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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Interim Mayor Ray O'Connell
City of Allentown
641 South Tenth Street
Allentown, Pennsylvania 18103

AUG 2 9 2018

Re: In the Matter of: City of Allentown Consent Agreement and Final Order
Docket No. CWA-03-2018-0103

Dear Mayor O'Connell:

Enclosed please find a time-stamped Consent Agreement and Final Order (CAFO) which resolves the City of Allentown. The CAFO was filed with Regional Hearing Clerk on AUG 2 9 2018.

The City of Allentown must timely pay the agreed civil penalty within thirty (30) days of the effective date of this CAFO. The case name and case docket number should be noted on each payment and a copy of each associated check or electronic transfer instrument or receipt should be sent simultaneously to the EPA attorney and the Regional Hearing Clerk.

For your file, I am also enclosing a copy of supporting memorandum from Environmental Protection Agency management to the Regional Judicial Officer. Please do not hesitate to contact Mr. Christopher Day at 215-814-2481 or day.christopher@epa.gov if you have any questions regarding this matter.

Sincerely,

Karen Esposito

Regional Hearing Clerk, Region III

Enclosure

cc: Christopher Day, Senior Assistant Regional Counsel

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Customer Service Hotline: 1-800-438-2474

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

U.S. EPA-REGION 3-RHC
FILED-29AUG2018am11:45

In the Matter of: City of Allentown 641 South Tenth Street Allentown, Pennsylvania 18103 Respondent.	**CONSENT AGREEMENT AND FINAL ORDER** Proceeding to Assess Class II Administrative Penalty Under Section 309(g)(2)(B) of the Clean Water Act, 33 U.S.C. § 1319 (g)(2)(B) Docket No. CWA-03-2018-0103

CONSENT AGREEMENT

I. STATUTORY AND REGULATORY AUTHORITY

1. 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 persons who violate Section 301(a) of the Act, 33 U.S.C. § 1311(a). The Administrator has delegated this authority to the Regional Administrator of EPA Region III, who in turn has delegated this authority to the Director, Water Protection Division (Complainant).

2. This Consent Agreement is entered into by the Complainant and the City of Allentown, Pennsylvania (City or Respondent), pursuant to Section 309(g) of the CWA and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22.

3. The Consolidated Rules, at 40 C.F.R.§ 22.13(b) provide in pertinent part that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may simultaneously be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). Pursuant thereto,

this Consent Agreement and Final Order (CAFO) simultaneously commences and concludes this administrative proceeding against Respondent.

4. Section 309(g)(2)(B) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(B), authorizes the assessment of 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.

5. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), any person who has violated any NPDES permit condition or limitation after December 6, 2013 through November 2, 2015 is liable for an administrative penalty not to exceed $16,000 per day for each day of violation up to a total penalty amount of $187,500, and for violations occurring after November 2, 2015 and assessed after January 15, 2017, for an administrative penalty not to exceed $20,965 per day for each violation up to a total of $262,066.

6. 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 has provided 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 Pennsylvania Department of Environmental Protection (PADEP) regarding this action, and will mail a copy of this document to the appropriate PADEP official.

7. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) by any person 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.

8. 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 permit. Section 402(b) of the Act, 33 U.S.C. §1342(b) provides that the Administrator may authorize a state to issue NPDES permits.

9. The City is a "municipality" within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4). The City 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. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." Id. § 122.26(b)(13).

12. Section 402(p) of the CWA, 33 U.S.C. §1342(p) and 40 C.F.R. §122.2 and §122.26 provide that, with some exceptions not relevant here, storm water discharges are "point sources' subject to NPDES permitting requirements under Section 402(a) of the CWA, 33 U.S.C. §1342(a).

13. An NPDES permit is required for discharges of pollutants from a municipal separate storm sewer system serving a population of 100,000 or more. Section 402(p)(2)(C) of the Act, 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.

14. "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.

15. "Municipal separate storm sewer system" ("MS4") is defined at 40 C.F.R. § 122.26(b)(8).

16. "Storm water" means "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).

17. "Waters of the United States" means those waters that are defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.

18. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Commonwealth of Pennsylvania (Commonwealth) to issue NPDES permits in 1978. Permits are issued by the PADEP.

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 for NPDES permit violations.

II. EPA's FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS AND CONCLUSIONS OF LAW

20. On August 1, 1997, PADEP issued NPDES Municipal Separate Storm Sewer System Permit NPDES Permit No. PA0063665 (MS4 Permit) to the City of Allentown. The MS4 Permit was renewed on April 26, 2004, expired on April 25, 2009, but has been administratively extended pursuant to 40 C.F.R § 122.6 and §122.21 and 25 PA. Code. 92a.7. Therefore, the MS4 Permit is considered to be administratively extended and remains in full force and effect.

21. At all times relevant to this matter, Respondent owned and/or operated a regulated MS4, located in the City of Allentown, Lehigh County, Pennsylvania (Allentown MS4).

22. Pursuant to 40 C.F.R. § 122.26(b)(7), the City of Allentown MS4 is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census, and

accordingly requires an NPDES permit. The estimated population served by the City of Allentown MS4 is 118,577.

23. The City of Allentown MS4 discharges stormwater to Little Lehigh Creek, Lehigh River, Cedar Creek, Little Cedar Creek, Trout Creek, Trout West, and Jordan Creek, which all meet the definition of "water of the United States" as that term is defined at Section 502(7) of the Act, 33 U. S. C. § 1362(7) and 40 C.F.R. § 122.2.

24. On December 15, 16, and 17, 2014, EPA and its duly-authorized representatives, along with representatives of PADEP, conducted an inspection and assessment of the City of Allentown's stormwater management program (MS4 Inspection). The team visited a number of facilities owned by the City, as well as private facilities subject to stormwater regulation. As part of the MS4 Inspection, EPA requested documents relevant to the implementation of the MS4 Permit. EPA made the requests before and shortly after the MS4 Inspection.

25. In July 2015, EPA finalized an inspection report documenting the inspection of the Allentown MS4 program.

26. Respondent received a copy of EPA's inspection report and, by letter dated September 25, 2015, Allentown responded to EPA's inspection report.

27. Based upon the MS4 Inspection, review of the documents provided in response to EPA's requests, review of the relevant Allentown MS4 Annual Reports, and review of the Allentown response, EPA has identified the following violations of the MS4 Permit and the CWA.

Count 1 – Failure to Annually Report Information on Industries

28. The MS4 Permit Part A.3.(a) requires that the Respondent shall compile and submit any new source identification information, including the identification and mapping of storm sewer system outfalls, and significant changes affecting the City's separate storm system due to: land use activities, population estimates, runoff coefficients, major structural controls, landfills, publicly owned lands, and industries in the annual reports to the Department pursuant to Part A(8)(c) "Annual Progress Report" of this permit.

29. The MS4 Inspection revealed that Respondent failed to compile and submit new source identification information pertaining to industries in the 2012-2013 and 2013-2014 annual report to PADEP, as required by the MS4 Permit, Part A.3. (a).

30. The MS4 Permit Part A.3. (b) requires that the Respondent "shall provide, no later than 3 months after the issuance of this permit, an inventory of industries organized by watershed with facility name, address, and description (which best reflects the principle products or services provided by each facility) which may discharge to the M.S.S.S.S.[MS4], and submit this inventory with annual reports to the Department pursuant to Part A(8)(c) "Annual Progress Reports" of this permit."

31. The MS4 Inspection revealed that Respondent failed to provide an inventory of industries organized by watershed with facility name, address, and description which may discharge to the MS4, and submit this inventory in the 2012-2013 and 2013-2014 annual reports to PADEP as required by Part A(8)(c) of the MS4 Permit.

32. Respondent's failure to submit the information required by Part A. 3. (a) and A. 3. (b) in its 2012-2013 and 2013-2014 annual reports is a violation of the MS4 Permit and Section 301 of the CWA, 33 U.S.C. §1311.

