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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

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IN THE MATTER OF:

City of Altoona
1301 Twelfth Street, Suite 200
Altoona, PA 16601

Docket No. CWA-03-2018-0012DN

ADMINISTRATIVE ORDER FOR
COMPLIANCE ON CONSENT

Proceeding under Section 309 of the Clean
Water Act, 33 U.S.C. § 1319

I. STATUTORY AUTHORITY

1. This Administrative Order for Compliance on Consent (“AOCC” or “Order”), EPA Docket No. CWA 03-2018-0012DN, is issued to the City of Altoona, Pennsylvania (“the City”), under the authority vested in the United States Environmental Protection Agency (“EPA”) by Section 309(a) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(a). The Administrator has delegated this authority to the Regional Administrator of EPA Region III who in turn has delegated it to the Director of the Water Protection Division.

II. STATUTORY AND REGULATORY BACKGROUND

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except in compliance sections 301, 302, 306, 307, 318, 402, and 404 of the Act.
3. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the National Pollutant Discharge Elimination System (“NPDES”) program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides for the authorization of state programs to issue NPDES permits.
4. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Commonwealth of Pennsylvania to issue NPDES permits in 1978. In 1991, EPA authorized the Pennsylvania Department of Environmental Protection (PADEP) to issue General NPDES Permits.

5. On March 16, 2013, PADEP issued the “NPDES Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4s) General Permit” (PAG-13), which authorized the discharge of stormwater from small MS4s (“the 2013 Permit”). The 2013 Permit became effective starting March 16, 2013 and expires on March 15, 2018. In order to be eligible for coverage under the 2013 Permit, a regulated MS4 had to submit a Notice of Intent (“NOI”) to PADEP.
6. The City timely submitted its NOI for coverage under the 2013 Permit on September 7, 2012. Starting on the effective date of the 2013 Permit, March 16, 2013, the 2013 Permit (PAG-133662) thereafter authorized stormwater discharges from the City’s MS4.
7. Section 309(a) of the Act provides, *inter alia*, that where “the Administrator finds that any person is in violation of . . . any permit condition or limitation implementing [section 1311, 1312, 1316, 1317, 1318, 1328, or 1345 of this title] in a permit issued under section 1342 of this title by [her] or by a State, [she] shall issue an order requiring such person to comply with such section or requirement”. 33 U.S.C. § 1319(a)(3).
8. “Discharge of a pollutant” means “[a]ny addition of any ‘pollutant’ or combination of pollutants to ‘waters of the United States’ from any ‘point source’.” 40 C.F.R. § 122.2 See also 33 U.S.C. § 1362(12).
9. “Storm water” is defined as “storm water runoff, snow melt runoff, and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).
10. “Municipal separate storm sewer” is defined, in pertinent part, as “a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains): (i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes . . . ; (ii) Designed or used for collecting or conveying storm water; (iii) Which is not a combined sewer; and (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.” 40 C.F.R. § 122.26(b)(8).
11. The term “small municipal separate storm sewer system” or “small MS4” means “all separate storm sewers that are: (i) Owned or operated by the United States, a State, city, town, borough . . . or other public body (created by or pursuant to State law) having jurisdiction over disposal of . . . storm water. . . . ; [and] (ii) Not defined as ‘large’ or ‘medium’ municipal separate storm sewer systems.” 40 C.F.R. § 122.26(b)(16). See also 40 C.F.R. § 122.26(b)(17)-(19).
12. Small MS4s are regulated pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p) and the regulations promulgated thereunder. Pursuant to 40 C.F.R. § 122.26(a)(9)(i), a small MS4 must obtain an NPDES permit where such a permit is required pursuant to 40 C.F.R. § 122.32.

13. 40 C.F.R. § 122.32(a)(1) requires a permit if the “small MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census.”
14. The latest Decennial Census, conducted in 2010, includes Altoona, Pennsylvania as an urbanized area.

