

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

In the Matter of:	:	Proceeding to Assess Class I
	:	Administrative Penalty Under
	:	Section 309(g) of the Clean Water Act
City of Havre de Grace	:	
Department of Public Works	:	
2 Jerry Foster Way	:	Docket No. CWA-03-2017-0055
Havre de Grace, MD 21078	:	
	:	
	:	CONSENT AGREEMENT
Respondent	:	AND FINAL ORDER
	:	
	:	

I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY

1. This Consent Agreement is entered into by the Director, Water Protection Division, United States Environmental Protection Agency, Region III ("Complainant") and City of Havre de Grace, Maryland ("City of Havre de Grace" or "Respondent") pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22. The parties have agreed to settlement of violations of the Clean Water Act by Respondent. This Consent Agreement and Final Order ("CAFO") simultaneously commences and concludes this action pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3) and is subject to the successful completion of the work required pursuant to the Administrative Order on Consent, EPA Docket No. CWA-03-2017-0056DW

2. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency ("EPA" or "Agency") is authorized to assess administrative penalties against any person who violates any NPDES permit condition or limitation in an amount not to exceed \$10,000 per day for each day of violation, up to a total penalty amount of \$125,000.

3. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective January 12, 2009), any person who has violated any NPDES permit condition or limitation after January 12, 2009 is liable for an administrative penalty not to exceed \$16,000 per

day for each day of violation occurring after January 12, 2009 up to a total penalty amount of \$187,500 if such violation occurred after December 6, 2013.

II. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS, and CONCLUSIONS OF LAW

4. Respondent is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

5. Respondent is a “municipality” within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).

6. At all times relevant to this Complaint, Respondent has owned and/or operated a municipal separate storm sewer system (“MS4”) as that term is defined in 40 C.F.R. § 122.26(b)(8).

7. At all times relevant to this Order, Respondent has owned and/or operated a MS4 as that term is defined in 40 C.F.R. § 122.26(b)(8).

8. Respondent’s MS4 is located within the City of Havre de Grace, Maryland which is an urbanized area as determined by the 2000 Decennial Census by the Bureau of the Census, and requires an NPDES permit to discharge storm water pursuant to 40 C.F.R. §122.32(a)(1). Respondent’s MS4 is located within the geographic boundaries of the County.

9. Havre de Grace encompasses a total area of approximately 5.5 square miles and its population is estimated at 12,952 people, according to the 2010 Census.

10. Havre de Grace is a “small MS4” within the meaning of 40 C.F.R. § 122.26(b)(16).

11. Respondent’s MS4 discharges stormwater to multiple waters, including Swan Creek, the Lower Susquehanna River, and the Chesapeake Bay. Swan Creek, the Susquehanna River, and their associated tributaries are “waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

12. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the State of Maryland to issue General NPDES permits in 1991.

13. On April 14, 2003, MDE issued notice to the City of Havre de Grace that it needed an NPDES General Permit for Discharges From Small Municipal Separate Storm Sewer Systems

(MS4s). *See* 40 C.F.R. § 122.26(b). Havre de Grace received a General Discharge Permit No. MDR055500 (“Permit”), that authorized the discharge of stormwater from small MS4s, generally defined as MS4s located in an incorporated place with a population less than 100,000 on April 13, 2004. Although the Permit was set to expire on April 14, 2008, it has been administratively extended by MDE until a new permit is issued.

14. EPA inspected the Site on January 16-17, 2014. Following EPA’s inspection, Havre de Grace submitted an NOI to MDE requesting coverage under General Permit No. 12-SW for Discharges from Stormwater associated with Industrial Activities for the City’s Department of Public Works Operation.

15. In the period of time before January 16-17, 2014, the City did not assign sufficient manpower to monitor and attend to the MS4 Permit requirements. As a result, a series of violations occurred.

16. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (“NPDES”) program under Section 402 of the Act, 33 U.S.C. § 1342.

17. 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 pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.

18. “Discharge of a pollutant” includes “any addition of any pollutant or combination of pollutants to waters of the United States from any point source.” 40 C.F.R. § 122.2.

19. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).

20. The term “municipal separate storm sewer system” (“MS4”) includes, “a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.” 40 C.F.R. § 122.26(b)(8)(i).

21. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Maryland Department of the Environment (“MDE”) to issue NPDES permits on September 5, 1974.

22. An NPDES permit is also required for discharges of storm water associated with industrial activity, as well as for stormwater discharges which MDE or EPA determine to be a significant contributor of pollutants or that contributes to a violation of a water quality standard. Section 402(p)(2) of the Act, 33 U.S.C. § 1342(p)(2); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.

III. FINDINGS OF VIOLATION

23. Respondent’s failure to comply with its NPDES permit has resulted in the following violations to the CWA.

Count #1 – Illicit Discharge Detection and Elimination

24. Pursuant to Part III. Section C of the Permit, “Permittees shall develop, implement, and maintain a program to identify and eliminate illicit storm drain system connections and non-stormwater discharges to the maximum extent practicable.”

25. Respondent failed to:

- a. map the extent of the storm drain system and cure the discrepancies between the GIS map and the actual location of some of the sewer outfalls;
- b. develop procedures for field screening storm drain outfalls on a consistent basis;
- c. develop inspection procedures for identifying the source of any suspected illicit discharges to the storm drain system;
- d. develop enforcement and penalty procedures and post them to the City’s website; and
- e. ensure that non-stormwater discharges to the MS4 are either permitted by MDE under NPDES or eliminated.