Count 2 – Failure to Fully Maintain and Implement a Stormwater Management Program

33. The MS4 Permit Part A.5. requires that "During the period beginning on the effective date and lasting through the expiration date of this permit, the City shall implement a stormwater management consistent with applicable state and Federal laws. The MS4 Permit Part A. 5. (a) further requires that the Respondent "Maintain and implement on a system-wide basis, watershed basis, jurisdiction basis or on an individual basis the storm water management program [SWMP] as proposed in the City's Part 2 storm water application to control and/or reduce the discharge of pollutants into the system to the maximum extent practicable." Respondent submitted its MS4 Permit application, including a SWMP, in 1993.

34. The MS4 Inspection revealed that, as of the time of the inspection, the Respondent had neither fully implemented its 1993 SWMP, nor had the SWMP been updated from 1993 to reflect the status and practices of its MS4 program. The SWMP did not include a current list of industries within the City, the City's Ordinances enacted since 1993, the number of stormwater outfalls, and the City was not conducting inspections and outfall screenings at the frequency stated in the SWMP.

35. Respondent's failure to maintain and implement its SWMP, as required by Part 5. and Part 5. (a) of the MS4 Permit is a violation of the MS4 Permit and Section 301 of the CWA, 33 U.S.C. §1311.

Count 3 – Failure to Provide a Description of a Comprehensive Program to Monitor and Control Pollutants from Industrial Facilities

36. The MS4 Permit Part A.5.(b) requires that the Respondent "provide a description of a comprehensive program to monitor and control to the maximum extent practicable, pollutants in runoff to the City's municipal system from operating or closed municipal landfills, hazardous waste treatment sites, industrial facilities that are subject to Section 313, Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), storage, recovery or disposal for municipal wastes, and industrial sites that handle, store, or transport toxics or hazardous materials, that the City determines are contributing a substantial pollutant loading to its system."

37. The MS4 Inspection revealed that, as of the time of the MS4 Inspection, the Respondent did not have a description of a comprehensive program to monitor and control pollutants from any of the facilities identified in Part A. 5. (b) of the MS4 Permit.

38. Respondent's failure to provide a description of a comprehensive program to monitor and control to the maximum extent practicable, pollutants in runoff to its MS4 from industrial facilities that are subject to SARA and industrial sites as required by Part A. 5. (b) is a violation of the MS4 Permit and Section 301 of the CWA, 33 U.S.C. §1311.

Count 4 - Failure to Conduct Preventative Maintenance Inspections of All Stormwater Management Facilities on a Triennial Basis

39. The MS4 Permit, Part A.5. (j) requires that the Respondent conduct preventive maintenance inspections of all stormwater management facilities at least on a triennial basis.

40. The MS4 Inspection revealed that, as of the time of the MS4 Inspection, Respondent had not been inspecting all stormwater management facilities on a triennial basis.

41. Respondent's failure to conduct preventive maintenance inspections of all stormwater management facilities at least on a triennial basis is a violation of the MS4 Permit and Section 301 of the CWA, 33 U.S.C. §1311.

Count 5 – Failure to Conduct Operation and Maintenance of all Municipal Facilities

42. Part B.1.F. of the MS4 Permit defines BMPs requires that the Respondent "shall design and build and, at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances), including Best Management Practices (BMPs) such as PPC Plans, E&S Plans, and any other storm water pollution prevention or management plans, which are installed or used by the City to achieve compliance with the conditions of this permit. BMPs shall be designed, implemented, and maintained to minimize or eliminate impacts from storm water runoff. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance

requires the operation of backup or auxiliary facilities or similar system, installed by the City only when necessary to achieve compliance with the conditions of this permit."

43. The MS4 Permit Part B.3, Definitions – Best Management Practices (BMPs) include: "Schedules of activities, prohibitions, maintenance procedures, and other management practices to prevent or reduce pollution to the waters of the Commonwealth. BMPs include PPC Plans, Erosion and Sedimentation Control Plans, Storm Water Management Act Plans, and other treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage."

