

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

U.S. EPA REGION 3-RH
FILED-304162018aw/sg

IN THE MATTER OF:

Pennsylvania,
Department of Transportation
Keystone Building
400 North Street
Harrisburg, PA 17120

Docket No. CWA-03-2018-0038DN

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 03-2018-0008DN, is issued to the Pennsylvania Department of Transportation, Pennsylvania (“PennDOT”), 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 309 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 certain CWA sections 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 section or requirement.
3. 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.
4. 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.

5. 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.
6. Pursuant to Section 402(i) of the CWA, 33 U.S.C. § 1342(i), EPA retains its authority to take enforcement action within the Commonwealth of Pennsylvania for NPDES permit violations.
7. PennDOT, or "Respondent", is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
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. Discharges of stormwater associated with construction activity (construction sites) are regulated pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p) and the regulations promulgated thereunder.
11. Regulations implementing Pennsylvania's NPDES permitting program can be found in 25 Pa. Code Chapters 92a and 102. 25 Pa. Code § 102.5(a) provides in relevant part:

Other than agricultural plowing or tilling activities, animal heavy use areas, timber harvesting or road maintenance activities, a person proposing an earth disturbance activity that involves equal to or greater than 1 acre (0.4 hectare) of earth disturbance, or earth disturbance on any portion, part, or during any stage of, a larger common plan of development or sale that involves equal to or greater than 1 acre (0.4 hectare) of earth disturbance, shall obtain an individual NPDES Permit or coverage under general NPDES for Stormwater Discharges Associated with Construction Activities prior to commencing the earth disturbance activity

III. FINDINGS OF FACT AND JURISDICTIONAL ALLEGATIONS

9. : Respondent is an executive department of the Commonwealth of Pennsylvania, a "State" and therefore a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
10. 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 applicable Permit. Section 402(b) of the Act, 33 U.S. C. §1342(b), provides that the Administrator may authorize a state to issue an NPDES permit.

11. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Pennsylvania Department of the Environment (“PA DEP”) to issue NPDES permits in 1978, and to issue general NPDES permits in 1991.
12. Pursuant to its authorization to issue general NPDES permits, PA DEP first issued its General Permit for Stormwater Discharges Associated with Construction Activities (PAG-02) (“PAG-02”) on October 10, 1992.
13. Regulations implementing Pennsylvania’s NPDES permitting program can be found in 25 Pa. Code Chapters 92a and 102. 25 Pa. Code § 102.5(a) provides in relevant part

Other than agricultural plowing or tilling activities, animal heavy use areas, timber harvesting or road maintenance activities, a person proposing an earth disturbance activity that involves equal to or greater than 1 acre (0.4 hectare) of earth disturbance, or earth disturbance on any portion, part, or during any stage of, a larger common plan of development or sale that involves equal to or greater than 1 acre (0.4 hectare) of earth disturbance, shall obtain an individual NPDES Permit or coverage under general NPDES for Stormwater Discharges Associated with Construction Activities prior to commencing the earth disturbance activity.

14. PennDOT has obtained coverage from PA DEP for construction stormwater discharges at numerous highway project sites since PA DEP first issued the PAG-02. Permit coverage for a highway project site extends for a 5-year time period, unless otherwise extended.
15. PennDOT has additionally applied for and been granted permit coverage under individual permits (“Individual Permits”) issued by PA DEP for construction stormwater discharges at numerous highway project sites that do not qualify for coverage under the PAG-02.
16. At all times relevant to this Order, PennDOT was required to obtain coverage under the PAG-02 or an Individual Permit for any construction stormwater discharges from highway project sites that involved equal to or greater than 1 acre of earth disturbance, excluding road maintenance activity.
17. Attachment A, incorporated herein by reference, contains a non-exclusive list of highway project sites where PennDOT obtained coverage under the PAG-02 or an Individual Permit.
18. According to PennDOT, it retains contractors to construct its highway projects and requires these contractors to become co-permittees under the PAG-02 or Individual Permit coverage for the project. Furthermore, PennDOT asserts that its agreements with its contractors impose responsibility for complying with the permit terms and conditions on the contractors, including the responsibility to fully implement the required Best Management Practices (“BMPs”).

19. Pursuant to Section 402(i) of the CWA, 33 U.S.C. §1342(i), EPA retains its authority to take enforcement action within the Commonwealth of Pennsylvania for NPDES permit violations.
20. PA DEP has delegated authority to certain Pennsylvania County Conservation Districts (CCDs) to implement portions of the state's construction stormwater program.
21. EPA and the CCDs have performed inspections of certain PennDOT facilities subject to permit coverage under either the PAG-02 or the individual permits described above, and in Attachment A, on multiple dates since at least 2011. Following some of these inspections, EPA and the CCDs issued inspection reports that identified apparent violations of the PAG-02, the individual permits described above, and the CWA, as described in detail in Attachment A and summarized below.
22. EPA submitted two formal information requests to PennDOT, pursuant to section 308 of the CWA, 33 U.S.C. §1342(i), and PennDOT provided responses to those requests to EPA.
23. EPA sent a letter to PennDOT on March 31, 2016 inviting PennDOT to meet with EPA to confer and resolve PennDOT's potential violations of the Clean Water Act. PennDOT and EPA met on May 24, 2016, June 30, 2016, August 5, 2016 and November 21, 2016.
24. As a result of the information known to EPA from sources including its inspections, the CCD inspection reports, PennDOT's responses to EPA's section 308 inquiries and the information provided to EPA by PennDOT during the meetings described above, EPA concludes that PennDOT violated the terms and conditions of its permit coverages and the CWA by failing to perform self-inspections and recordkeeping and by failing to fully implement BMPs at multiple highway construction sites.

IV. CONCLUSIONS OF LAW (VIOLATIONS)

Failure to perform self-inspections and recordkeeping

25. Part A.2.a of the PAG-02, entitled "Visual Inspections" requires that the Respondent perform self-inspections, at least weekly and after each measurable precipitation event and document each inspection. Specifically, Part A.2.a in the most current version of the PAG-02 states that:

The permittee and co-permittee(s) must ensure that visual site inspections are conducted and documented weekly, and within 24 hours after each measurable stormwater event throughout the duration of construction and until the receipt and acknowledgement of the NOT by the Department or authorized conservation district. The visual site inspections and reports shall be completed on a form developed by the Department and conducted by qualified personnel, trained and experienced in erosion and sediment control, to ascertain that E&S, PCSM and PPC BMPs are properly constructed and maintained to effectively minimize pollution to the waters of the Commonwealth. A written report of each inspection shall be kept and include at a minimum:

(1) A summary of site conditions, E&S and PCSM BMPs, implementation and maintenance and compliance actions; and

(2) The date, time, name and signature of the person conducting the inspection.

26. Self-inspection and reporting requirements, substantially equivalent to those set forth in Part A.2.a of the contemporaneous version of the PAG-02 are contained in the Individual Permits, identified in Attachment A.
27. As set forth in Paragraph 24 above, and elaborated herein, EPA concludes that the self-inspection and record keeping requirements of the PAG-02 and the applicable Individual Permits, as described in Attachment A, were not fully satisfied, on at least 191 occasions, as summarized below:

Montgomery County, SR 202, Section 65N. Respondent failed to develop/maintain records of inspections on at least 50 occasions during the time period of March of 2012-October of 2013, including the following dates: 3/6/12; 4/20/12; 5/14/12 (report completed late); 5/31/12 (report completed late); and 10/1/12; 10/24/12. Moreover, six reports prepared by PennDOT were undated and unsigned. Additionally, according to PennDOT's 308 response, the site was active until 10/31/13. PennDOT provided no self-inspection reports for the time period from 12/1/12 through 10/31/13.