III. FINDINGS OF FACT AND JURISDICTIONAL ALLEGATIONS

15. The City is 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 AOCC, the City owned and/or operated a regulated small MS4, located in the City of Altoona, Pennsylvania.
17. The City’s MS4 discharged storm water into the Little Juniata River and Beaverdam Branch, both of which flow into the Juniata River. The Little Juniata River, the Beaverdam Branch, and the Juniata River (collectively, the “Altoona Receiving Waters”), constitute “waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and as that term is defined at 40 C.F.R. section 122.2.
18. Storm water discharges from the City’s MS4 to the Altoona Receiving Waters are permitted only in accordance with the terms and conditions of a NPDES permit.
19. The City’s MS4 constitutes a “point source” as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14).
20. The 2013 Permit at Part A.2.a requires permittees to “implement, enforce and report on the Stormwater Management Program (SWMP) as set forth in Appendix A. . .” It specifies that “[t]he SWMP as set forth in Appendix A of this permit contains DEP’s approved approach for satisfying each of the six [Minimum Control Measures (MCMs)]. The SWMP in Appendix A describes each MCM and the permit requirements, including BMPs and measurable goals. Permittees operating under this General Permit shall implement the SWMP in Appendix A in its entirety.” 2013 Permit at Part A.2.c (emphasis in original).
21. MCM #3 from Appendix A requires the City to “develop and implement a written program for the detection, elimination, and prevention of illicit discharges.” PAG-13, Appendix A., p. 4 (BMP #1) (emphasis in original). The program must contain procedures for illicit discharge detection and elimination. Id. The Permit also requires that “[r]ecords shall be kept of all outfall inspections, flows observed, results of field screening and testing, and other follow-up investigation and corrective action work performed under this program.” Id.

22. MCM #5 from Appendix A requires the permittee to “[e]nsure adequate operation and maintenance of all post-construction stormwater management BMPs installed at all qualifying development or redevelopment projects (including those owned or operated by the permittee).” 2013 Permit, Appendix A, at p. 10 (BMP #6).
23. MCM #6 from Appendix A requires the permittee to “[d]evelop, 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.” 2013 Permit, Appendix A, at p. 12 (BMP #2).
24. EPA and its representatives conducted an inspection of the City’s MS4 program on September 30 and October 1, 2014. During the inspection, EPA personnel requested documentation regarding the City’s implementation of its MS4 program. The City subsequently provided the requested documentation.
25. EPA personnel prepared an inspection report based on its investigation, which included the inspection, a review of the documentation provided, and other relevant information; EPA sent the City a copy of the inspection report on February 5, 2015.
26. On or about February 25, 2015, the City provided to EPA a written response to EPA’s inspection report.
27. The City neither admits nor denies the findings of fact and conclusions of law contained or referenced in this AOCC.
28. The City admits the jurisdictional allegations contained in this AOCC and agrees not to contest EPA’s jurisdiction to issue and enforce the terms of this AOCC.

IV. CONCLUSIONS OF LAW (VIOLATIONS)

29. Based upon the EPA’s inspection and investigation of the City’s MS4 program, described in Section III above, EPA determined that, for at least the period of March 16, 2013 to October 1, 2014, the City had not developed a written program for the detection, elimination, and prevention of illicit discharges as required by the 2013 Permit, Appendix A (MCM #3 BMP #1).
30. Based upon the EPA’s inspection and investigation of the City’s MS4 program, described in Section III above, EPA determined that, for at least the period of March 16, 2013 to October 1, 2014, the City had not adequately administered a post-construction stormwater management program as required by the 2013 Permit, Appendix A (MCM #5 BMP #6).

31. Based upon the EPA's inspection and investigation of the City's MS4 program, described in Section III above, EPA determined that, for at least the period of March 16, 2013 to October 1, 2014, the City had not developed or implemented a written O&M program as required by the 2013 Permit, Appendix A (MCM #6, BMP #2).
32. The failures described in paragraphs 29 through 31 above constitute the City's non-compliance with certain requirements of its SWMP in violation of the 2013 Permit.
33. Accordingly, for the reasons stated in paragraphs 29 through 32 above, the City has failed to comply with the terms of the 2013 Permit and therefore has violated Section 301 of the CWA, 33 U.S.C. § 1311.
34. Since EPA's 2014 inspection, the City has taken significant steps to improve its stormwater program. With respect to MCM #3, the City created a written standard operating procedure for illicit discharge detection and elimination, developed an outfall reconnaissance program, revised its GIS mapping, and developed map of entire stormwater system. With respect to MCM #5, the City passed a stormwater management ordinance. With respect to MCM #6, the City developed an operation and management plan for municipal facilities that the City identified.
35. In addition, the City has undertaken a green infrastructure project in partnership with the Blair County Conservation District and local schoolchildren to install a rain garden at a location that will improve stormwater drainage in the City and increase public education regarding stormwater management.

V. COMPLIANCE ORDER

Therefore, this 6th day of March, 2018, the City is hereby ORDERED, pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), and consents to conduct the following activities:

36. Written Program for Inspections of Illicit Discharges. Within thirty (30) days of the Effective Date, the City will submit to EPA the following documents:
 - a. A written program or standard operating procedure for illicit discharge detection and elimination to be implemented by the City that meets the requirements of Appendix A of the 2013 Permit; and
 - b. A hard copy of the GIS map of the City's MS4.

37. Written Program for Operation & Maintenance of Post-Construction Stormwater BMPs. Within thirty (30) days of the Effective Date, the City will submit to EPA the following documents:
- a. A copy of the stormwater management ordinance passed by the City Council;
 - b. A written program for operation and maintenance of post-construction stormwater BMPs to be implemented by the City; and
 - c. An inventory of all post construction BMPs and a written description of the City's tracking system to memorialize inspections.
38. Written Program for Operation & Maintenance of Municipal Operations. To address this issue, the City will submit to EPA the following documents:
- a. A list of all municipal facilities identified by the City;
 - b. A written operation and maintenance plan for municipal facilities to be implemented by the City; and
 - c. A written description of the system the City uses to track and document municipal facility inspections.
39. Documentation of Green Infrastructure Project (4th Street Rain Garden). The City will submit to EPA the following documents:
- a. Within thirty (30) days of the effective date of this agreement, a written statement verifying that Phase I of the 4th Street Rain Garden project has been completed pursuant to the plans provided to EPA on January 31, 2017 and is functioning as designed;
 - b. By December 18, 2018, unless a different date has been agreed in writing by EPA, a written statement verifying that Phase II of the 4th Street Rain Garden project has been completed pursuant to the plans provided to EPA on January 31, 2017 and is functioning as designed; and
 - c. Within thirty (30) days of the effective date of this agreement, and every ninety (90) days thereafter, a written verification that Phase I of the 4th Street Rain Garden project continues to function as designed and a written status update on Phase II of the 4th Street Rain Garden project. The requirement to provide this written verification will terminate on December 18, 2018 or the date agreed to in writing by EPA pursuant to Paragraph 39(b), whichever is later.
40. The City's failure to complete or comply with any requirement of this AOCC shall be deemed a violation of this Order.

41. All notices and submissions required under this AOCC shall be sent either via mail or electronically to:

Mr. Peter Gold
NPDES Enforcement Branch (3WP42)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
gold.peter@epa.gov

42. All submissions provided pursuant to this Order shall be signed by the City and shall include the following certification pursuant to 40 C.F.R. section 122.22:

“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.”

GENERAL PROVISIONS

43. The City waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review of this Order which the City may have with respect to any issue of fact or law set forth in this Order.
44. Issuance of this Order shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited.
45. This AOCC addresses only the violations described herein. EPA reserves the right to commence action against any person, including the City, in response to any condition not described herein that EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment.
46. This Order does not constitute a waiver or modification of the terms or conditions of any NPDES permit. Compliance with the terms and conditions of this Order does not relieve the City of its obligations to comply with any applicable federal, state, or local law or regulation.

47. EPA reserves any rights and remedies available to it under the CWA, 33 U.S.C. §§ 301 *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Order.
48. Violations of the terms of this Order may result in further EPA enforcement action for violations of this Order, and may subject the City to the imposition of administrative and/or civil penalties pursuant to 33 U.S.C. § 1319.
49. EPA reserves all existing 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.
50. The undersigned representative of the City certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this AOCC and to execute and legally bind that party to it.
51. All of the terms and conditions of this AOCC together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this AOCC, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire AOCC shall be null and void.

VI. EFFECTIVE DATE

52. This Order will become effective upon the City's receipt of a fully-executed copy of this Order unless modified or withdrawn.

VII. TERMINATION

53. This Order shall terminate when all conditions of this Order have been met.

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FOR THE CITY OF ALTOONA, PENNSYLVANIA

By: 

Name: Matt Pacifico

Title: Mayor

Date: 3-15-18

SO ORDERED:

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY

By: _____

Name: Catharine McManus

Title: Acting Director, Water Protection Division
U.S. EPA, Region III

Date: _____

FOR THE CITY OF ALTOONA, PENNSYLVANIA

By: _____

Name: _____

Title: _____

Date: _____

SO ORDERED:

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY

By: Catharine R. McManus

Name: Catharine McManus

Title: Acting Director, Water Protection Division
U.S. EPA, Region III

Date: 3/6/18