44. The EPA Inspection revealed that, as of the time of the MS4 Inspection, Respondent had failed to properly operate and maintain all facilities and systems of treatment and control and any other stormwater pollution prevention or management plans at these municipal facilities: the City Streets Department and City Garage, Mack South Fire Station, Yard Waste Site at Oxford Drive, Recycling Center, City Golf Course and Lehigh Parkway North Parks Maintenance.

45. The MS4 Inspection revealed that there were no storm water pollution prevention or management plans for any municipal facilities to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. In addition, there were no documented stormwater inspections at any of the municipal facilities.

46. Respondent's failure to comply with the requirements of Part B.1. F. of the MS4 Permit is a violation of the MS4 Permit and Section 301 of the CWA, 33 U.S.C. §1311.

IV. CIVIL PENALTY

47. In full and final settlement of the Complainant's claims for civil penalties for the alleged violations identified herein, Respondent consents to the assessment of, and agrees to pay, in accordance with the terms set forth herein, an administrative civil penalty of fifty thousand dollars ($50,000) within thirty (30) days of the effective date of this CAFO, pursuant to 40 C.F.R. § 22.31(c).

48. The civil penalty amount set forth in Paragraph 47 above, is based on a number of factors, including 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).

49. Respondent shall pay the civil penalty amount described in Paragraph 47, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with the instructions set forth below, by either cashier's check, certified check, or electronic wire transfer, in the following manner:

a. All payments by Respondent shall reference Respondent's name and address, and

the Docket Number of this action;

b. All checks shall be made payable to "**United States Treasury**";

c. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Primary Contact: Craig Steffen, (513) 487-2091
Secondary Contact: Molly Williams, (513) 487-2076

d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Primary Contact: Craig Steffen, (513) 487-2091
Secondary Contact: Molly Williams, (513) 487-2076

e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

f. All payments made by electronic wire transfer shall be directed to:
Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency

CTX Format Transaction Code 22 - Checking

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

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

h. On-Line Payment Option:

WWW.PAY.GOV/paygov/

Enter **sfo 1.1** in the search field. Open and complete the form.

i. Additional payment guidance is available at:

http://www.epa.gov/financial/makepayment

j. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CAFO.

A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

Deane H. Bartlett
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC20)
1650 Arch Street
Philadelphia, PA 19103-2029

And

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

50. 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. Accordingly, Respondent's failure to make timely payment as specified herein shall result in the assessment of interest.

51. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct 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 such interest begins to accrue. 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).

52. The penalty specified in Paragraph 47 shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

V. GENERAL PROVISIONS

53. For the purpose of this proceeding, Respondent admits the jurisdictional allegations set forth in this CAFO.

54. Except as provided in Paragraph 53, above, Respondent neither admits nor denies the Findings of Fact in this CAFO.

55. 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.

56. Respondent shall bear its own costs and attorney fees.

57. 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.

VI. APPLICABLE LAWS

58. 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.

VII. RESERVATION OF RIGHTS

59. 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 an 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.

60. Entry of this CAFO is a final settlement of all violations alleged in this Consent Agreement. Complainant reserves the right to seek and obtain appropriate relief if Complainant obtains evidence that the information and/or representations made by the Respondent in this matter 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, EPA may have under law or equity in such event.

VIII. FULL AND FINAL SATISFACTION

61. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for the violations alleged in this CA. Compliance with the requirements and provisions of this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and/or regulations administered by EPA.

IX. PARTIES BOUND

62. This CAFO shall apply to and be binding upon the EPA, Respondent, and Respondent's officers, employees, agents, successors and assigns. 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.

X. ENTIRE AGREEMENT

63. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

XI. EFFECTIVE DATE

64. 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), this CAFO shall be issued after a 40-day public notice period is concluded. This CAFO will become final and effective thirty (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), or after a public comment process pursuant to 40 C.F.R. § 22.45(b) is concluded.