Pike County, SR 201. Respondent failed to develop/maintain records of inspections on 15 occasions during the time period of January of 2012-October of 2012, on or about the following dates: 1/16/12; 2/10/12; 2/17/12; 3/21/12; 6/22/12; 7/6/12; 8/13/12; 9/20/12; 9/28/12; 10/1/12; 10/4/12; 10/12/12; 10/19/12; 10/25/12; and 10/31/12.

Washington County, I70, Section Y20. Respondent failed to develop/maintain records of inspections on 49 occasions during the time period of January of 2012-December of 2013, on or about the following dates: 1/12/12; 1/19/12; 3/14/12; 3/26/12; 4/ 2/12; 5/3/12; 5/25/12; 6/4/12; 6/13/12; 7/6/12; 7/23/12; 7/30/12; 9/3/12; 9/6/12; 9/10/12; 9/20/12; 11/14/12; 12/6/12; 12/12/12; 12/19/12; 1/17/13; 1/30/13; 2/6/13; 3/7/13; 3/20/13; 4/18/13; 4/26/13; 5/9/13; 5/27/13; 5/30/13; 6/27/13; 7/2/13; 7/12/13; 7/29/13; 8/21/13; 9/20/13; 10/8/13; 10/18/13; 10/25/13; 11/1/13; 11/8/13; 11/15/13; 11/19/13; 11/28/13; 12/6/13; 12/13/13; 12/16/13; 12/23/13; and 12/31/13.

Berks County, SR 183 & SR 222. Respondent failed to develop/maintain records of inspections on 17 occasions during the time period of January 2012-August 2013 on or about the following dates: 1/23/12; 5/7/12; 5/28/12; 7/6/12; 7/13/12; 7/25/12; 8/7/12; 8/16/12; 12/11/12; 12/31/12; 2/12/13; 3/18/13; 6/12/13; 7/15/13; 8/9/13; 8/14/13 and 8/30/13.

Lehigh County, SR 2045, Section 01B. Respondent failed to develop/maintain records of inspections on 9 occasions during the time period of February 2012 to October 2012 on or about the following dates: 2/11/12; 5/3/12; 7/3/12; 9/13/12; 9/20/12; 9/23/12; 10/4/12; 10/9/12; and 10/18/12.

Lehigh County, RT 309, Section 7S. Respondent failed to develop/maintain records of inspections on 12 occasions during the time period of January of 2013-July of 2013 on or about the following dates: 1/14/13; 1/17/13; 2/11/13; 2/21/13; 3/14/13; 3/20/13; 4/15/13; 4/22/13; 5/1/13; 5/30/13; 6/12/13; and 7/3/13.

Lehigh County, SR 145 & RT 22. Respondent failed to develop/maintain records of inspections on 23 occasions during the time period of June of 2012 – February of 2013 on or about the following dates: 6/22/12; 7/5/12; 8/2/12; 8/16/12; 8/31/12; 9/5/12; 9/28/12; 10/4/12; 10/12/12; 10/19/12; 10/26/12; 11/2/12; 11/9/12; 11/16/12; 11/23/12; 11/30/12; 12/7/12; 12/14/12; 1/13/13; 1/18/13; 2/1/13; 2/8/13 and 2/15/13.

Montgomery County, SR 202, Section 711. Respondent failed to develop/maintain records of inspections on 16 occasions during the time period of January of 2012 to November of 2012 on or about the following dates: 1/6/12; 1/25/12; 3/5/12; 3/23/12; 5/4/12; 5/14/12; 7/17/12; 7/30/12; 8/2/12; 8/16/12; 9/6/12; 9/10/12; 9/20/12; 10/1/12; 10/24/12; and 11/15/12.

28. The failure to perform self-inspections and/or recordkeeping are violations of Part A.2.a of PAG-02 and the relevant sections of the Individual Permits, and are therefore violations of Sections 301 and 402 of the CWA.

Failure to implement BMPs

29. Part A.1.b of the most current version of PAG-02, entitled “Applicable Effluent Limitations” requires that:

Activities covered under this permit must comply with applicable effluent limitations established in 25 Pa. Code Chapters 91, 92a, 93, 96, 102, and 105 and any applicable federal law or regulation, including the effluent guidelines for construction at 40 CFR Part 450.

30. 40 CFR Section 450.21, requires that regulated construction-related point sources implement erosion and sediment controls, soil stabilization, dewatering, and pollution prevention activities.
31. 25 Pa. Code Section 102.4 requires the installation and maintenance of BMPs, including inlet protection, silt socks, stormwater management basins, maintaining the limits of disturbance, the containment of concrete wash water and rock entrance controls.
32. 25 Pa. Code Section 102.22 requires site stabilization activities.
33. Applicable Effluent Limitations, similar to those set forth in Part A.1.b are contained in the Individual Permits described in paragraph 14, above, and in the permits specifically identified in Attachment A.

34. As set forth in Paragraph 24 above, and elaborated herein, EPA concludes that the BMP requirements set forth in the Applicable Effluent Limitations, as required by PAG02 and the applicable Individual Permits, were not fully satisfied. While PennDOT contracted with others to fully implement the BMPs required by the permits as described in paragraph 18 above, EPA concludes that PennDOT nonetheless remained obligated to implement the BMPs and is liable for the failure of the BMPs to be fully implemented. As summarized below, and described more fully in Attachment A, EPA concludes that the Applicable Effluent Limitations were violated on at least 18 occasions:

Washington County, I70/I79 on or about: 10/11/13; 11/20/13; and 5/6/14;
Washington County, SR 519 on or about: 3/2/15; 3/19/15; 6/25/15; and 3/3/16;
Lehigh County, RT 309, Section 07S, on or about: 7/29/13; 5/19/15;
Luzerne County, Airport Beltway, on or about: 3/6/13;
Lehigh County, RT 22 and SR 145, on or about: 2/13/13; 2/21/13; 6/28/13; 11/27/13;
5/1/14; and 5/19/14;
Armstrong County, Theater Road, on or about: 5/4/15; and 5/28/15.

35. These failures to fully comply with the Applicable Effluent Limitations are violations of Part A.1.b of PAG-02 and the relevant sections of the Individual Permits, and are therefore violations of Sections 301 and 402 of the CWA.

V. COMPLIANCE ORDER

Therefore, this 30 day of August, 2018, PennDOT 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. PennDOT shall comply with the Compliance Management Program identified in Attachment B to this AOCC.
37. In order to mitigate environmental damages that might have occurred as a result PennDOT's non-compliance with the terms of PAG 02 cited above, PennDOT has agreed to undertake an environmentally beneficial project within the Codorus Creek Watershed which is impaired due to sediment. This beneficial project would not otherwise be required for PennDOT construction projects. The project will include BMP siting, design, permitting, acquisition of property interests, construction, and twenty additional years of post-construction maintenance. PennDOT shall make no less than \$750,000 available for this project. PennDOT has begun its process for procuring a contractor in anticipation of the entry of this Order. If not already awarded, PennDOT will award a contract for the project no later than 30 days after the Effective Date and commence implementation according to the schedule described in Attachment C. PennDOT may submit to EPA a request for an extension of time. The request must contain a paragraph explaining the need for the time extension and the amount of additional time needed. EPA will respond within ten days of the receipt of PennDOT's request.

