

**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 Salisbury, Maryland
125 North Division Street
Salisbury, Maryland 21803

Docket No. CWA-03-2017-0087

**CONSENT AGREEMENT
AND FINAL ORDER**

Respondent.

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 the City of Salisbury Maryland ("City" 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 having 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).
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") 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 \$177,500.

4. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective December 6, 2013), any person who has violated any NPDES permit condition or limitation after December 6, 2013 is liable for an administrative penalty not to exceed \$16,000 per day for each violation occurring after December 6, 2013 up to a total penalty amount of \$187,500.

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

5. 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.
6. 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.
7. Pursuant to 40 C.F.R. § 122.26(a)(9)(i), small MS4s require an NPDES Permit if they are required to be regulated pursuant to 40 C.F.R. § 122.32.
8. City of Salisbury is a municipality within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).
9. Respondent is therefore a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
10. “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.
11. “Stormwater” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” *Id.* § 122.26(b)(13).
12. Stormwater from the City drains to the Wicomico River and its tributaries, which at all times relevant to this Order, are considered “waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2; 40 C.F.R. § 122.2.

13. 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, stormwater, 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).
14. The term “small municipal separate storm sewer system” or “small MS4” means “all separate storm sewers that are: (i) Owned or operated by the United States, a State, city, town, borough . . . or other public body (created by or pursuant to State law) having jurisdiction over disposal of . . . stormwater. . . .; [and] (ii) Not defined as ‘large’ or ‘medium’ municipal separate storm sewer systems.” 40 C.F.R. § 122.26(b)(16).
15. Pursuant to 40 C.F.R. § 122.32(a)(1), the Maryland Department of the Environment (“MDE”) has determined that the City of Salisbury is a small MS4 located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census, and accordingly requires an NPDES Permit.
16. Therefore, the City of Salisbury is a “small MS4” within the meaning of 40 C.F.R. § 122.26(b)(16).
17. 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 General permits on September 31, 1991.
18. On April 14, 2003 MDE issued a NPDES General Permit for Discharges from Small Municipal Separate Storm Sewer Systems No. MDR055500 (hereinafter the “MS4 Permit” or “Permit”). The expiration date of the MS4 Permit was April 14, 2008; however, the MS4 Permit has been administratively extended pending a final decision on the renewal application.
19. Following issuance of the Permit, Respondent submitted a signed Notice of Intent (“NOI”) to MDE for coverage under the Permit.
20. Following receipt of the NOI, MDE notified Respondent that it was approved for coverage under the Permit.

21. The Permit authorizes discharges of storm water from Respondent's MS4 to the Wicomico River and its tributaries, but only in accordance with the conditions of the Permit.
22. On April 16 & 17, 2014 representatives of EPA conducted an inspection of the City's MS4 program implementation.
23. On October 14, 2014, EPA issued the City of Salisbury, Maryland Municipal Separate Storm Sewer System (MS4) Program Inspection Report (Inspection Report), which included, in addition to general information regarding the City's MS4 program and history, seventeen (17) observations regarding the City's MS4 Program related to the requirements of the current MS4 Permit (MDR055500, effective April 14, 2003). The Inspection Report also included 7 attachments (exhibit log, photo log, document log, etc.).
24. A copy of the Inspection Report was sent to the City by e-mail on October 15, 2014.
25. Based upon the April 16 & 17, 2014 inspection, EPA identified two areas, among the seventeen (17) observations, which it had concluded were violations of the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.
26. Part III.C of the Permit (Illicit Discharge Detection and Elimination) requires Permittees to develop, implement and maintain a program to identify and eliminate illicit storm drain system connections and non-stormwater discharges to the maximum extent practicable. At a minimum, a program developed to implement illicit discharge detection and elimination to satisfy this control measure shall contain "procedures to field screen storm drain outfalls on a consistent basis" (Part C.3).
27. At the time of inspection the City had documentation for outfall screenings conducted in 2011 and 2012. There was no documentation provided of outfall screenings conducted beyond 2012.
28. Part III.D of the Permit (Construction Site Stormwater Runoff Control) states that "The Maryland Environment Article, Title 4, Subtitle 1, Annotated Code of Maryland establishes a statewide erosion and sediment control program to control construction site Stormwater runoff. This statute, coupled with the Code of Maryland Regulations (COMAR), specifies the requirements for any construction activity that disturbs five thousand (5,000) square feet or more of earth. MDE considers compliance with the state statute to be compliance with this minimum control measure, the general permit and CFR. COMAR 26.17.02.11 requires the City to provide for the inspection and maintenance of all completed Environmental Site Design (ESD) treatment practices. Specifically, "the owner shall perform or cause to be performed preventative maintenance of all completed

ESD treatment practices and structural stormwater management measures to ensure proper functioning. The responsible agency of the county or municipality shall ensure preventative maintenance through inspection of all stormwater management systems. The inspection shall occur during the first year of operation and then at least once every three years after that.”

29. At the time of the MS4 inspection, the City did not provide evidence that it maintained a formal inventory or database of stormwater management facilities nor did the City provide evidence that it had a Standard Operating Procedure (SOP) for the inspection of these facilities. In addition, the City did not provide documentation that they inspected stormwater management facilities during the first year of operation and at least once every three years thereafter.

III. CONSENT AGREEMENT AND FINAL ORDER

30. For the purpose of this proceeding, Respondent admits the jurisdictional allegations set forth in this CAFO.
31. Respondent admits the Findings of Fact, Jurisdictional Allegations, and Conclusions of Law set forth in this CAFO.
32. Respondent waives any defenses it might have as to jurisdiction and venue, its right to contest the allegations through hearing or otherwise; and its right to appeal the proposed final order accompanying the consent agreement.
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 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 MDE regarding this action, and will mail a copy of this document to the appropriate MDE 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 sixteen thousand dollars (\$16,000) 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 sixteen thousand dollars (\$16,000) 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.

Payment by check to "United States Treasury":

By regular mail:

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

Contact Eric Volck (513-487-2105)

By overnight delivery:

U.S. Bank
Government Lock Box 979077
US EPA, Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: Eric Volck (513-487-2105)

By Wire Transfer:

Federal Reserve Bank of New Lancaster
ABA = 021030004
Account = 68010727

SWIFT Address = FRNYUS33
33 Liberty Street
New Lancaster, 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):

PNC Bank
ABA = 051036706
Environmental Protection Agency
Account Number: 310006
CTX Format
Transaction Code 22 - checking
808 17th Street, NW
Washington, D.C. 20074

Contact for ACH: John Schmid (202-874-7026)

On-Line Payments:

The On-Line Payment Option, available through the Dept. of Treasury, can be accessed from the information below:

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/financial/makepayment>

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-

Yvette C. Roundtree
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 Consent Agreement and Order resolve 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. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondent's violation of any applicable provision of law.
46. The penalty specified in Paragraph 47 shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
47. 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.
48. 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.
49. 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.

IV. EFFECTIVE DATE


Pursuant to 40 C.F.R. § 22.45, this CAFO shall be issued after a 40-day public notice period is concluded. This CAFO will become final and effective 30 days after it is filed with the Regional Hearing Clerk, pursuant to Section 309(g)(5) of the Act, 33 U.S.C. § 1319(g)(5).

FOR RESPONDENT, CITY of SALISBURY:

Date: 24 FEB 17
By: JR
Name: JACOB R. DAY
Title: MAYOR

SO ORDERED, pursuant to 33 U.S.C. 1319(g), and 40 C.F.R. Part 22,

this _____ day of _____, 2017


for Dominique Lueckenhoff, Acting Director
Water Protection Division