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

In the Matter of:	:	**ADMINISTRATIVE ORDER ON CONSENT**
Government of the District of Columbia,	:	Docket No. CWA-03-2018-0019DN
Respondent.	:	

I. STATUTORY AND REGULATORY BACKGROUND

1. The United States Environmental Protection Agency ("EPA") has made the following findings of fact and issues in this Administrative Order on Consent ("Consent Order") pursuant to the authority vested in the Administrator of EPA under Section 309(a) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(a). This authority has been delegated by the Administrator to the Regional Administrator of EPA Region III, and further delegated to the Director, Water Protection Division, Region III.

2. Section 309(a) of the Act, 33 U.S.C. § 1319(a), provides, *inter alia*, that whenever on the basis of any information available to her the Administrator finds that any person is in violation of any permit condition or limitation implementing certain CWA sections in a permit issued under Section 402 of the Act, 33 U.S.C. § 1342, he shall issue an order requiring such person to comply with such section or requirement.

3. Respondent, the District of Columbia (the District), has agreed to the issuance of this Consent Order.

4. 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.

5. 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, to ensure compliance with the requirements of the CWA. The

discharges are subject to specific terms and conditions, as prescribed in the permit. *See also* 33 U.S.C. § 1311.

6. 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.

7. "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.

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

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

10. "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.

11. Definitions. The following definitions apply to this Consent Order:

a. A "stormwater control measure" ("SCM") is a management practice, structure or policy that captures, diverts or manages the volume of stormwater or minimizes or eliminates the concentration of pollutants in stormwater discharges.

b. Inspections:

i. "Regulatory inspection" means an inspection conducted by the District Department of Energy and Environment ("DOEE") personnel, or a DOEE designee, to determine compliance with a regulatory requirement.

ii. "Self-inspection" means an inspection carried out by or for a District agency of its own facilities or operations.

c. "Program Year" is:

i. For the first Program Year, the period that begins immediately after the effective date of this Consent Order and ends on the next September 30; and

ii. Thereafter the period congruent with a fiscal year that begins on October 1 and ends on September 30 of the following year.

d. "Writing" or "written" or "in writing" includes electronic format, including email with confirmation that the message was received and read. The term denotes a tangible or electronic record of a communication or representation, including (a) handwriting, (b) typewriting, (c) printing, (d) photostat, (e) fax, (f) photograph, (g) word processing,

spreadsheet or database computer output or upload, and (g) e-mail. An electronic writing file may include any of the following formats: docx, .wpd, .xlsx, .pdf, .html, or database format readable by MS Access. A "signed" writing includes an electronic symbol or process attached to, or logically associated with, a writing. An electronic signature is a writing executed or adopted by a person with the intent to sign the writing, and may include an electronic code or alphanumeric string, a statement stating that it constitutes a signature, or an image of a manual signature.

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

12. The District is a "municipality" within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).

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

14. At all times relevant to this Order, Respondent has owned and/or operated a MS4.

15. Respondent's MS4 is located within the jurisdictional boundaries of the District.

16. The District encompasses a total area of approximately 43,712 acres. At least half of that area drains into the MS4.

17. The MS4 discharges into the Potomac River, the Anacostia River, and Rock Creek, and to tributaries of these waters.

18. The MS4 discharges into waters of the Unites States.

19. According to the U.S. Census Bureau, as of 2014, the District's population was approximately 658,000 people.

20. EPA issued to Respondent an NPDES MS4 Discharge Permit No. DC0000221, that became effective on January 22, 2012, (the "MS4 Permit").

21. The MS4 Permit identifies Respondent as the permittee, with the District Department of the Environment ("DDOE") as the agency responsible for managing the activities to comply with the MS4 Permit. This agency is now known as the Department of Energy and Environment ("DOEE").

22. The MS4 Permit requires the permittee to submit a report every year (the "Annual Report"). The Annual Report must address each permit requirement, including a review of program implementation and compliance. The District has submitted Annual Reports every year, as required by the MS4 Permit.

23. The MS4 Permit requires the District to comply with all the conditions of the permit.

24. On May 6 through 8, 2013, an EPA compliance inspection team inspected Respondent's MS4 program (the "MS4 Inspection"). The team visited a number of facilities owned by the District 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 2014, EPA finalized an inspection report documenting the inspection of the District's MS4 program.

26. Respondent received a copy of EPA's inspection report on or about July 18, 2014. The District responded to EPA's inspection report on or about October 16, 2014. ("District's October Response")

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

Count I: Failure to adequately maintain an electronic inventory of stormwater control practices that includes information on the maintenance verification

28. Section 4.2.2 of the MS4 Permit requires the District to develop mechanisms to ensure maintenance of stormwater controls on private property. To insure maintenance, the permittee must include a long-term verification process of operation and maintenance, which may include inspections, owner/operator certification, or other mechanism.