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

Mr. Chuck Schadel
NPDES Enforcement Branch (3WP42)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
schadel.chuck@epa.gov

39. All submissions provided pursuant to this Order shall be signed by PennDOT 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.”

VI. GENERAL PROVISIONS

40. PennDOT waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review of this Order which PennDOT may have with respect to any issue of fact or law set forth in this Order.
41. 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.
42. This AOCC addresses only the violations described herein. EPA reserves the right to commence action against any person, including PennDOT, 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.
43. 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 PennDOT of its obligations to comply with any applicable federal, state, or local law or regulation.
44. 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.

45. Violations of the terms of this Order may result in further EPA enforcement action for violations of this Order, and may subject PennDOT to the imposition of administrative and/or civil penalties pursuant to 33 U.S.C. § 1319.
46. 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.
47. The undersigned representative of PennDOT 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.
48. 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.
49. PennDOT neither admits nor denies the findings of fact and conclusions of law contained or referenced in this AOCC.
50. PennDOT 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.

VII. EFFECTIVE DATE

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

VIII. TERMINATION

52. This Order shall terminate five (5) calendar years after the electronic tracking system for Stormwater Compliance Data is implemented.

FOR THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

By:



Name: George W. McAuley, P.E.

Title: Deputy Secretary for Highway Administration

6/20/18 _____

Date:

SO ORDERED:

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY

By:

Dominique Luekenhoff

Name:

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

Date:

FOR THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

By: _____

Name: _____

Title: _____

Date: _____

SO ORDERED:

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY

By: *Dominique Lueckenhoff*

Name: Dominique Lueckenhoff

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

Date: 7/11/2018

**ATTACHMENT A
PENNDOT-VIOLATION SUMMARY TABLE**

COUNT 1: Failure to perform self-inspections and/or recordkeeping.

Based on PennDOT's response to the 308 Information Request Letter, EPA has identified the violations identified in the table below.

County/Site (Coverage Approval Date)	Evidence (Self-inspection reports missing from PennDOT's 308 Responses)
Berks County SR 183 & SR 222 <u>PAG2-0006-09-021</u> (Oct 27, 2009)	Chapter 102.8. There are 17 missing reports.
Lehigh County/ SR 2045-Section 01B- <u>PAI-0239-10-001</u> (June 2, 2010)	Chapter 102.8. There are 9 missing reports.
Lehigh County Rt 309 Sec 7S- <u>PAI-0239-11-020</u> (Sept. 5, 2012)	Chapter 102.8. There are 12 missing reports.
Lehigh Vounty SR 145 & Rt 22- <u>PAG 02-0039-12-009</u> (Aug. 24, 2012)	Chapter 102.8. There are 23 missing reports.
Montgomery County/ SR202-Section 711 <u>PAG2-0046-07-076-1</u> (Jan. 31, 2008)	Chapter 102.8. There are 16 missing reports.
Montgomery County/ SR202-Section 65N <u>PAG02-0046-041-62</u> (Feb. 9, 2009)	Chapter 102.8. There are 50 missing reports.
Pike County SR 2001 Sec <u>PAI 025-2060-11</u> (Jan. 2, 2009)	Chapter 102.8. There are 15 missing reports.
Washington County/I70-Section Y20 <u>PAI-0563-09-002</u> (Feb. 16, 2010)	Chapter 102.8. There are 49 missing reports.

TOTAL: 191

COUNT 2: Failure to fully comply with the Applicable Effluent Limitations.

SITE (Coverage Approval Date)	EVIDENCE
Armstrong County-Theater Road- <u>PAG 02-000312002</u> (May 15, 2012)	<p>5/4/15-Chapter 102.4-Failure to implement BMPs including, but not limited to, silt socks.</p> <p>Chapter 102.22-Failure to stabilize, including, but not limited to, inactive areas.</p> <p>5/28/15-Chapter 102.4-Failure to implement BMPs including, but not limited to, silt socks.</p> <p>Chapter 102.22-Failure to stabilize, including but not limited to, inactive areas.</p>
Lehigh County-Rt 22 & SR 145- <u>PAG 02-0039-12-009</u> (Aug. 24, 2012)	<p>2/13/13 - Chapter 102.4-Failure to maintain BMPs, including, but not limited to, silt fence and rock construction entrances.</p> <p>-Chapter 102.22-Failure to stabilize, including, but not limited to, inactive areas.</p> <p>2/21/13- Chapter 102.22-Failure to stabilize, including, but not limited to, slopes, swales and inactive areas.</p> <p>-Chapter 102.4 -Failure to maintain BMPs, including, but not limited to, silt fence and rock construction entrances.</p> <p>6/28/13 - Chapter 102.4 -Failure to maintain BMPs, including, but not limited to, silt fence and stone check dams.</p> <p>- Chapter 102.22-Failure to stabilize, including, but not limited to, stockpiles and swales.</p> <p>11/27/13- Chapter 102.4 -Failure to install BMPs, including, but not limited to, silt fence and rock construction entrances.</p> <p>- Chapter 102.4 -Failure to maintain BMPs, including, but not limited to, silt fence, rock construction entrances and inlet filters.</p> <p>- Chapter 102.4 -Failure to implement BMPs, including, but not limited to, the sequence of construction.</p> <p>- Chapter 102.22- Failure to stabilize, including, but not limited to, swales and inactive areas.</p>

