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
Carroll County, Maryland	Docket No. CWA-03-2014-0081
Respondent.	**CONSENT AGREEMENT AND FINAL ORDER**

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 Carroll County Maryland ("Carroll 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, 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.

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

4. Carroll County, Maryland, or "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 Complaint, 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. Respondent's MS4 is located within the geographic boundaries of Carroll County.

7. Carroll County (the County)encompasses a total area of approximately 289,536 acres. According to the County, its population is estimated at 167,929 people.

8. Stormwater from the County drains to a number of water bodies, including the Upper Monocacy River, Lower Monocacy River, Conewago Creek, Double Pipe Creek and the North and South Branches of the Patapsco River, in addition to numerous small tributary creeks and streams, 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. § 232.2; 40 C.F.R. § 122.2.

9. 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.

10. 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.

11. "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.

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

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, 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).

14. An NPDES permit is required for discharges from an MS4 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.

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

16. 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.

17. MDE issued to Respondent an NPDES MS4 Discharge Permit No. MD 0068331 which became effective on July 14, 2005 (hereinafter the "MS4 Permit").

18. The expiration date of the MS4 Permit was July 14, 2010; however, the MS4 Permit has been administratively extended pending a final decision on the renewal application.

19. 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), 40 C.F.R. § 122.21.

20. On December 1, 2002 MDE issued a General Discharge Permit for Storm Water Associated with Industrial Activities ("Industrial SW Permit"). The permit 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.

21. On April 26 & 27, 2012, a compliance inspection team comprised of EPA and authorized representatives of EPA inspected Respondent's MS4 program (the "MS4 Inspection").

22. In May 2013, EPA issued the Carroll County Municipal Separate Storm Sewer System (MS4) Program Inspection Report (Inspection Report), which included, in addition to general information regarding the County's MS4 program and history, eighteen (18) observations regarding the County's MS4 Program related to the requirements of the current MS4 Permit (MD 0068331, effective July 14, 2005). The Inspection Report also included 8 attachments (exhibit log, photo log, document log, etc.).

23. The County received a copy of the Inspection Report which was sent by mail on May 20, 2013. The County prepared and submitted a response to EPA on July 3, 2013.

24. Based upon the April 26 & 27, 2012 inspection, EPA identified eight categories of violations, 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.

25. Part III.C. of the permit requires "Sources of pollutants in stormwater runoff shall be identified and linked to specific water quality impacts on a watershed basis. This process shall be used to develop watershed restoration plans that effectively improve water quality. The following information shall be submitted in geographical information system (GIS) format with associated tables as required in Part IV. of this permit: storm drain system: major outfalls, inlets and associated drainage areas;"

26. At the time of inspection, seven years after the permit issuance, Carroll County had still not completed mapping all of its major outfalls.

27. Part III.E.2 of the permit requires the County to maintain an acceptable erosion and sediment control program in accordance with Environment Article, Title 4, Subtitle 1 of the Annotated Code of Maryland. Title 4, Subtitle 1 requires that construction sites be inspected on average once every two weeks. This requirement is also written in Section 7.1 of the Maryland Model Erosion and Sediment Control Ordinance (MDE 2/2012) "Every active site having a designed erosion and sediment control plan should be inspected for compliance with the plan on average once every two (2) weeks."

28. At the Antrim Mini-Storage site, compliance inspections occurred on January 14, 2009, February 20, 2009 and April 1, 2009. The periods between these inspections were between 26 and 46 days, well beyond the two week average.

29. Part III.E.3 of the permit requires "Carroll County maintain an inspection and enforcement program or other alternative methods approved by MDE, to ensure that all discharges to and from the municipal separate storm sewer that are not composed entirely of stormwater are either permitted by MDE or eliminated."

30. At the time of the MS4 inspection, Carroll County's dry weather inspections were not adequately investigating for illicit discharges by failing to examine inflow points into stormwater management structures (SWMs) for the presence of dry weather flows.

31. Part III.E.6.a of the permit requires Carroll County to "Continue to publicize a compliance hotline for the reporting of suspected illicit discharges, illegal dumping and spills."

32. At the time of the MS4 inspection Carroll County still had not developed an outreach program to inform citizens about illegal dumping and spills, or the method to report illegal dumping and spills.

33. Part III.E.4 of the MS4 permit requires Carroll County to "... identify all County-owned facilities requiring NPDES stormwater general permit coverage and submit Notices of Intent (NOI) to MDE for each. The status of pollution prevention plans development and implementation shall be submitted annually."

34. At the time of the MS4 inspection, Carroll County had not developed Stormwater Pollution Prevention Plans (SWPPPs) for two closed landfills.

35. Part III.E.4 of the MS4 permit requires Carroll County to "... identify all County-owned facilities requiring NPDES stormwater general permit coverage and submit Notices of Intent (NOI) to MDE for each. The status of pollution prevention plans development and implementation shall be submitted annually." Part IV.C.2.f of the general permit requires qualified plant personnel be identified to visually inspect designated equipment and plant areas. A site inspection shall be conducted annually by such personnel to verify that the description of potential pollutant sources as required in the permit is accurate.

36. At the time of the MS4 inspection, annual stormwater inspections were not documented for the Northern Landfill.

37. Based upon the MS4 inspection, EPA has concluded that Respondent's failures to: 1) identify and map all stormwater outfalls; 2) develop and implement procedures to inspect construction sites on a bi-weekly basis and insure compliance with the E&S plans; 3) ensure that all County facilities are properly permitted and inspected for compliance with their SWPPPs; and 4) develop a hotline for residents to call in illicit discharges; violate the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

III. CONSENT AGREEMENT AND FINAL ORDER

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

39. Respondent admits the Findings of Fact, Jurisdictional Allegations, and Conclusions of Law set forth in this CAFO.

40. 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.

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

42. 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.

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

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

45. 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.

46. 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.

47. 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 forty thousand dollars ($40,000) in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.

48. Respondent shall pay the total administrative civil penalty of forty thousand dollars ($40,000) 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/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-

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

49. 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.

50. 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).

51. 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).

52. 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.

53. 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.

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

55. 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.

56. 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.

57. 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, CARROLL COUNTY.:

Date: 11 March 2014

By: Steven D. Powell

Name: Steven D. Powell

Title: Chief of Staff

REVIEWED BY: [illegible]
COUNTY ATTORNEY'S OFFICE FOR
CARROLL COUNTY
DATE: 3-6-14

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 4/3/14

Dominique Lueckhoff
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 _____ day of _____, 2014

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