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CERTIFICATE OF SERVICE

REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

I hereby certify that on this day, I caused to be filed with the **Regional Hearing Clerk**, EPA Region III, the original Response to Comments, Docket No. CWA-03-2012-0095, and that copies of this document were sent to the following individual in the manner described below:

By first class, certified mail, return receipt requested:

The Honorable Patrick J. Toomey
United States Senate
Washington, D.C. 20510

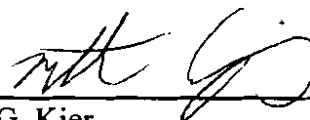
The Honorable Mike Folmer
The State Capitol
Harrisburg, PA 17120-5708

The Honorable Robert J. Phillips
Chairman
Lebanon County Commissioners
Room 207, Municipal Building
400 South Eighth Street
Lebanon, PA 17042-6794

Robert P. Hoffman, AIA
Beers & Hoffman, Ltd. Architects
20A East Roseville Road
Lancaster, PA 17601

Date:

4/12/2012

 for Lori Kier

Lori G. Kier
Senior Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103



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

RE: Proposed Consent Agreement and Final Order ("CAFO") with City of Lebanon, Pennsylvania, EPA Docket No. CWA-03-2012-0095

Dear Sir or Madam:


You are receiving this letter because you submitted a comment to the Regional Hearing Clerk regarding a proposed CAFO with the City of Lebanon, Pennsylvania. Pursuant to Section 309(g)(4) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g)(4) and 40 C.F.R. § 22.45, the CAFO was put out for public comment for forty (40) days. The comment period is now closed. Your comment is part of the official public record. Should you have future inquiries, please direct them to Lydia Guy, the Regional Hearing Clerk, at the following address:

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

In accordance with the Clean Water Act and 40 C.F.R. Part 22, EPA is enclosing a copy of the executed CAFO. Additionally, EPA is enclosing a responsiveness summary which constitutes EPA's response to the pertinent questions and comments received during the public comment period. This fulfills EPA's requirements under 40 C.F.R. § 22.45.

We appreciate your time and effort in submitting comments.

Sincerely,

 for Lori Kier

Lori G. Kier
Senior Assistant Regional Counsel

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REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

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

In the Matter of:

City of Lebanon
400 S. 8th Street
Lebanon, PA 17042

Respondent.

Proceeding to Assess Class II
Administrative Penalty Under

Section 309(g) of the Clean Water Act

Docket No. CWA-03-2012-0095

RESPONSE TO COMMENTS

On February 16, 2012, the U.S. Environmental Protection Agency (EPA) Region III issued a public notice requesting comments for the proposed issuance of a Consent Agreement and Final Order ("CAFO") to the City of Lebanon, Pennsylvania ("City" or "Lebanon"). The CAFO addresses violations of Lebanon's NPDES Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems a/k/a Authorization to Discharge, PAG-13 ("the Permit").

This responsiveness summary addresses the comments and questions presented during the forty (40) day comment period required pursuant to Section 309(g)(4) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g)(4) and 40 C.F.R. § 22.45. The comment period ended on March 26, 2012. Where applicable, the comments have been grouped into major issues. They are addressed in the following paragraphs:

1. Economic Benefit Resulting From Violation.

As is the case with all EPA penalties for Clean Water Act violations, the penalty against the City of Lebanon was based on a number of statutory factors, including "the economic benefit (if any) resulting from the violation, any history of such violations." 33 U.S.C. § 1319(g). EPA's "Interim Clean Water Act Settlement Penalty Policy" (March 1, 1995) ("Settlement Policy") (available at: <http://www.epa.gov/compliance/resources/policies/civil/cwa/cwapol.pdf>), which further outlines EPA's penalty calculation methodology, was issued to ensure that all respondents are treated fairly and equitably.

In the case of Lebanon, EPA took into account the fact that the City did not have a sufficient number of employees to perform all tasks required by its MS4 Permit. EPA

considered the salary and benefits that one additional employee would have received, over the course of one year, as a way to figure the cost savings experienced by the City. EPA's one-year assumption was conservative as the Settlement Policy permits EPA to perform this calculation for the entire period of noncompliance, which could have been up to five years prior to the issuance of penalty.