<p>Lehigh County-Rt 22 & SR 145-<u>PAG 02-0039-12-009</u> (Aug. 24, 2012)</p>	<p>5/1/14 - Chapter 102.4 - Failure to install BMPs, including, but not limited to, rock inlets and silt fence. - Chapter 102.22-Failure to stabilize, including, but not limited to, swales and inactive areas. - Chapter 102.4 -Failure to maintain BMPs, including, but not limited to, silt fence and rock construction entrances. 5/19/14- Chapter 102.4 -Failure to maintain BMPs, including, but not limited to, silt fence and rock construction entrances. Chapter 102.22- Failure to stabilize, including, but not limited to, swales and inactive areas.</p>
<p>Lehigh County-Rt 309 Sec 075-<u>PAI 0239 11 020</u> (Sept. 5, 2012)</p>	<p>7/29/13-Chapter 102.22-Failure to stabilize, including, but not limited to, inactive areas. Chapter 102.4-Failure to implement BMPs, including, but not limited to, maintaining the limits of disturbance of construction and containment for concrete wash water. Chapter 102.4-Failure to install BMPs including, but not limited to, compost socks. Chapter 102.4 Failure to maintain BMPs, including, but not limited to, inlet protection and rock entrance control. 5/19/15-Chapter 102.22-Failure to stabilize, including, but not limited to, rain gardens and slopes.</p>
<p>Luzerne County-Airport Beltway <u>PAI 02 4010 009</u> (Oct. 20, 2011)</p>	<p>3/6/13-Chapter 102.4-Failure to install BMPs, including, but not limited to, rock filters, Chapter 102.22-Failure to stabilize, including, but not limited to, swales.</p>
<p>Washington County I70/I79 South Junction-<u>PAI 05 6310 004</u> (May 11, 2011)</p>	<p>10/11/13 - Chapter 102.4-Failure to maintain BMPs, including, but not limited to, inlet protection. Chapter 102.4-Failure to implement BMPs, including, but not limited to, silt socks. 11/20/13 - Chapter 102.22-Failure to stabilize, including, but not limited to, slopes. Chapter 102.4-Failure to implement BMPs, including, but not limited to, inlet protection. Chapter 102.4-Failure to maintain BMPs, including, but not limited to, silt sock traps. 5/6/14- Chapter 102.4-Failure to maintain BMPs including, but not limited to, inlet protection. Chapter 102.4-Failure to maintain BMPs, including, but not limited to, swale matting.</p>
<p>Washington County SR 519-<u>PAI 05 6312 007</u> (Oct. 1, 2013)</p>	<p>3/2/15 - Chapter 102.4-Failure to implement BMPs, including, but not limited to, maintaining the limits of disturbance of construction. Chapter 102.4-Failure to install BMPs including, but not limited to, install stormwater management basins. 3/19/15 - Chapter 102.4-Failure to implement BMPs, including, but not limited to, maintaining the limits of disturbance of construction. Chapter 102.4-Failure to install BMPs, including, but not limited to, silt socks. 6/25/15 - Chapter 102.4-Failure to maintain effective BMPs, including, but not limited to, compost socks. 3/3/16 - Chapter 102.4-Failure to install BMPs, including, but not limited to, stormwater management basins. Chapter 102.4-Failure to maintain BMPs, including, but not limited to, stormwater management basins</p>
<p>York County / SR 083-South Junction <u>PAR 10 Y622</u> (Nov 22, 2002)</p>	<p>1/26/12 - Chapter 102.22- Failure to stabilize, including, but not limited to, slopes.</p>

Attachment B

PennDOT Proposed Compliance Management Program

The Pennsylvania Department of Transportation (PennDOT) shall develop and implement a Compliance Management Program (CMP) consisting of the elements described below according to the cited schedule. The purpose of the CMP shall be to ensure that PennDOT construction activities meet the requirements of their National Pollutant Discharge Elimination System (NPDES) permits for the discharge of stormwater.

1. Designation of Department Compliance Manager. The Deputy Secretary for the Highway Administration shall serve as the Department Compliance Manager. The Department Compliance Manager shall be charged with implementation of the CMP, including monitoring and reporting compliance status of construction activities managed by the PennDOT Districts. Specifically, the PennDOT Department NPDES Compliance Manager shall do the following for the duration of this Administrative Order for Compliance on Consent (AOCC).
 - a. Ensure implementation of the Compliance Management Program by PennDOT, including its Districts.
 - b. After the electronic tracking system for Stormwater Compliance Data is implemented and continuing through the duration of this AOCC, submit a quarterly report to the Secretary of PennDOT and a semi-annual report to EPA. These semi-annual report submittals to EPA are to be used by EPA to document the effectiveness of the PennDOT Compliance Management Program. The reports shall include a summary of the following statistics for each PennDOT District.
 - i. Number of active NPDES permits.
 - ii. Number of notices of intent (NOIs) submitted and number of notices of termination (NOTs) submitted.
 - iii. Number of self-inspections conducted and number of self-inspections missed.
 - iv. Number and type of self-audits of construction site compliance performed by PennDOT or third parties;
 - v. Number of self-audited construction sites with a Written Response Required (WRR) Audit Finding that was not addressed within one week of the audit.
 - vi. Number of inspections conducted by EPA, Pennsylvania Department of Environmental Protection, County Conservation Districts or any other authorized agencies (hereinafter, "Regulatory Agencies"); and
 - vii. Number of inspections conducted by Regulatory Agencies where deficiencies have been noted.
 - viii. Number of enforcement actions issued or commenced against PennDOT by Regulatory Agencies, including but not limited to Notices of Violation (NOVs), Penalty Actions and Compliance Orders. Copies of the notices issuing or commencing such enforcement actions, or electronic links thereto, shall be attached to the report.

- c. Ensure that Districts take appropriate action to correct site or facility non-compliance and/or unacceptable performance.
 - d. Ensure that stormwater-related contract compliance requirements are executed as detailed in Section 3, below.
 - e. Ensure implementation of a Department Stormwater Inspection Training Program as detailed in Section 4, below.
 - f. Ensure implementation of a Stormwater Audit Program as detailed in Section 5 below.
 - g. Ensure implementation of a Compliance Response Policy as detailed in Section 6 below.
 - h. Ensure implementation of a Stormwater Compliance Tracking System as detailed in Section 7 below.
2. Designation of District Compliance Manager. The District Executives in each of the PennDOT's engineering districts shall serve as the District Compliance Manager and be responsible for ensuring implementation of the CMP within their respective Districts. The District Compliance Manager shall be charged with implementation of the Compliance Management Program at the District level, implementation of the construction site audit program in the District, monitoring and reporting compliance status of construction projects in the District, and taking appropriate action to correct construction site non-compliance. Specifically, the District Compliance Manager shall do the following for the duration of this AOCC.
- a. Ensure District-level implementation of the Compliance Management Program.
 - b. Compile and monitor compliance statistics for each NPDES-permitted site in the District and report findings to the Department Compliance Manager. The compliance statistics shall be established by the central office and shall include at a minimum the elements in Section 1.b above.
 - c. Ensure implementation at the District level of the Compliance Response Policy detailed in Section 6 below by:
 - i. Ensuring that deficiencies identified through any inspection (including self-inspection, Regulatory Agency inspection, Stormwater Audits, or Regulatory Agency compliance actions) are identified to appropriate District Management and staff.
 - ii. Ensuring that appropriate Corrective Action is taken and that sites are brought into compliance within the time-frames specified in the Compliance Response Policy.
 - iii. Informing relevant District Management of identified deficiencies and actions taken to address them.
 - d. Ensure implementation at the District level of stormwater related contract compliance requirements detailed in Section 3 below.
 - e. Ensure implementation at the District level of a Stormwater Inspection Training Program as detailed in Section 4 below.