FOR RESPONDENT, CITY OF ALLENTOWN:

Date: 5/11/2018

Ray O'Connell

Ray O'Connell, Interim Mayor
City of Allentown

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 7/16/18

Dominique Lueckenhoff, Acting Director
Water Protection Division
U.S.EPA Region III

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of:	
City of Allentown, Pennsylvania	**EPA Docket No. CWA-03-2018-0103**
Respondent.	**FINAL ORDER**
	U.S. EPA-REGION 3-RHC FILED-29AUG2018am11:45
	Proceeding under Section 309(g) of the Clean Water Act

FINAL ORDER

Complainant, the Acting Director of the Water Protection Division, U.S. Environmental Protection Agency, Region III, and Respondent, the City of Allentown, Pennsylvania, have executed a document entitled Consent Agreement, which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules of Practice), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, the statutory factors set forth in Section 309(d) of the Clean Water Act ("CWA"), 33 U.S.C. § 309(d).

NOW, THEREFORE, PURSUANT TO Section 309 of the CWA, 33 U.S.C. Section 309(g), and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of Fifty Thousand dollars ($50,000), in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is thirty (30) days after this Final Order is filed with the Regional Hearing Clerk, pursuant to 33 U.S.C. §1319(g)(5).

Aug 29, 2018
Date

Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

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

In the Matter of:	)	
	)	
City of Allentown	)	**Docket No. CWA-03-2018-0103**
	)	
	)	
	)	**Proceeding under Section 309g of the Clean Water Act**
RESPONDENT.	)	

CERTIFICATE OF SERVICE

I certify that on AUG 2 9 2019, the original and one (1) copy of foregoing ***Consent Agreement and Final Order***, were filed with the EPA Region III Regional Hearing Clerk. I further certify that on the date set forth below, I served a true and correct copy of the same to each of the following persons, in the manner specified below, at the following addresses:

Copy served via Certified Mail to:
Ray O'Connell, Interim Mayor
City of Allentown
641 South Tenth Street
Allentown, Pennsylvania 18103

Copy served via **Hand Delivery or Inter-Office Mail** to:

Christopher Day
Senior Assistant Regional Counsel
Office of Regional Counsel (3RC20)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(Attorney for Complainant)

Dated: AUG 2 9 2019

Bevin Esposito
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region III

TRACKING NUMBER(S): 7015 0640 0005 8013 3757

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

7/18/18

MEMORANDUM

SUBJECT: In the Matter of City of Allentown
U.S. EPA Docket No. CWA-03-2018-0103

FROM: Dominique Lueckenhoff, Acting Director
Water Protection Division (3WP00)

Mary Coe
Regional Counsel (3RC00)

TO: Joseph J. Lisa 9/29/2018
Regional Judicial Officer (3RC00)

EPA is presenting to you for review a Consent Agreement and Final Order ("CAFO"), resolving the liability of Respondent, City of Allentown, Pennsylvania ("Allentown"), for violations of Section 301 and 402 of the Clean Water Act ("CWA"), 42 U.S.C. § 1311 and §1342. EPA alleged that Allentown failed to comply with requirements of its National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System Permit No. PA-0063665 (MS4 Permit) Allentown owns and operates an MS4. In December 2014, EPA conducted a compliance inspection related to Allentown's implementation of the requirements of its MS4 Permit. EPA alleges that Allentown violated its MS4 Permit, and therefore Sections 301 and 402 of the CWA, by failing to 1) annually report information on industries, 2) fully implement a stormwater management program, 3) provide a description of a comprehensive program to monitor and control pollutants from industrial facilities, 4) conduct preventative maintenance inspections of all stormwater management facilities on a triennial basis, and 5) conduct operation and maintenance of all municipal facilities.

PROPOSED SETTLEMENT

The Consolidated Rules, at 40 C.F.R.§ 22.13(b) provide in pertinent part that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may simultaneously be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). This is such a case, so this CAFO simultaneously commences and concludes this administrative proceeding against Respondent.

The parties have agreed that Allentown will pay a civil penalty of **$50,000** to settle the matter. The proposed settlement is authorized by Section 309 of the CWA, 33 U.S.C. § 1319 and is based upon consideration of the statutory penalty factors, including the nature, circumstances, extent and gravity of the violations, Allentown's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations and such other matters and justice may require. We recommend that this Final Order be executed, as such a settlement is in the best interest of the parties.