2. Ability to Pay.

In addition to the statutory factor of economic benefit, the Clean Water Act requires that a party's ability to pay be taken into account when determining the amount of a penalty. To ensure consistency among cases, EPA evaluates a municipality's ability to pay by utilizing a financial analysis tool called "MuniPay", which evaluates a municipality or regional utility's ability to afford compliance costs, cleanup costs or civil penalties (available at: <http://www.epa.gov/compliance/civil/econmodels/index.html#abel>). During settlement discussions, EPA offered Lebanon the opportunity to demonstrate its alleged inability to pay by providing data required for a MuniPay analysis. The City provided the requested information, and EPA entered the relevant data into MuniPay. MuniPay determined that the City could afford the initial proposed penalty of \$81,600. EPA therefore considered the City's ability to pay when determining the penalty amount, and did not have a basis for a reduction of penalty based on an "inability to pay".

Despite EPA's determination that Lebanon could afford to pay the full proposed penalty of \$81,600, EPA chose to provide the City a financial credit for a portion of the total costs of damages experienced by Lebanon during Tropical Storm Lee in September 2011. That credit, which was applied for the purposes of recognizing Lebanon's financial situation, reduced the overall penalty paid by the City.

3. Green Infrastructure Project.

During settlement negotiations, a party who has violated environmental statutes and regulations may propose projects for consideration that can reduce a cash penalty. EPA encourages such projects but is limited as to the types of projects that it can consider as part of administrative settlement cases. Projects should provide an environmental benefit, and be performed or paid for by the party that violated the statute or regulation. To provide an opportunity for environmental benefit, EPA invited Lebanon to propose a green infrastructure project that would benefit the Chesapeake Bay for the purpose of reducing its penalty. Lebanon proposed a project; however, it was to be largely funded by private donors rather than the City. EPA explained to Lebanon that any penalty mitigation project would need to be funded by the City. To ensure fairness and equity among the regulated community, EPA does not accept "third-party" funding for penalty mitigation purposes. Where EPA mitigates penalties, it needs a mechanism to ensure that the project is completed by the responsible party. If a third-party funds a project, the Agency has no recourse against that entity if the funds are not spent and/or the project is not implemented. EPA carefully evaluated the proposal and determined that it did not comport with the requirements that EPA had previously explained to the City.

4. Conditional Removal of Fines.

The Clean Water Act and its implementing regulations at 40 C.F.R. Parts 122-124 do not authorize conditional removal of fines. We do not have the ability to conditionally remove these penalties. At this time, our focus is on ensuring compliance with the Clean Water Act (CWA) and the NPDES regulations. EPA is available to provide compliance assistance to municipalities as they implement their MS4 programs and will continue to work with the Commonwealth of Pennsylvania to ensure that permittees understand their compliance obligations.

5. City's Efforts to Maintain Compliance.

EPA has information demonstrating that the City has taken some efforts to comply with its Permit since EPA's issuance of the June 2011 Administrative Order for Compliance. These efforts included the October 2011 passage of a City Ordinance that regulates pollutants and prohibits non-stormwater discharges to the MS4, as well as City-wide efforts to educate the public about stormwater pollution. Lebanon continues to take additional steps to come into complete compliance with its Permit. In that regard, EPA has scheduled a meeting with the City for purposes of providing compliance assistance.

6. Lack of Pollution.

In the CAFO, Lebanon agreed that it was responsible for the following violations of its Permit: (1) failure to implement and enforce a program to detect and eliminate illicit discharges into the MS4; (2) failure to implement and enforce a program to reduce pollution in stormwater runoff to the MS4 from construction activities; (3) failure to implement and enforce a program to reduce pollution in stormwater runoff to the MS4 from new development and redevelopment; and (4) failure to implement an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations.

It is well-documented that non-compliance with the above types of permit violations does, over time, lead to environmental degradation. *See e.g.*, National Research Council, *Urban Stormwater Management in the United States* (2009) National Academy of Sciences http://www.nap.edu/catalog.php?record_id=12465. Accordingly, penalizing these violations is entirely appropriate.

7. Funding for Municipal Stormwater Programs

Many municipalities throughout the country have been successful at "self-funding" municipal stormwater programs by creating stormwater utilities. *See e.g.*, http://www.epa.gov/npdes/pubs/region3_factsheet_funding.pdf.