- f. Ensure implementation at the District level of a Stormwater Audit Program as detailed in Section 5 below.
 - g. Ensure implementation at the District level, including data completeness and accuracy, of a Stormwater Compliance Tracking System as detailed in Section 7 below.
 - h. Prepare quarterly reports to Department Compliance Manager regarding District performance and compliance with the requirements of the Stormwater Compliance Program and the terms of this agreement.
3. Stormwater Construction Contracting. Within six (6) months of the effective date of this Consent Agreement, PennDOT shall revise and modify PennDOT construction-related contract language to ensure that incentives for compliance with NPDES construction permit requirements are present in all future contracts for all projects requiring an NPDES construction permit. The revised contract language shall be consistent with the requirements of the Compliance Response Policy required by Section 6 below. PennDOT shall submit the revised contract language to EPA for review and comment. Upon receipt and consideration of EPA comments, PennDOT shall begin including revised contract language in all highway construction-related contract documents and shall continue for at least the duration of this AOCC. Construction-related contract language shall at a minimum provide PennDOT adequate authority to do the following.
- a. Require the contractor to take immediate corrective action upon notification by PennDOT of any noncompliance with the Erosion and Sedimentation (E&S) Plan for the project.
 - b. Order any contractor who refuses to promptly comply with E&S Plan requirements, following notification of E&S noncompliance, to stop all or part of the construction work until the corrective action has been taken.
 - c. Withhold payment for work completed until the requirements of the E&S plan are met.
4. Stormwater Inspection Training. PennDOT shall develop and implement a Stormwater Inspection Training program that provides detailed instruction as to proper methodology for inspecting highway construction projects for compliance with E&S control plans. The Stormwater Inspection Training program shall be developed within six (6) months of the effective date of this consent agreement. PennDOT shall submit a copy of the training program to EPA. Thereafter, for the duration of this AOCC, PennDOT shall do the following.
- a. Ensure that its existing construction and compliance staff involved in inspecting E&S controls receive the full Stormwater Inspection Training within one (1) year of its development.
 - b. Ensure that all newly-hired employees whose work involves such inspections receive the training within the first year of their employment by PennDOT.

- c. Offer the training to all County Conservation District staff state-wide at least twice per calendar year for no less than each of the five (5) calendar years following development of the training.
 - d. Provide an annual report to EPA identifying the number of individuals who receive the training each year, broken out by PennDOT staff; County Conservation District staff; and any other attendees.
5. Stormwater Self-Audit Program. PennDOT shall implement a Stormwater Self-Audit Program that covers all construction projects actively engaged in earth disturbance activity requiring an NPDES stormwater permit pursuant to 25 Pa. Code §102.5. The data obtained from this program shall be used to monitor the compliance status of construction sites, to monitor the basis for taking necessary corrective action for a site or contractor, and to determine the effectiveness of self-monitoring by site personnel. PennDOT shall submit a copy of the procedures and audit documentation for the Stormwater Self Audits to EPA for review and comment no later than six (6) months after the execution of this AOCC. After the electronic tracking system for Stormwater Compliance Data is implemented, PennDOT shall implement this program following receipt and consideration of EPA comments, and shall continue its implementation for the duration of this AOCC. The Stormwater Self-Audit Program shall at a minimum contain the following elements.
- a. Field Inspections. Field Inspections shall consist of the visual site inspections required by the NPDES stormwater permit for the construction project. Field Inspections may be performed by PennDOT personnel, PennDOT consultants and/or PennDOT contractors. PennDOT shall enhance these inspections by developing a mobile application for use with the electronic self-inspection form required by Section 7.b below.
 - b. District Self-Inspections. District Self-Inspections shall use the same processes and procedures as Field Inspections. District Self-Inspections shall be performed by appropriately trained PennDOT personnel or PennDOT consultants, other than the personnel or consultants assigned to regularly perform the Field Inspections for the construction project. PennDOT shall perform at least one District Self-Inspection per construction project covered by the Stormwater Self-Audit Program each construction season. Additional District Self-Inspections may be required by the Compliance Response Policy to be developed pursuant to Section 6 below.
 - c. Stormwater Self Audits. Stormwater Self Audits shall be performed by appropriately trained PennDOT personnel or consultants, other than the personnel or consultants assigned to regularly perform the Field Inspections or the District Self-Inspections for the construction project, and shall be unannounced. Stormwater Self Audits shall be performed as follows.
 - i. At least one audit per construction project covered by the Stormwater Self-Audit Program each construction season.
 - ii. A follow-up audit (and subsequent follow-up audits as needed) whenever an audit for a construction project produces a written response required (WRR) audit finding.

- d. Audit Procedures. The procedures for the Stormwater Self Audits shall at a minimum address the following.
 - i. E&S controls are installed in accordance with the approved E&S plan for the project.
 - ii. All project-related work is within the NPDES permit boundary.
 - iii. The as-designed construction sequence is being followed unless otherwise approved by the appropriate agency.
 - iv. Inactive areas are temporarily stabilized in accordance with the requirements of the permit and 25 Pa. Code 102.22 (a) or (b) (relating to site stabilization) as applicable.
 - v. E&S controls remain installed and maintained until permanent stabilization is achieved or their removal is approved by the appropriate agency.
 - vi. Review of self-inspection reports (Field Inspection) to ensure that they are completed as required and accurately reflect field conditions.
 - vii. Review of regulatory agency inspection reports and compliance actions.
 - viii. Review of all corrective actions taken at the site in response to self-inspection reports, regulatory agency inspection reports, and regulatory agency compliance actions for the construction project.
 - e. Audit Documentation. The documentation for the Stormwater Self Audits shall at a minimum address the following.
 - i. Reporting of audit findings to site personnel, the District Compliance Manager, and the Department Compliance Manager.
 - ii. Corrective actions taken at the site.
 - iii. Deficiencies not corrected in accordance with the Compliance Response Policy specified in Section 7.
 - iv. Metrics to track site and District performance including at a minimum the number and type of audit findings; the number of WRR audit findings; the number of WRR audit findings not timely addressed, and the number of times the contractor's checklist did not meet field conditions.
 - f. Definition of "Construction Season." For purposes of this CMP, the term "construction season" means the period of the year beginning each Spring or late Winter when the weather becomes favorable for highway construction and ending in the late Autumn or early Winter when the weather is no longer favorable.
6. Compliance Response Policy. PennDOT shall develop and implement a Compliance Response Policy that covers all its construction projects requiring an NPDES stormwater permit pursuant to 25 Pa. Code §102.5. The Compliance Response Policy shall address PennDOT's expectations regarding actions to be taken by PennDOT personnel, PennDOT consultants and PennDOT contractors in response to documented violations or recurring compliance problems. PennDOT shall submit a draft copy of this policy to EPA for review and comment no later than six (6) months from the effective date of this AOCC. PennDOT shall implement this policy following receipt and consideration of EPA

comments, and shall continue its implementation for the duration of this AOCC. At a minimum, the policy shall detail the following.

- a. Categories of deficiencies (e.g., deficiencies resulting in significant discharge of pollutants, deficiencies that could result in significant discharge of pollutants, failure to comply with approved E&S plans, county conservation district concerns regarding design and/or construction of BMPs, failure to perform weekly or rain event inspections).
- b. Expected corrective action responses and time-frames for each category of violations.
- c. Expected actions against PennDOT contractors for chronic or serious non-compliance (e.g., stop work and withholding of payment).
- d. An escalation process to resolve concerns raised by County Conservation District.

A table summarizing the anticipated policy is attached hereto as "CMP Attachment 1. Summary of Compliance Response Policy."

