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

In the Matter of:	Proceeding to Assess Class II Administrative Penalty Under Section 309(g) of the Clean Water Act
The Board of County Commissioners of Frederick County, Maryland 30 North Market Street Frederick, Maryland 21701	Docket No. CWA-03-2015-0052
Respondent.	**CONSENT AGREEMENT AND FINAL ORDER**

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EPA REGION III, PHILA, PA

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 Board of County Commissioners of Frederick County, Maryland ("Frederick County," "County," 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, and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22. The parties have agreed to settlement of this matter. 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" 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 $177,500.

II. EPA 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. At all times relevant to this CAFO, 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).

6. At all times relevant to this CAFO, Respondent has owned and/or operated facilities engaging in industrial activities that are included in several of the categories listed in 40 C.F.R. § 122.26.(b)(14).

7. Respondent's MS4 is located within the geographic boundaries of the County.

8. Frederick County encompasses a total area of approximately 424,960 acres. According to the County, its population is estimated at 233,385 people at the time of the 2010 U.S. Census. The population served by the MS4 is 135,647.

9. Stormwater from the MS4 drains to a number of water bodies, including the Upper Monocacy River, Lower Monocacy River, Catoctin Creek, Double Pipe Creek and the Potomac River, all of which 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. § 122.2.

10. 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.

11. 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.

12. "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.

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

14. 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).

15. An NPDES permit is required for discharges from an MS4 serving a population of 100,000 or more, pursuant to section 402(p)(2)(C) of the Act, 33 U.S.C. § 1342(p) and 40 C.F.R. § 122.26(a).

16. Respondent's MS4 serves a population of at least 100,000 people.

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 permits on September 5, 1974.

18. MDE issued to Respondent an NPDES MS4 Discharge Permit No. MD 0068357 which became effective on March 11, 2002 (hereinafter the "MS4 Permit").

19. The expiration date of the MS4 Permit was March 11, 2007; however, the MS4 Permit has been administratively extended pending a final decision on the renewal application.

20. 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).

21. On December 1, 2002 MDE issued a General Discharge Permit for Storm Water Associated with Industrial Activities ("Industrial Stormwater Permit"). The permit, effective December 1, 2002, also covers storm water discharges determined to be significant contributor of pollutants. The permit was set to expire on November 30, 2007, but it has been administratively extended.

22. On April 24 & 25, 2012, a compliance inspection team comprised of EPA staff and authorized representatives of EPA inspected Respondent's MS4 program and compliance with the Industrial Stormwater Permit at County-owned and/or County-operated facilities (the "Inspection").

23. At the time of the inspection, Respondent had obtained permit coverage under the Industrial Stormwater Permit for eleven (11) County-owned and/or County-operated facilities.

III. EPA FINDINGS OF VIOLATION

Failure to Maintain an Acceptable Erosion and Sediment Control Program

24. Part III.E.4 of the MS4 Permit requires Respondent to "maintain an acceptable erosion and sediment control program in accordance with the Environment Article, Title 4, Subtitle 1, Annotated Code of Maryland."

25. Code of Maryland Regulations ("COMAR") 26.17.01.09.D. requires Respondent to inspect sites with an approved erosion and sediment control plan an average of once every 2 weeks for compliance with the approved plan.

26. COMAR 26.17.01.09.I. requires Respondent to use enforcement action when erosion and sediment control violations occur.

27. At the time of inspection, Respondent was not conducting follow-up enforcement for erosion and sediment control violations at the Windsor Knolls construction site in Ijamsville, Maryland.

28. By not conducting follow-up enforcement for erosion and sediment control violations, EPA has concluded that Respondent was in violation of the MS4 Permit.

Failure to Have and Implement Storm Water Pollution Prevention Plans

29. Parts IV.B. and C. of the Industrial Stormwater Permit require that Respondent have and implement a stormwater pollution prevention plan (SWPPP) for each facility covered under the Industrial Stormwater Permit.

30. At the time of the inspection, Respondent had not fully implemented SWPPPs at six (6) of Respondent's facilities covered under the Industrial Stormwater Permit.

31. By not implementing SWPPPs at these six facilities covered under the Industrial Stormwater Permit, EPA has concluded that Respondent was in violation of the Industrial Stormwater Permit.

32. EPA finds that Respondent's failure to comply with the MS4 Permit and Industrial Stormwater Permit violates Section 301 of the Act, 33 U.S.C. § 1311.

IV. CONSENT AGREEMENT AND FINAL ORDER

33. For purposes of this proceeding, Respondent admits the Jurisdictional Allegations set forth in Section II, above.

34. For purposes of this proceeding, Respondent neither admits nor denies EPA's Findings of Fact and Conclusions of Law set forth in Section II, above, or EPA's Findings of Violation set forth in Section III, above.

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

36. 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.

37. Each party to this action shall bear its own costs and attorney fees.

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

39. 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.

40. 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), EPA has consulted with the State of Maryland regarding this action, and will mail a copy of this document to the appropriate Maryland official.

41. 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 **twenty nine thousand dollars ($29,000)** in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.

42. Respondent shall pay the total civil penalty of **twenty nine thousand dollars ($29,000)** 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, i.e., CWA-03-2015-0052.

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-

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

43. 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.

44. 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 interest on 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).

45. 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. The County reserves the right to all defenses in response to any action commenced by EPA, including but not limited to, an enforcement proceeding related to this CAFO.

46. The penalty specified in Paragraph 41 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. The County reserves the right to all defenses in response to any action commenced by EPA under this paragraph.

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.

50. This CAFO does not limit or affect the rights of the County or EPA against any third parties not a party to this CAFO.

V. PUBLIC NOTIVE AND EFFECTIVE DATE

51. 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.

FOR RESPONDENT, THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND:

Date: 8-21-14

By: Blaine R. Y

Name: Blaine R. Young

Title: President

KM 6/18/14

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 9/12/14

Dominique Lueckenhoff

Jon M. Capacasa, Director
Water Protection Division

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

this 25th day of November, 2014

Shawn M. Garvin
Regional Administrator
U.S.EPA Region III