaces (paved streets, parking lots, and building rooftops), it accumulates debris, chemicals, sediment or other pollutants that can adversely affect water quality, erode streambanks, destroy needed habitat for fish and other aquatic life, and make it more difficult and expensive for

downstream users to effectively use the water. According to EPA, “polluted stormwater runoff is commonly transported through municipal separate storm sewer systems (MS4s), and then often discharged, untreated, into local water bodies.”¹

15. City of Carbondale (Respondent) is a “municipality” within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4). Respondent is therefore a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
16. 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.
17. 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.
18. 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).
19. 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.
20. The Carbondale MS4 includes all conveyances owned or operated by the City that are designed or used for collecting or conveying stormwater (with the exception of combined sewers and Publicly Owned Treatment Works). The Carbondale MS4 includes but is not necessarily limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, and storm drains that discharge to waters of the United States.
21. At all times relevant to this Order, the Carbondale MS4 has discharged stormwater to Fall Brook, Racket Brook and the Lackawanna River and their associated tributaries.
22. Fall Brook, Racket Brook 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.
23. Fall Brook, Racket Brook and the Lackawanna River and their associated tributaries are each a watershed draining to the Chesapeake Bay.
24. The Carbondale MS4 is a small MS4s located in and discharging to receiving watersheds draining to the Chesapeake Bay.
25. 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.

¹ <https://www.epa.gov/npdes/stormwater-discharges-municipal-sources>

26. 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.
27. 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.
28. 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).
29. In the 2014 MS4 Permit Application Revisions, Respondent identified the following three waterbodies as areas of "Stormwater Discharge": Racket Brook, Fall Brook and Lackawanna River.
30. On June 15, 2015, PADEP issued the Respondent NPDES Permit No. PAI32246 (the 2015 MS4 NPDES Permit), which stated that it became effective on July 1, 2015 and would expire on June 30, 2020 or upon termination of the Permit in writing by PADEP.
31. The 2015 MS4 NPDES Permit was issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
32. The 2015 MS4 NPDES Permit authorized discharges of storm water from the Carbondale MS4, only in accordance with the conditions of the Permit.
33. The 2015 MS4 NPDES Permit stated that "3. An application for renewal of coverage under this Individual Permit shall be received by DEP at least 180 days prior to the Expiration Date on the Approval of Individual Permit Coverage (unless written permission has been granted by DEP for submission at a later date). A request for renewal of coverage must be made using an application form provided by DEP."
34. The 2015 MS4 NPDES Permit stated that "4. Permittees who submit a timely renewal application in accordance with paragraph 3 may continue to operate pursuant to the terms and conditions of this permit until the Approval of Coverage under the renewal permit becomes effective."
35. The 2015 MS4 NPDES Permit stated that "To continue discharging after the expiration date for coverage under this individual permit, an administratively complete and acceptable application must be received by DEP no later than 180 days prior to the coverage expiration date."
36. In accordance with the terms of the 2015 MS4 NPDES Permit, the Respondent was required to submit a renewal application no later than 180 days prior to the 2015 MS4 NPDES Permit coverage expiration date of June 30, 2020, or no later than January 2, 2020.
37. PADEP informed EPA that, on January 23, 2020, PADEP received an application for a renewal NPDES MS4 Individual Permit (the 2020 NPDES MS4 Permit Renewal Application) from Carbondale.

38. By letter dated April 17, 2020, PADEP denied the 2020 NPDES MS4 Permit Renewal Application, outlined several deficiencies that rendered the 2020 NPDES MS4 Permit Renewal Application incomplete and requested submission of missing documentation.
39. On May 5, 2020, EPA entered into an Administrative Compliance Order on Consent (the 2020 Carbondale MS4 AOC) with Respondent, whereby Respondent agreed to comply with the requirements of the 2015 MS4 NPDES Permit.
40. On June 30, 2020, the 2015 MS4 NPDES Permit expired.
41. By letter dated December 22, 2020, EPA notified Respondent that Respondent had failed to comply with the terms of the 2020 Carbondale MS4 AOC, due to Respondent's failure to submit requisite documents to EPA in accordance with the terms of the 2020 Carbondale MS4 AOC.
42. By email communication dated January 8, 2021, a representative of the Respondent submitted to EPA electronic files of certain documents described in the 2020 Carbondale MS4 AOC.
43. As of the date of this Order, Respondent has failed to submit to PADEP a complete application for a NPDES Individual Permit to Discharge Stormwater from an MS4.
44. According to Respondent's 2020 Annual MS4 Status Report, Respondent's MS4 has 66 total number of outfalls in the MS4.
45. Based on the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Technical Release 55 titled "Urban Hydrology for Small Watersheds," for an area that is 85% impervious with a corresponding Soil Conservation Service (SCS) Runoff Curve Number of 89, runoff will be generated in rain events greater than approximately 0.25 inches of rain.
46. According to the National Oceanic & Atmospheric Administration, precipitation at the Wilkes Barre Scranton International Airport, located approximately 20 miles from Carbondale, Pennsylvania exceeded 0.25" on 79 days between July 1, 2020 and October 31, 2021.
47. Subsequent to June 30, 2020, discharges of stormwater from the Carbondale MS4 have continued into Fall Brook, Racket Brook and the Lackawanna River and their associated tributaries.
48. Discharges from the Carbondale MS4 constitute the "discharge(s)" of "pollutants" from a "point source" to "navigable waters" within the meaning of Sections 502(12), (6), (14), and (7) of the Act, 33 U.S.C. § 1362(12), (6), (14), and (7).
49. Respondent has discharged pollutants illegally into Fall Brook, Racket Brook and the Lackawanna River and their associated tributaries unlawfully in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