26. Respondent’s failure to comply with Part III. Section C of the Permit in developing, implementing and maintaining a program to identify and eliminate illicit storm drain system connections and non-stormwater discharges pursuant to Permit requirements is a violation of Section 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

Count #2 – Pollution Prevention and Good Housekeeping

27. Pursuant to Section III.F of the Permit, Respondent must practice pollution prevention and good housekeeping techniques and procedures to reduce pollutants from all municipal operations.
28. Respondent failed to implement and maintain pollution prevention and good housekeeping techniques and procedures at City operations by: a) failing to provide employee training materials to prevent and reduce pollutant discharges to the storm drain; b) failure to provide runoff controls geared toward fleet yard and building maintenance activities; and c) failure to ensure all facility activities are properly permitted under Maryland's NPDES Industrial General Permit (02-SW or 12-SW) or any other appropriate State or Federal water pollution control program.
29. In addition, the City was unable to provide documentation of stormwater inspections at the Department of Public Works Operations Center and Department of Public Works Maintenance Shop.
30. Respondent's failure to implement and maintain pollution prevention and good housekeeping techniques is a violation of Section 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

IV. CONSENT AGREEMENT AND FINAL ORDER

31. Respondent admits the Findings of Fact, Jurisdictional Allegations, and Conclusions of Law set forth in Section II, above.
32. Respondent neither admits nor denies EPA's Findings of Violation set forth in Section III, above.
33. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.
34. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consents to issuance of this CAFO without adjudication.
35. Each party to this action shall bear its own costs and attorney fees.
36. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.

37. The parties agree that the immediate settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.

38. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1)(A), EPA has consulted with the State of Maryland regarding this action, and will mail a copy of this document to the appropriate Maryland official.

39. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA HEREBY ORDERS AND Respondent HEREBY CONSENTS to pay a civil penalty in the amount of **thirteen thousand eight hundred dollars (\$13,800)** in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.

40. Respondent shall pay the total administrative civil penalty of **thirteen thousand eight hundred dollars (\$13,800)** within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c). Payment shall be made by one of the following methods set forth below.

All payments by Respondent shall reference Respondent's name and address and the Docket Number of this action, **CWA-03-2017-0055**.

Payment by check to "United States Treasury":

By regular mail:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
Box 979077
St. Louis, MO 63197-9000

Contact: 513-487-2091

By overnight delivery:

U.S. Bank
Government Lock Box 979077

*In re: City of Havre de Grace
EPA Docket No.: CWA-03-2017-0055*

US EPA, Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: 314-418-1028

By Wire Transfer:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
(Field Tag 4200 of the wire transfer message should read:
D 68010727 Environmental Protection Agency)

By Automated Clearinghouse (ACH) Transfers for receiving U. S. currency (also known as REX or remittance express):

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact for ACH: John Schmid (202-874-7026)
Remittance Express (REX): 1-866-234-5681

On-Line Payments:

WWW.PAY.GOV
Enter sfo 1.1 in the search field
Open form and complete required fields.

Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

Respondent shall send notice of such payment, including a copy of the check if payment is made by check, to the Regional Hearing Clerk at the following address:

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

-and-

Pamela J. Lazos
Mail Code 3RC20
Office of Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

41. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251 *et seq.*, or any regulations promulgated thereunder.
42. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payments as required herein or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which it is due. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

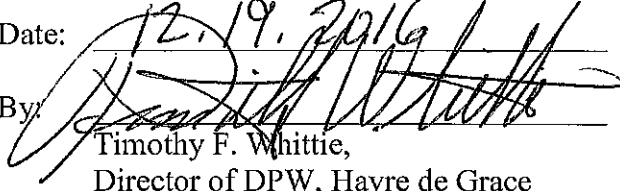
43. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
44. This CAFO resolves only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present and imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 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 CAFO, following its filing with the Regional Hearing Clerk.
45. The penalty specified in Paragraph 39 shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
46. Entry of this CAFO is a final settlement of all violations alleged in this CAFO. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO if the EPA obtains evidence that the information and/or representations of the Respondent are false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.
47. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.
48. All of the terms and conditions of this CAFO 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 CAFO, 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 CAFO shall be null and void.

V. PUBLIC NOTICE AND EFFECTIVE DATE

49. This CAFO will be issued after a forty (40) day notice period, execution by an authorized representative of EPA, and filing with the Regional Hearing Clerk. It will become final and effective thirty (30) days after issuance. Payment of the civil penalty assessed in this CAFO is due thirty (30) days after the effective date.

In re: City of Havre de Grace
EPA Docket No.: CWA-03-2017-0055

FOR RESPONDENT, CITY OF HAVRE DE GRACE

Date: 12.19.2016
By: 
Timothy F. Whittie,
Director of DPW, Havre de Grace

In re: City of Havre de Grace
EPA Docket No.: CWA-03-2017-0055

It is SO ORDERED:

Date: _____

Jon M. Capacasa, Director
Water Protection Division
U.S. Environmental Protection Agency

CERTIFICATION OF SERVICE

I hereby certify that I sent a true and correct copy of the Administrative Order for Compliance to the City of Havre de Grace via certified mail, return receipt requested, at the address listed below after filing the original with the Regional Hearing Clerk, US EPA Region III, 1650 Arch St., Philadelphia, PA 19103.

Timothy F. Whittie, Director
Department of Public Works
City of Havre de Grace
2 Jerry Foster Way
Havre de Grace, MD 21078

Paul Ishak, Esquire
Stark and Keenan, P.A.
Attorneys at Law
30 Office Street
Bel Air, Maryland 21014

Pamela J. Lazos
Senior Assistant Regional Counsel
US EPA Region III

Date: