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

**CERTIFIED MAIL**
**RETURN RECEIPT REQUESTED**
**RECEIPT NO.**

SEP 30 2009

Township Manager
Monaghan Township
202 South York Road
Dillsburg, PA 17019

Re: Administrative Order and Information Request
Docket No. CWA-03-2009- CWA-03-2009-0316DN

Dear Township Manager:

Through consultation with the Pennsylvania Department of Environmental Protection (PADEP), the United States Environmental Protection Agency (USEPA) has determined that Monaghan Township ("Respondent"), has violated its Pennsylvania National Pollutant Discharge Elimination System Stormwater Discharges From Small Municipal Separate Storm Sewer Systems Permit, (Permit) and various provisions of the Clean Water Act, by not submitting all Annual Reports required by your permit to the PADEP.

The enclosed document is entitled "Findings of Violation and Order for Compliance and Information request" (Order and Request) and issued this date pursuant to Section 309(a) and 308 of the Clean Water Act, ("the Act") as amended, 33 U.S.C. Section 1319(a).

The USEPA encourages you to read the contents of the enclosed Order and Request, and communicate to each responsible official, agent or employee the actions that each such person must take to ensure compliance with its terms. Failure to comply with the terms of the Order and Request may result in the USEPA taking further enforcement actions, including a civil suit for penalties and injunctive relief, or a criminal prosecution as appropriate.

*9/29/2009Printed on 100% recycled/recyclable paper with 100% post-consumer fiber and process chlorine free.*
*Customer Service Hotline: 1-800-438-2474*

Respondent may be required to disclose to the Securities and Exchange Commission ("SEC") the existence of certain administrative or judicial proceedings taken against the Respondent company under Federal, State or local environmental laws. Please see the attached "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings" for more information about this requirement and to aid you in determining whether your company is subject to it.

Both the PADEP and USEPA encourage the Respondent to review its entire MS4 program for compliance with the Permit and immediately correct any deficiencies. If you require any information or assistance regarding this Order and Request, please contact Chuck Schadel of my staff at (215) 814-5761.

Sincerely,

Jon M. Capacasa, Director
Water Protection Division

Enclosures

cc: Scott Williamson, SC PADEP
Ken Murin, HQ PADEP

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

**IN THE MATTER OF :**

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|---|---|---|
| Monaghan Township<br>202 South York Road<br>Dillsburg, PA 17019<br><br>Respondent | : | Docket No. CWA-03-2009-0316DN<br>FINDINGS OF VIOLATION,<br>ORDER FOR COMPLIANCE<br>AND<br>INFORMATION REQUEST |

## I. STATUTORY AUTHORITY

1. This Order for Compliance and Request for Information ("Order and Request") is issued under the authority vested in the Administrator of the Environmental Protection Agency (hereinafter "EPA") under Section 308 of the Clean Water Act (CWA or Act), 33 U.S.C. 1318 and Section 309(a) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. Section 1319(a). The Administrator has delegated this authority to the Regional Administrator of Region III, who in turn has delegated it to the Director of the Water Protection Division of Region III.

## II. STATUTORY AND REGULATORY BACKGROUND

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutants (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.

3. EPA is authorized under Section 308 of the Federal Water Pollution Control Act ("Clean Water Act" or "the Act"), 33 U.S.C. § 1318, to require owners and operators of point sources to establish records and make such reports as may be necessary to carry out the purpose of the Act, including but not limited to:

   (a) Developing or assisting in the development of any effluent limitation, or other limitation, prohibition, effluent standard, pretreatment standard, or standard of performance under the Clean Water Act;

   (b) Determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance;

(c) Any requirement under Section 308 of the Clean Water Act; and

(d) Carrying out Sections 305, 311, 402, 404, and 504 of the Clean Water 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 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.

5. "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.

6. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." Id. § 122.26(b)(13).

7. 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).

8. Pursuant to 40 CFR 122.26(a)(9)(i), small MS4s require an NPDES permit if they are required to be regulated pursuant to 40 CFR 122.32.

9. Monaghan Township is a small MS4 within the meaning of 40 CFR 122.26(b)(16).

10. Monaghan Township is a small MS4 located in an urbanized areas as determined by the latest Deciennial Census by the Bureau of the Census, and accordingly requires an NPDES permit pursuant to 40 CFR part 122.32(a)(1).

11. Pursuant to section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized Commonwealth of Pennsylvania ("PA") to issue NPDES permits in 1978. In 1991, EPA authorized PA to issue General NPDES Permits.

## III. EPA FINDINGS AND ALLEGATIONS

12. Monaghan Township, PA (Respondent) is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

13. Respondent, at all times relevant to this Complaint, has owned and/or operated an MS4, located in the vicinity of Akron, PA, known as the ("MS4").