IV. ORDER FOR COMPLIANCE

Therefore, pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), EPA ORDERS the Respondent to do the following:

50. Within 14 Days of the Effective Date of this Order, Respondent shall submit to EPA via e-mail Respondent's Initial Response to Order Notification (Response to Order Notification). Such Response to Order Notification shall provide a clear indication of Respondent's intention to immediately comply with the terms of the Order or provide EPA with an alternative response. The Notice shall be submitted to:

Mark Zolandz (EPA Enforcement Officer)
Enforcement and Compliance Assurance Division
United States Environmental Protection Agency, Region III
zolandz.mark@epa.gov

51. Within 14 Days of the Effective Date of this Order, Respondent shall notify EPA as to Respondent's primary point of contact, who represents and is authorized to communicate on behalf of Respondent for all EPA communications regarding this Order (Primary Contact Notification). Such information shall include such person's: name, title, mailing and email addresses and direct dial phone number. In the event that Respondent decides to change its' primary point of contact, Respondent shall provide immediate notification of any such change, including the above described information.
52. No later than 45 Days from the Effective Date of this Order, Respondent shall issue all required public notices and conduct all required public meetings necessary to obtain a NPDES Individual Permit to Discharge Stormwater from an MS4, in accordance with Section 402(a) of the CWA, 33 U.S.C. § 1342(a), and 25 Pa. Code Title 25, Chapter 92a (National Pollutant Discharge Elimination System Permitting, Monitoring And Compliance).
53. No later than 60 Days from the Effective Date of this Order, Respondent shall submit to PADEP and EPA documentation detailing the following information relating to each public notice issued and/or public meeting held in accordance with this Order and any PADEP NPDES Permit Application requirement: date, physical location or digital electronic forum, agenda, copy of public notification of such public meeting, names and titles of each Carbondale municipality officials leading the meeting and approximate number of participants.
54. No later than 90 Days from the Effective Date of this Order, Respondent shall submit to PADEP and EPA, in accordance with this Order, a complete application for a NPDES Individual Permit to Discharge Stormwater from Small MS4s, including all documents and information required by PADEP to obtain a NPDES permit in accordance with Section 402(a) of the CWA, 33 U.S.C. § 1342(a), 40 C.F.R. § 122.32(a)(1) and 25 Pa. Code Title 25, Chapter 92a (National Pollutant Discharge Elimination System Permitting, Monitoring And Compliance).
55. In the event that PADEP issues Respondent a NPDES Permit regulating discharges from the Carbondale MS4, then within seven (7) Days of issuance of such NPDES permit, Respondent shall submit to EPA a copy of such NPDES permit, including all attachments, appendices, accompanying documents, and transmittal letters, emails or other written communication from PADEP.

V. PROCEDURES FOR SUBMISSIONS

56. For purposes of this Order, "Day" or "Days" shall mean a calendar day or calendar days. In the event that a deadline set forth in Section IV (Order for Compliance) falls on a Saturday, Sunday

or any Federal or Commonwealth of Pennsylvania legal holiday, Respondent shall have until the next calendar day that is not one of the aforementioned days to complete the required action or submit the required written submission or other deliverable.

57. Unless otherwise directed, Respondent shall submit any submission or written communication, including any accompanying data, relating to this Order to EPA via electronic mail, unless electronic mail service is not reasonably available. The subject line of all email correspondence to EPA must include the following: “Carbondale Administrative Order, CWA-03-2022-0026DN” and the subject or title of the relevant deliverable. Unless otherwise notified by EPA, any submission or written communication relating to this Order, shall be submitted to:

Name: Mark Zolandz (EPA Enforcement Officer)
Enforcement and Compliance Assurance Division, EPA, Region III

Email: Zolandz.Mark@epa.gov

If any specific submission cannot be sent via electronic mail to EPA, Respondent shall contact the EPA Project Manager to make arrangements for alternative delivery.

