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

September 29, 2016

Lori G. Kier
Senior Assistant Regional Counsel

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

Re: In the Matter of Bel Air, Maryland
Docket Nos. CWA-03-2016-0145 (CAFO); CWA-03-2016-0148DN (AOC)

Dear Ms. Guy,

Attached please find the original and one copy of the above-captioned documents, which have been filed in your office.

Sincerely,

Lori G. Kier

cc: (w/encls.)
Mr. L. Jesse Bane
Town Administrator
Town of Bel Air, Maryland
39 N. Hicory Avenue
Bel Air, Maryland 21014

Mr. Andrew Dinsmore
EPA NPDES Enforcement

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

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In the Matter of:	
Town of Bel Air 39 N. Hickory Avenue Bel Air, Maryland 21014	Proceeding to Assess Class II Penalty Under Section 309(g)(2)(B) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(B)
	Docket No. CWA-03-2016-0145
Respondent.	CONSENT AGREEMENT AND **FINAL ORDER**

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 Town of Bel Air, Maryland ("Bel Air" or "Respondent"), pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), 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. Pursuant to 40 C.F.R.§ 22.13(b), the Consolidated Rules 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 be simultaneously 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 2009 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 between January 12, 2009 up to and through December 6, 2013 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 $177,500. 73 Fed. Reg. 75340 (Dec. 11, 2008), as corrected 74 Fed. Reg. 626 (Jan. 7, 2009).

6. Pursuant to the 2013 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 from December 7, 2013 through the present 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. 78 Fed. Reg. 215 (Nov. 6, 2013).

II. GENERAL PROVISIONS

7. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.

8. 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 it waives its right to contest all of the allegations contained herein, and it further consents to issuance of this CAFO without adjudication.

9. Respondent agrees to bear its own costs and attorney fees.

10. 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.

11. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

13. 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.

14. 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 NPDES permit.

15. 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, and to issue general NPDES permits in 1991.

16. MDE issued NPDES "General Permit for Discharges from Small Municipal Separate Storm Sewers," General Discharge Permit No. 03-IM-5500; General NPDES Permit No. MDR 055500 (hereinafter, "the MS4 Permit"), effective April 14, 2003.

17. The MS4 Permit was scheduled by its terms to expire on April 14, 2008.

18. MDE issued NPDES "General Permit for Discharges from Stormwater Associated with Industrial Activities," General Discharge Permit No. 12-SW; General NPDES Permit No. MDR 0000 (hereinafter, "the Industrial Permit") effective January 1, 2014.

19. The Industrial Permit is scheduled by its terms to expire on December 31, 2018.

20. Pursuant to Section 402(i) of the CWA, 33 U.S.C. §1342(i), EPA retains its authority to take enforcement action within the State of Maryland for NPDES permit violations.

21. At all times relevant to this CAFO, Respondent 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) (hereinafter, "Bel Air MS4").

22. The Bel Air MS4 is located within Harford County, Maryland.

23. The Bel Air MS4 is a "small MS4" within the meaning of 40 C.F.R. § 122.26(b)(16).

24. The Bel Air MS4 discharges stormwater to Winters Run, Bynum Run and their associated tributaries, which discharge to the Chesapeake Bay, a "water 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.

25. Bel Air's initial coverage for its MS4 discharges under the MS4 Permit was first effective on June 5, 2003, and its discharges have been covered by the MS4 Permit through an administrative extension since its expiration on April 14, 2008.

26. On January 14-15, 2014, EPA representatives performed an inspection of the Bel Air MS4 (hereinafter, "EPA Inspection") during which such representatives observed multiple violations of the MS4 and Industrial Permits as described in Section IV below.

27. Respondent admits the Findings of Fact and Conclusions of Law set forth herein.

IV. VIOLATIONS

Count I
Failure to Implement Illicit Discharge Detection and Elimination Program

28. Section III.C of the MS4 Permit requires Bel Air to develop a program to implement illicit discharge detection and elimination, including field-screening of outfalls and inspection procedures.