14. The Stony Run and Yellow Breeches Creek, to which storm water flows and, at all times relevant to this Order, have flowed from the MS4, are each a "water of the United States" as that term is defined at 40 C.F.R. § 122.2.

15. Respondent signed and submitted a notice of intent ("NOI") for coverage under the General NPDES Permit for Stormwater Discharges Associated with Construction Activities ("Permit") to the Pennsylvania Department of Environmental Protection (PADEP).

16. On December 1, 2004, the PADEP issued to the Respondent the Stormwater Discharges From Small MS4s General Permit, PAG133562 ("Permit").

17. The Permit authorizes discharges of storm water from the MS4 to the Cocalico Creek and associated tributaries, but only in accordance with the conditions of the Permit.

18. The Permit, Part C, 2. Annual Report, requires the Respondent, among other things, to submit annual reports to PADEP on stormwater management activities performed during the permit year.

19. On June 9, 2009 USEPA personnel conducted a review of MS4 annual reports at the PADEP office in Harrisburg, PA. No annual report was available for the Respondent for the periods 2008/2009, 2006/2007, 2005/2006, 2004/2005, 2003/2004 at that time.

## III. VIOLATIONS

20. Respondent had failed to comply with the Permit by not submitting to PADEP a complete MS4 annual report for the periods 2008/2009, 2006/2007, 2005/2006, 2004/2005, 2003/2004.

## IV. CONCLUSION OF LAW

21. By failing to comply with it's Permit, the Respondent discharged pollutants contained in storm water associated with an MS4, in violation of the Permit and section 301 of the CWA, 33 U.S.C §1311.

## V. ORDER AND REQUEST

AND NOW, this 30 day of SEP, 2009, Respondent is hereby ORDERED AND REQUESTED, pursuant to Section 309(a) of the Act, 33 U.S.C. Section 1319(a) and Section 308 of the Act, 33 U.S.C. 1318, to do the following:

22. Within thirty (30) days of the effective date of this Order and Request, Respondent shall:

a. Submit a complete annual report for the periods 2008/2009, 2006/2007, 2005/2006, 2004/2005, 2003/2004 to:

Chuck Schadel, Enforcement Officer
U.S. EPA, Region III, (3WP42 )
1650 Arch Street
Philadelphia, PA 19103-2029
(215) 814-5761

and

Scott R. Williamson, Environmental Group Manager
PA Department of Environmental Protection
South Central Regional Office
909 Elmerton Ave
Harrisburg, PA 17110

b. Provide the ordinances that were developed to comply with the Minimum Control Measure for Post-Construction Site Runoff Control

c. Provide certification, signed by a responsible corporate officer, as defined in 40 CFR § 122.22, that reads as follows: *"I certify that the information contained in or accompanying this submission is true, accurate, and complete. As to the identified portion(s) of this submission for which I cannot personally verify its truth and accuracy, I certify as the company official having supervisory responsibility for the person(s) who, acting under my direct instructions, made the verification, that this information is 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

23. Issuance of this Order and Request 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. Failure to comply and/or respond to this Order and Request, or providing misleading or false information, may subject you to civil and/or criminal sanctions pursuant to, 33 U.S.C. § 1319, and/or a civil judicial action initiated by the U.S. Department of Justice. If EPA initiates such an action, Respondent may be subject to civil penalties of up to $37,500 per day of violation pursuant to 33 U.S.C. § 1319 and 40 C.F.R. Part 19.

24. If a criminal judicial action is initiated, and Respondent is convicted of a criminal offense under Section 309 of the Act, Respondent may be subject to a monetary fine and/or imprisonment, and may become ineligible for certain contracts, grants, or loans under Section 508 of the Act.

25. Respondent shall permit EPA or its authorized representative to inspect any site at reasonable times to confirm that Respondent is in compliance with this Order and Request, and with any applicable permit. EPA reserves all existing inspection authority.

26. This Order and Request 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 and Request does not relieve the Respondent of its obligations to comply with any applicable federal, state, or local law or regulation.

27. Violation of the terms and conditions of this Order and Request constitutes an additional violation of the Act, and may result in a civil action for injunctive relief and/or a penalty not to exceed $37,500 per day of such violation, pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. Section 1319(b) and (d). In addition, Section 309 provides criminal sanctions for knowing or negligent violations of the Act including imprisonment and fines of up to $50,000 per day of violation.

## VII. EFFECTIVE DATE

This ORDER AND REQUEST is effective upon receipt.

Date: SEP 30 2009

Jon M. Capacasa, Director
Water Protection Division
EPA, Region III