7. Stormwater Compliance Data. No later than the second anniversary of the effective date of this AOCC, PennDOT shall develop and implement an electronic tracking system to aid compliance with the requirements of NPDES stormwater permits for construction projects. PennDOT shall maintain the Stormwater Compliance Data for at least the duration of this AOCC. The Stormwater Compliance Data shall include, at a minimum, the following elements.
 - a. Identification of highway construction projects including an identification code for the project and the location of the project by county and route number.
 - b. An electronic self-inspection form.
 - c. Dates for the following.
 - i. Submission of the notice of intent.
 - ii. Application for an individual permit.
 - iii. Approval of permit coverage.
 - iv. Start of earth disturbance activity.
 - v. Permit extension, revision or reissuance.
 - vi. Submission of the notice of termination.
 - vii. Approval of the notice of termination.
 - viii. Completed self-inspections.
 - ix. Alerts sent to District Compliance Managers for missed weekly inspections.
 - x. Regulatory Agency inspections where deficiencies were identified and completion of the associated corrective actions. Each deficiency will be assigned a unique identifier for purposes of tracking the associated corrective action completion date.
 - xi. Compliance actions against PennDOT from Regulatory Agencies (e.g., NOV, Compliance Orders, etc.)
8. Public Information Portal. PennDOT shall develop a Public Information Web Page. PennDOT shall implement the Public Information Web Page upon implementation of the

Stormwater Compliance Data System and maintain it for at least the duration of this AOCC. The information to be made available on the Public Information Web Page shall include the following.

- a. Identification of highway construction projects including an identification code for the project and the location of the project by county and route number;
- b. Dates for the following.
 - i. Submission of the notice of intent.
 - ii. Application for an individual permit.
 - iii. Approval of permit coverage.
 - iv. Start of earth disturbance activity.
 - v. Permit extension, revision or reissuance.
 - vi. Submission of the notice of termination.
 - vii. Approval of the notice of termination.
 - viii. Regulatory Agency inspections where deficiencies were identified and completion of the associated corrective actions. Each deficiency will be assigned a unique identifier for purposes of tracking the associated corrective action completion date.
 - ix. Compliance actions against PennDOT from Regulatory Agencies (e.g., NOV's, Compliance Orders, etc.).

PennDOT shall update the information on the Public Information Web Page within thirty (30) days of each quarterly report submitted to the Department Compliance Manager. PennDOT shall ensure that such information remains available to the public on the portal until at least three years after the notice of termination is approved.

9. If PennDOT determines that it will be unable to implement any element of the CMP by the specified deadline, PennDOT shall promptly provide EPA with an explanation of the technical or other issues causing the delay and a request for an extension. PennDOT shall provide EPA with written notice upon implementing all elements of the CMP. Modifications to the CMP may be proposed for EPA review and approval at any time during the duration of this AOCC. This AOCC shall terminate five (5) calendar years after the electronic tracking system for Stormwater Compliance Data is implemented.

**Statement of Work for Invitation to Bid (IFB)
6100045061**

**Sediment Impairment Reduction – Design,
Build, Operate, & Maintain**

Codorus Creek Watershed, York County, PA

Table of Contents

- 1. General Information**
- 2. Scope of Work**
- 3. Standard Specifications**
- 4. Bid Requirements**
- 5. Invoicing and Billing Instructions**

1. General Information

Project Location

Codorus Creek Watershed, York County, Pennsylvania.

Definitions

The following words and terms, when used in this Statement of Work, have the following meanings, unless the context clearly indicates otherwise.

BMP. A best management practice. BMPs related to stormwater discharge are sometimes also referred to as stormwater control measures.

CCD. County Conservation District

Codorus Creek Watershed. The area of York County, Pennsylvania that drains into the Codorus Creek. The Codorus Creek Watershed is a subwatershed of the Susquehanna River Basin, which is part of the Chesapeake Bay Watershed.

Construction. When used to denote a period of time, construction means the period that begins when physical work starts on the BMPs identified in the final PRP and ends when the vendor supplies PennDOT with as-built records sealed by a licensed professional documenting that all BMPs have been fully constructed.

Direct Nexus. A connection between a BMP and a water quality improvement sufficient that PADEP and EPA will allow credit to PennDOT for the BMP for purposes of complying with MS4 permit requirements and the Chesapeake Bay Total Maximum Daily Load.

EPA. The United States Environmental Protection Agency.

Long Term Operation and Maintenance. Operating and maintaining a BMP on an ongoing basis following post-construction as required by the DEP Guidance Documents for PennDOT to receive credit for the reductions under an NPDES MS4 PRP.

MS4. Municipal Separate Storm Sewer System.

NPDES. National Pollutant Discharge Elimination System.

PADEP. The Commonwealth of Pennsylvania, Department of Environmental Protection.

PADEP Guidance Documents. PADEP documents that provide guidance for calculating sediment reduction and for developing PRPs and TMDL plans, along with any updates to them. To the extent that these documents conflict, the most recent controls. Most of the PADEP Guidance Documents are available on PADEP's eLibrary (www.elibrary.dep.state.pa.us) in the "Technical Guidance Final Documents" and the permit and authorization packages for general and individual NPDES permit applications for MS4s. The following PADEP Guidance Documents are of particular importance to this Statement of Work:

- PRP Instructions (Document 3800-PM-BCW0100k Rev. 3/2017)

- TMDL Plan Instructions (Document 3800-PM-BCW0200d Rev. 3/2017)
- BMP Effectiveness Values (Document 3800-PM-BCW0100mm Rev. 5/2016)

PennDOT. The Commonwealth of Pennsylvania, Department of Transportation.

Post-Construction. When used to denote a period of time, post-construction means the period of time that begins at the end of construction and ends only when both of the following occur:

- The vendor has met all of its obligations described in paragraph 9 of the Scope of Work below for all BMPs;
- All entities identified by the vendor to comply with paragraph 4 of the Scope of Work below begin long term operation and maintenance of the BMPs.

PRP. Pollutant Reduction Plan.

Sediment Reduction Credit. Credit in accordance with the PADEP Guidance Documents toward PennDOT's current, future or anticipated obligations to reduce sediment discharging to the Chesapeake Bay measured for purposes of this Statement of Work in pounds of sediment reduced.

TMDL. Total Maximum Daily Load.

Urbanized Area. An area identified as urbanized by the 2010 United States Decennial Census.

Vendor. The awarded bidder. In the terms and conditions and standard specifications included elsewhere in this IFB, the vendor may also be referred to as the "vendor."

USACE. The United States Army Corps of Engineers.

YCPC. The York County Planning Commission. YCPC is the administrative organization for the York Area Metropolitan Organization.

Waterway Impairment Background

Waterways within the Codorus Creek Watershed are impaired by sediment pollution. The following three reports provide details on these waterway impairments:

1. The Codorus Creek Watershed River Conservation Plan (2005) was submitted to PADEP and used to open funding to complete stream mitigation projects.
2. The USACE Codorus Creek Watershed Restoration Report (2007) and its appendix has conceptual ideas of how to improve the watershed. It is PennDOT's understanding the USACE was unable to fund any projects from this report. The report references the cost at \$10M.
3. The York County Planning website contains the Integrated Water Resource Plan (2011). This report includes lists of projects that can be funded to improve water quality.

Project Background

PennDOT is contributing funding to help clean up waterway impairments within the Codorus Creek Watershed as part of its statewide efforts to address the impact of transportation activities and facilities on the Chesapeake Bay Watershed and other local watersheds. PennDOT intends this contribution to serve as part of the PRPs that PennDOT anticipates will be required when its NPDES permit for the MS4 serving the state highway system is renewed. PennDOT also intends this project to serve as a pilot to evaluate a method to streamline efforts in reducing erosion rates and controlling sediment deposits.