58. Unless otherwise directed, Respondent shall submit any submission or written communication, including any accompanying data, relating to this Order to PADEP via electronic mail, unless electronic mail service is not reasonably available. Unless otherwise notified by PADEP, any submission or written communication relating to this Order, shall be submitted to:

Name: Brian Burden (Project Manager)
Clean Water Program, PADEP

Email: brburden@pa.gov

59. All documents submitted in accordance with this Order to EPA shall be accompanied by a certification signed by a responsible officer, as defined in 40 C.F.R. § 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: _____

Date: _____

60. Respondent is entitled to assert a claim of business confidentiality covering any part or all of the information submitted in response to this Order, in a manner described at 40 C.F.R. § 2.203(b). Information subject to any claim of business confidentiality will be made available to the public

only in accordance with 40 C.F.R. Part 2, Subpart B. Unless a claim of business confidentiality is asserted at the time the requested information is submitted to EPA in a manner compliant with the applicable regulations, EPA may make this information available to the public without further notice to Respondent.

61. Any information submitted electronically to EPA shall be submitted in a widely recognized electronic format.
62. Regardless of method of submission, each submission by Respondent shall be deemed submitted on the date such communication is either electronically transmitted or postmarked.
63. Regardless of method of submission (electronic or other mailing), Respondent shall maintain records of each notification or communication with EPA for the duration of this Order.

VI. GENERAL PROVISIONS

64. Respondent's compliance with the terms of this Order shall not relieve Respondent of its obligation to comply with all applicable provisions of the Clean Water Act or any other Federal, State, or local law or regulation. Issuance of this Order is not an election by EPA to forego any civil or criminal action otherwise authorized by the Clean Water Act. EPA reserves the right to seek any remedy available under the law that it deems appropriate to the violations described herein. Compliance with this Order shall not be a defense to any action commenced pursuant to such authorities.
65. Violation of the terms of this Order may result in further EPA enforcement action including, but not limited to, imposition of administrative penalties, pursuant to 33 U.S.C. § 1319(g) as modified by the Debt Collection Procedures Act of 1996 and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and/or initiation of judicial proceedings that allow for civil penalties of up to \$53,484 per day for each day of violation that occurs, and/or for the criminal sanctions of imprisonment and fines of up to \$25,000 per day, 33 U.S.C. § 1319(c).
66. The provisions of this Order shall apply to and be binding upon the Respondent and its officers, directors, employees, contractors, agents, trustees, successors and assigns of Respondent.
67. Respondent will allow EPA personnel on the Site for the purpose of inspecting work performed pursuant to this Order upon reasonable notice. EPA reserves all existing inspection authority otherwise available to EPA pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, or pursuant to any other statute or law.
68. Respondent may seek federal judicial review of this Order, issued under Section 309 of the CWA, 33 U.S.C. § 1319, pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706.

VII. OPPORTUNITY TO CONFER

69. Respondent is invited to submit a written request to confer with the Agency about the findings and conclusions reflected in this Order including the terms and conditions contained herein (Opportunity to Confer Conference). Respondent's written request for an Opportunity to Confer Conference must be submitted in writing via e-mail, in accordance with this Paragraph within

Twenty (20) Days of receipt of this Order and shall include specific proposed dates and times for such conference. Such Opportunity to Confer Conference shall be held no later than ten (10) Days after EPA's receipt of such written request. If Respondent fails to submit a timely and complete written request for an Opportunity to Confer Conference in accordance with this Paragraph, Respondent waives its right to a conference, and this Order shall become effective ten (10) days from its receipt. Any request for a conference, or other inquiries concerning this Order, should be made in writing to: Mark Zolandz at zolandz.mark@epa.gov. If represented by counsel, Respondent's attorney may contact Kathleen Root, Senior Assistant Regional Counsel, at root.kathleen@epa.gov

VIII. TERMINATION OF ORDER

70. EPA shall provide Respondent with written notification of termination of this Order.

IX. EFFECTIVE DATE

71. The Effective Date of this Order shall be one of the following dates: a) ten (10) Days from the date on which Respondent receives this Order or b) if Respondent timely requests an Opportunity to Confer Conference, in accordance with the procedures set forth in Section VII (Opportunity to Confer), above, and Respondent and EPA participate in an Opportunity to Confer Conference within the time frame set forth in Section VII (Opportunity to Confer), above, then the Effective Date of this Order shall be ten (10) Days after such Opportunity to Confer conference occurs.

IT IS SO ORDERED

Date: _____

Karen Melvin, Director
Enforcement and Compliance Assurance Division
EPA Region III