29. The MS4 Permit also requires that the District maintain an electronic inventory of stormwater control practices that includes information on the mechanism used to verify maintenance.

30. As of the dates of the MS4 Inspection, the District had an electronic inventory listing stormwater control practices on private property in the District.

31. However, when asked by EPA inspectors about randomly selected private property parcels, the District could not locate particular stormwater control practices on some of the private property in the District's databases or records, or otherwise show how the District was tracking particular control practices on those parcels.

32. Respondent's failure to maintain complete and current information on all stormwater control practices in the electronic inventory resulted in a failure to adequately monitor and ensure maintenance of retention practices on private property, in violation of the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count II: Failure to practice good housekeeping in all municipal facilities

33. Section 4.3.7 of the MS4 Permit requires the District to incorporate good housekeeping components at all municipal facilities, including implementing maintenance standards at all municipal facilities, implementing an inspection schedule of not less than one inspection per facility per year, implementing recordkeeping and tracking of inspections and maintenance at all municipal facilities, and ensuring proper operation of treatment management practices and maintenance of such practices as necessary.

34. As of the date of the MS4 inspection, the District had not implemented an inspection and maintenance program that included and tracked yearly inspection of all municipal facilities.

35. On or about May 6, 2013, EPA inspected a District Department of General Services vehicle maintenance facility located at 4 DC Village Lane, SW. The inspection team observed, among other maintenance concerns, catch basins without oil-water separators, catch basins clogged with sediment, fuel storage containers without secondary storage containment, and salt spreading machinery stored outside without cover. This facility drains into the District's MS4.

36. On or about May 6, 2013, EPA inspected a District Department of Public Works ("DPW") waste transfer station facility located at 3200 Benning Road, NE. The inspection team observed, among other maintenance concerns, numerous stormwater inlets filled with sediment and debris, and an overgrown vegetated swale. The team requested maintenance records for this facility but the District was not able to provide any. This facility drains into the District's MS4.

37. On or about May 6, 2013, EPA inspected a District Department of Transportation ("DDOT") street maintenance facility located at 1403 W Street, NE. The inspection team observed, among other maintenance concerns, fluid spills around machinery, as well as asphalt spilled on the ground. The team also observed a stormwater management control structure filled with sediment, litter and organic contaminants. This facility drains into the District's MS4.

38. On or about May 6, 2013, EPA inspected a District DDOT vehicle maintenance and salt storage facility located at 414 Farragut NE. The inspection team observed, among other maintenance concerns: an open drain valve in the secondary containment of the brine tank; a salt tank without secondary containment, with salt around it on the ground; salt staining visible around the storm sewer inlet; and other chemical containers stored without secondary containment. The facility also had three sand filters that were improperly below grade and one had a broken concrete apron. Inspections conducted by DOEE (then DDOE) at this facility in 2010, 2011 and 2012 had identified the same maintenance problems with the sand filters. This facility drains into the District's MS4.

39. On or about May 6, 2013, EPA inspected the District DPW Fort Totten waste transfer station located at 4900 Bates Road, NE. The inspection team observed trash and debris accumulated near storm sewer inlets. The Vortechs® filtering systems in the inlets were filled with trash and debris. Documents on the maintenance of the filtering systems failed to show that the systems had received maintenance in several years. This facility drains into the District's MS4.

40. On or about May 7, 2013, EPA accompanied DOEE personnel during an inspection of stormwater control practices at the District's Department of Parks and Recreation Langdon Park Playground, located at 2901 20th Street, NE. One of the stormwater control practices, a bioretention cell, was overgrown with invasive trees. This facility drains into the District's MS4.

41. Respondent's failure to implement the required good housekeeping practices, to ensure the proper operation of treatment management practices, and to implement a yearly inspection schedule, violates the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count III: Failure to adequately implement and document training program

42. Section 4.3.10 of the MS4 Permit requires the District to implement on-going training for specified employees, as well as for an employee whose function may impact the stormwater program implementation. The training program must address, among other things, the requirements of the District's MS4 permit, maintenance standards, inspection procedures, and ways to perform the municipal work that minimize impacts to the receiving waters. The training program must include at a minimum yearly refresher or follow-up training.

43. During the May 2013 inspection, the EPA inspection team requested training documentation and attendance lists for stormwater training. The District asserted that it had conducted the required training, but no training documentation or attendance lists were provided for training that occurred prior to the inspection.

44. Respondent's failure to adequately implement and document the required ongoing training program for District employees violates the MS4 Permit and Section 301 of the Act, 33 U.S.C. §1311.