The vendor must construct BMPs, conforming to the PADEP Guidance Documents, that reduce sediment discharging to the Codorus Creek Watershed. One or more of several methods can be used to implement these BMPs, but there must be a direct nexus between the BMPs and water quality improvement for waterways in the Codorus Creek that are impaired by sediment from urbanized areas. The vendor must also operate, maintain and monitor the BMPs for five years post construction and provide for the long term operation and maintenance of the BMPs thereafter.

The vendor may elect to work with one or more local municipalities to accomplish this project. YCPC has endorsed this effort and has formed a collaboration with all but one of its urban municipalities to reduce sediment loading.

Basis of Award

The award will be based upon the lowest cost per pounds of sediment reduction credit that can be achieved in five years for the compensation of \$750,000.00.

Conceptual PRP

Following award, the vendor must submit a conceptual PRP. A conceptual PRP is a document that describes the vendor's approach to achieving the bid cost per pounds of sediment reduction credit in five years for the compensation of \$750,000.00. The conceptual PRP must demonstrate a direct nexus between the BMPs and water quality improvement for waterways in the Codorus Creek that are impaired by sediment from urbanized areas.

The conceptual PRP also must include the following information:

- A list of the BMPs that the vendor proposes to construct. BMP types may include only the following:
 1. Wet Ponds and Stormwater Wetlands
 2. Hydrodynamic Structures
 3. Infiltration Practices
 4. Filtering Practices
 5. Filter Strip Runoff Reduction
 6. Filter Strip Stormwater Treatment
 7. Bio-Retention or Raingardens
 8. Vegetated Open Channels

9. Bioswales
10. Permeable Pavements
11. Stream Restoration
12. Forest Buffers (create or restore)
13. Tree Planting
14. Storm Sewer Solids Removal
15. Converting Land Use

- Visual sketches and schematics for each proposed BMP.
- The location for each proposed BMP.
- A property acquisition approach as described below.
- A narrative that demonstrates the required direct nexus between each BMP and water quality improvements.
- An estimated timeline for constructing the BMPs.
- Sediment baseline, reduction and effectiveness calculations, including total pounds of sediment, nitrogen and phosphorus to be removed by each BMP independently, in accordance with the methods described below.

Sediment Reduction Baseline and Effectiveness Values

Do not calculate the baseline for the watershed. YCPC is administering the Pollutant Reduction Plan for the entire York County and impaired watersheds.

Calculate the baseline existing water quality load to each BMP that provides a percent pollutant reduction.

Sediment removal calculations for each proposed BMP must use the effectiveness values provided by PADEP's BMP Effectiveness Values (Document # 3800-PM-BCW0100m 5/2016): [http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-116283/3800-PM-BCW0100k%20PRP%20Instructions%20\(3-28-17\)%20\(003\).pdf](http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-116283/3800-PM-BCW0100k%20PRP%20Instructions%20(3-28-17)%20(003).pdf)

For structural and restoration BMPs with a percent (%) effectiveness, the reduction credit will require calculation of the existing load to the BMP. The PADEP Simplified Method described in PADEP's Pollution Reduction Plan Instructions (Document 3800-PM-BCW0100k Rev. 3/2017) must be used for this calculation: [http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-112621/3800-PM-BCW0100m%20BMP%20Effectiveness%20\(Final\).pdf](http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-112621/3800-PM-BCW0100m%20BMP%20Effectiveness%20(Final).pdf).

The calculation must use the developed land sediment loading rates for York County. The rates are 1,614.15 lbs/acre/year for impervious and 220.4 lbs/acre/year for pervious land uses.

Should a stream restoration BMP be proposed, the 44.88 lbs/ft/yr sediment reduction must be used to calculate the total load reduction for the BMP. However, the proposed work must adhere to one of the eligible protocols covered in the Chesapeake Bay

Recommendations of the Expert Panel to Define Removal rates for Individual Stream Restoration Projects:

http://www.chesapeakebay.net/channel_files/18983/attachment_b1--urban_stream_restoration_panel_final_report_12062012.pdf

Property Acquisition

The conceptual PRP must describe the approach that the vendor will use to acquire the necessary property interests to construct, operate, maintain and assure long term operation and maintenance of the BMPs. Vendors can use their own property, acquire property, acquire easements or leases, or enter agreements with municipalities to use their property. The vendor must record easements or deed restrictions conforming to paragraphs 3 and 4 of the Scope of Work below in the appropriate County Recorder of Deeds Office for properties not owned by the Commonwealth.

Should the vendor wish to work with a municipality, the following municipalities within the watershed have expressed to PennDOT that they have municipal land available that can be used to implement BMPs. The decision to contact these townships is solely at the discretion and risk of the vendor.

- Gary Milbrand, Township Manager, York Township, 717-741-3861x133
- William Conn, Township Manager, Jackson Township, 717-225-5661, manager@jacksontwp.york.org
- Stewart Olewiler, Zoning Officer, Manchester Township, 717-764-4646, s.olewiler@mantwp.com
- Chez Green, Acting Director, Public Works, City of York, 717-849-2251, cgreen@yorkcity.org
- Jessica M. Fieldhouse, Director of Community Development, Springettsbury Township 717-757-3521 ext. 413, jessica.fieldhouse@springettsbury.com

If use of municipal land is being proposed, the conceptual PRP must include a committal letter from the municipality(ies).

The vendor may use state highway right-of-way for the project only if both of the following requirements are met:

- The conceptual PRP includes a committal letter from the District Executive for PennDOT Engineering District 8-0. PennDOT has sole discretion over whether to issue a committal letter. The most likely reason that PennDOT might refuse to issue a committal letter is that the vendor's proposed use conflicts with the existing use or an anticipated future use of the highway right-of-way. PennDOT, however, reserves the right to refuse to issue a committal letter for any reason whatsoever.
- The vendor applies for and obtains one or more highway occupancy permits from PennDOT allowing the work prior to beginning construction within the state highway right-of-way. The vendor must satisfy all highway occupancy permit requirements.

2. Scope of Work

This IFB is for siting, design, permitting, acquisition of property interests, construction, inspection, operation, maintenance, post-construction monitoring and long term operation and maintenance of BMPs that provide a direct nexus to demonstrate a water quality improvement for urbanized area sediment impaired waterways within the Codorus Creek watershed. This IFB is only for the payment of sediment removal credit not already used or accounted for under any other required environmental mitigation. Services under this IFB that have already been performed, including acquisition of property interests, are eligible for payment and must be included in the conceptual PRP submission.