29. The EPA Inspection revealed that, at the time of the inspection, Bel Air had failed to develop a program to implement illicit discharge detection and elimination, including field-screening of outfalls and inspection procedures.

30. Bel Air's failure to develop a program to implement illicit discharge detection and elimination constitutes a violation of the Section III.C of the MS4 Permit and Section 402 of the Act, 33 U.S.C. § 1342.

Count II
Failure to Develop a Stormwater Pollution Prevention Plan

31. Section III.F of the MS4 Permit and Section III.C of the Industrial Permit require Bel Air to develop a stormwater pollution prevention plan (SWPPP) for industrial facilities.

32. The EPA inspection revealed that, at the time of the inspection, Bel Air had failed develop a SWPPP for its DPW Maintenance Facility, which had coverage under the Industrial Permit.

33. Respondent's failure to develop a SWPPP for its DPW Maintenance Facility constitutes violations of Section III.F of the MS4 Permit, Section IIII.C of the Industrial Permit, and Section 402 of the Act, 33 U.S.C. § 1342.

Count III
Failure to Submit Annual Reports/Deficient Annual Reports

34. Section V.C of the MS4 Permit requires Bel Air to submit annual reports regarding its MS4 operations, including certain required information, to MDE.

35. The EPA inspection revealed that Bel Air had failed to submit annual reports regarding its MS4 operations to MDE for reporting years 2012 and 2013, and to include certain required information in its annual report for reporting year 2014.

36. Respondent's failure to submit annual reports regarding its MS4 operations to MDE for reporting years 2012 and 2013, and to include certain required information in its annual report for reporting year 2014 constitute violations of Section V.C of the MS4 Permit and Section 402 of the Act, 33 U.S.C. § 1342.

V. CIVIL PENALTIES

37. 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.

38. 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 **thirty-five thousand dollars ($35,000)** in full and final settlement of EPA's claims for penalties for the violations alleged herein.

39. Respondent shall pay the total administrative civil penalty of **thirty-five thousand dollars ($35,000)** 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.

All payments by Respondent shall reference Respondent's name and address and the Docket Number of this action, CWA-03-2016-0145.

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
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-

Lori G. Kier
Mail Code 3RC20
Office of Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

40. 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.

41. The following notice concerns interest 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(a), EPA is entitled to assess interest on outstanding debts owed to the United States. 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 interest.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of the fully-executed 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).

42. The penalty specified in Paragraph 38 shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

VI. PUBLIC NOTICE AND EFFECTIVE DATE

43. Pursuant to 40 C.F.R. § 22.45(b), this CAFO shall be issued after a 40-day public notice period is concluded and following execution by an authorized representative of EPA, and filing with the Regional Hearing Clerk. 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, whichever occurs later.

44. 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 Maryland Department of the Environment (MDE) regarding this action, and will mail a copy of this document to the appropriate MDE official.

VII. APPLICABLE LAWS

45. 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.

VIII. RESERVATION OF RIGHTS

46. 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 the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). 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.

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 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, EPA may have under law or equity in such event.

IX. FULL AND FINAL SATISFACTION

48. 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 CAFO. 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.

X. PARTIES BOUND

49. 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.

XI. ENTIRE AGREEMENT

50. 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.

XII. NON-SEVERABILITY

51. 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.

XIII. FINAL ORDER

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

29TH day of SEPTEMBER, 2016.

Jon M. Capacasa, Director
Water Protection Division

FOR RESPONDENT:

Date: July 27, 2016

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I hand-delivered the original and one copy of the Consent Agreement and Final Order, Docket No. CWA-03-2016-0145, to:

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

I further certify that on the same date, I sent via email and via certified mail - return receipt requested, a true and correct copy of the aforesaid Consent Agreement and Final Order to:

Mr. L. Jesse Bane
Town Administrator
Town of Bel Air, Maryland
39 N. Hicory Avenue
Bel Air, Maryland 21014

9/29/16
Date

Lori G. Kier
Senior Assistant Regional Counsel
U.S. EPA, Region III
Office of Regional Counsel (3RC20)
1650 Arch Street
Philadelphia, P A 19103-2029