The scope of services to be delivered include all the following:

1. Supply a conceptual PRP. PennDOT reserves the right to terminate the contract if PennDOT determines, at its sole discretion, that the conceptual PRP fails to meet the requirements of this Statement of Work.
2. Identify sites and design the BMPs.
3. Acquire the property interests to construct, maintain and preserve the BMPs. Examples of property interests include long term leases, easements, and fee simple ownership. If the property is not owned by the Commonwealth, the areas where BMPs are located will require a recorded instrument (e.g., a conservation easement or deed restriction) identifying and preserving the BMP; identifying the entity responsible for the long term operation and maintenance of the BMP; and granting reasonable access for inspection to EPA, PennDOT, PADEP, CCDs and the entity responsible for long term maintenance.
4. Identify an entity other than PennDOT that will assume responsibility for long term operation and maintenance of each BMP conforming to the requirements of the PADEP Guidance Documents. The entity must also agree to provide written documentation to PennDOT upon request confirming that the entity has performed the required long term operation and maintenance. This entity must be one of the following: a governmental entity; a fee simple owner or easement holder of the BMP site; or an adjacent property owner in the case of stream restoration. If the entity is a property owner and is not the Commonwealth then the vendor must obtain and record fully-executed instruments in the chain of title for the property that make these obligations legally binding and enforceable by PennDOT and PADEP on the owner and subsequent owners. If the entity is a municipality, the vendor must obtain a fully-executed and binding agreement with an appropriate resolution from the municipality. This agreement between the vendor and the municipality must be enforceable by PennDOT and PADEP.
5. Supply a final PRP. The final PRP is based on the conceptual PRP but also includes the following:
 - a. Copies of all recorded instruments and agreements required by paragraphs 3 and 4 above.
 - b. Final BMP(s) plans consistent with PADEP standards
 - c. Final Schedule for implementing the BMPs

- d. Operations and Maintenance Plan consistent with the PADEP Guidance Documents
 - e. Calculations showing the sediment, nitrogen and phosphorus removed per year consistent with the PADEP Guidance Documents.
6. Perform all activities necessary to obtain and comply with all USACE Clean Water Act Section 404 and Rivers and Harbors Act Section 10 permits; PADEP Chapter 102 and 105 permits; and if applicable, local Floodplain consistency, local Stormwater Management consistency, local zoning approval and any other permits or authorizations required to construct the BMPs. Provide copies of the permits and authorizations to PennDOT upon request.
 7. Provide field services related to the construction of all BMPs consistent with the applicable permits and approvals, operation, any inspections and any maintenance required by PADEP to receive credit for the reductions under a NPDES MS4 PRP.
 8. Supply as-built records sealed by a licensed professional, to document the end of construction.
 9. Operate, monitor and maintain all BMPs during construction and post-construction. During post-construction, the vendor must do all the following:
 - a. Monitor all stream restoration BMPs for no less than five years in accordance with the regulations found at Code of Federal Regulations, Title 33, Part 332 ("Compensatory Mitigation for Losses of Aquatic Resources) and USACE Regulatory Letter No. 08-03 ("Minimum Monitoring Requirements for Compensatory Mitigation Projects Involving the Restoration, Establishment, and/or Enhancement of Aquatic Resources"), and any updates to them.
 - b. Inspect all other BMPs no fewer than two times to confirm that they are functioning as designed. The inspections shall at least include both of the following:
 - i. A condition assessment no sooner than one month and no later than one year after that BMP is constructed using PennDOT Form M79; and
 - ii. A visual inspection performed no sooner than two years after the condition assessment using PennDOT Forms M77 and M78.
 - c. Perform any other post-construction monitoring or maintenance required by the DEP Guidance Documents for PennDOT to receive credit for the reductions under an NPDES MS4 PRP.
 - d. Repair or reconstruct any BMPs that do not function as designed.
 10. Provide copies of any required inspections, record keeping, and other documentation for each BMP conforming to the PADEP Guidance Documents and PennDOT's MS4 permit conditions for each BMP during construction and post-construction.

3. Standard Specifications

To the extent that the specific provisions of this Statement of Work conflict with any terms and conditions or standard specifications included elsewhere in this IFB, the specific provisions of this Statement of Work control and supersede the conflicting terms and conditions or standard specifications.

The Vendor must complete the services in accordance with the April 1, 2016 PennDOT Publication 408 specifications:

http://www.dot.state.pa.us/public/PubsForms/Publications/Pub_408/PUB%20408.pdf

If required, conduct Maintenance and Protection of Traffic in accordance with the most current version of Publication 213. Work Zone Traffic Control is considered incidental.

<http://www.dot.state.pa.us/public/PubsForms/Publications/PUB%20213.pdf>

4. Bid Requirements

The Bid Submission must include:

- _____ – **Bid Sheet**
- A permitting, construction, inspection and maintenance schedule
- Financial model: anticipated expenditures per year for ten years. This will demonstrate inspection and maintenance will be covered
- A list of past environmental and storm water mitigation projects managed or constructed by the contractor. The contractor must demonstrate they have been conducting this type of work for at least three years.

5. Invoice and Billing Instructions

Payment Milestones are as follows:

#	Milestone Activity	Milestone Date (on or before)	Maximum Payment
1.	Conceptual PRP submitted to PennDOT	2 Months after award	\$0.00
2.	Conceptual PRP approved by PennDOT	varies	\$50,000.00
3.	Final PRP submitted to PennDOT	10 Months after #2	\$0.00
4.	Final PRP approved by PennDOT	varies	\$100,000.00
5.	Federal, State, and Local permits & approvals	6 Months after #4	\$0.00
6.	Begin BMP construction	8 Months after #5	\$0.00
7.	25% construction complete	8 Months after #6	\$100,00.00
8.	50% construction complete	8 Months after #7	\$100,000.00
9.	100% construction complete	16 Months after #8	\$200,000.00
10.	End of Post-Construction	varies	\$200,000.00

PennDOT reserves the right, at its sole discretion, to adjust the milestone dates as necessary. At any milestone, if PennDOT determines, in conformity with the PADEP Guidance Documents, that PADEP will allow PennDOT less sediment credit reduction toward PennDOT's MS4 permit obligations than necessary to achieve the unit price bid by the vendor, PennDOT may proportionally reduce all remaining payments due as necessary to achieve the total cost per pound of sediment reduction credit bid by the vendor. PennDOT, at its sole discretion, may consult with PADEP in making this determination. PennDOT may also consider any BMP for which the vendor has failed to fully comply with paragraphs 3 or 4 of the Scope of Work as providing no (zero) sediment reduction credit.

A completed _____, Confirmation of Services Form (Form OS-501) must be submitted by the Vendor to the Project Manager, for review and verification for each payment milestone.

The project manager will notify the vendor if corrections are needed. Each _____, Form OS-501 is to be itemized to include sufficient detail to validate that the Payment Milestone has been completed.

Untimely or incomplete submissions of _____, Form OS-501 and required supporting documentation may delay payment as required by the Payment section of the Terms and Conditions.

PennDOT reserves the right, throughout the life of the contract, to make changes to Form OS-501, and its instructions, content, and all other requirements.

PennDOT's Project Manager for this contract will be Daryl St. Clair, dstclair@pa.gov 717-787-9512.

Contacting the Project Manager prior to award is not permitted.

In Re: Pennsylvania Department of Transportation
Docket No. CWA-03-2018-0038-DN

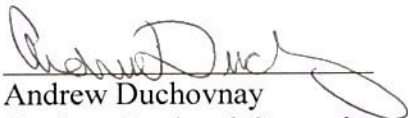
CERTIFICATE OF SERVICE

I certify that on this date I caused to be sent by first class mail, a copy of this "Administrative Order on Consent," to the following persons:

Neal Brofee, Esq.
Governor's Office of General Counsel
Department of Transportation
Office of Chief Counsel
Real Property Division
P.O.Box 8212
Harrisburg, PA 17105-8212

and a copy delivered by hand to:

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


Andrew Duchovnay
Sr. Asst. Regional Counsel

Date: 8/30/18