Count IV: Failure to include all required data for critical sources in the District's commercial and institutional databases

45. Section 4.4.1.1 of the MS4 Permit requires the District to maintain an inventory or database of all facilities within its jurisdiction that are critical sources of stormwater pollution in commercial and institutional areas. Critical sources include, among others, industrial activities, as defined in 40 C.F.R. §122.26(b)(14), and construction sites exceeding one acre. Section 4.4.1.2 specifies the information that must be included for each critical source. The critical sources inventory must be updated at least annually, as provided in Section 4.4.1.3 of the MS4 Permit.

46. As of May 2013, the District maintained separate databases, that, when considered together, included most, but not all, of the facilities identifiable as critical sources carrying out industrial activities, as defined in 40 C.F.R. § 122.26(b)(14).

47. Within the totality of the records of the databases, one or more of the required data fields that Permit Section 4.4.1.2 requires was missing or the data were out of date.

48. Respondent's failure to maintain an inventory of critical sources as specified in the MS4 Permit is a violation of the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

III. ORDER

AND NOW, Pursuant to section 309(a) of the Act, 33 U.S.C. § 1319(a), having taken into account the seriousness of the violations and good faith efforts by Respondent to comply with section 301(a) of the Act, Respondent is hereby ORDERED to do the following:

49. The Respondent shall take all actions necessary to comply with its MS4 Permit, including:

a. Continue to update its Stormwater Database that documents stormwater control measures (SCM), as follows:

i. Add prior existing SCMs in the geographic area of the District's MS4 which have not yet been added to the Stormwater Database.

ii. For each SCM, document information related to its effectiveness, including:

(1) Type of SCM;

(2) Date of most recent regulatory inspection;

(3) Date of most recent reported self-inspection, as the District may require;

(4) SCM condition;

(5) Planned regulatory inspection frequency; and

(6) Principal inspection findings or determinations.

iii. Complete the update by the time specified in the timelines section.

b. Complete development and implementation of an operations and maintenance program ("the Program"), as described in Appendix A attached to this AOC, at municipal facilities located in the MS4 Permit area and covered by the MS4 permit specified in paragraph 50 ("the Facilities").

c. The Program shall:

i. Address the following functions:

(1) Operations;

(2) Maintenance and good housekeeping practices;

(3) Self-inspection;

(4) Regulatory inspection; and

(5) Corrective action.

ii. Require identification of responsible staff and managers at each of the Facilities responsible for compliance with the Program.

iii. Require identification of the staff and managers responsible for conducting and tracking self-inspections.

iv. Specify:

(1) Self-inspection frequencies for SCMs;

(2) Self-inspection frequencies of each Facility to assure good housekeeping;

(3) Maintenance frequency of SCMs; and

(4) Requirements for tracking self-inspections, deficiencies identified, and completion of corrective action.

(5) Timelines for the completion and implementation of stormwater pollution prevention plans in the following municipal facilities in the MS4 Permit area:

(a) Each automotive service facility;

(b) Each facility conducting an industrial activity, as defined by 40 C.F.R. § 122.26;

(c) Each maintenance yard for streets, infrastructure or grounds;

(d) Each municipal wastewater or potable drinking water facility; and

(e) Each other Facility that the District identifies as a critical source.

d. The Program may allow for different operations and maintenance practices and

different self-inspection frequencies for different types of Facilities, based on the potential of each type of Facility to discharge pollutants through stormwater.

e. Submit a periodic Program report to EPA, as provided below, that:

i. Documents the implementation of the Program in the preceding Program Year;

ii. Identifies each Program implementation result that was found to be deficient, and for each such result briefly addresses causes;

iii. Describes each action that Respondent determined to take in order to address each deficiency;

iv. Includes a summary of the findings of the reporting period's regulatory inspections conducted in the Facilities, as required by the Permit;

v. Includes a summary of recurring maintenance and good housekeeping issues, and how Respondent's agencies are addressing these recurring issues; and

vi. Is concurrently posted on the District's website page where the MS4 Annual Reports are posted.

f. Submit a periodic training report to EPA, as provided below, that:

i. Identifies the stormwater training events conducted in the preceding Program Year for District employees who must receive training under the MS4 Permit specified in paragraph 50;

ii. Identifies the length of each event;

iii. Separately groups trainings conducted for:

(1) Respondent's regulatory staff responsible for regulatory inspections of stormwater or MS4 program work; and

(2) Other staff at District agencies;

iv. Identifies for each training event:

(1) The trainee's agency;

(2) The trainee's facility or multiple facilities;

(3) Description of the content of the training event;

(4) The number of employees trained at each event; and

(5) Hyperlink or other identifier to the location of the materials, summaries, or recordings from the event, or, if none, includes the material.

g. Follow these timelines and deadlines:

i. Database: Complete the Stormwater Database update no later than two years after the effective date of this Consent Order.

ii. Program: Implement the Program no later than two years after the effective date of this Consent Order.

iii. Reports: Provide the following reports to EPA on the following schedule:

(1) Types of reports:

(a) Program; and

(b) Training.

(2) Deadlines:

(a) Due no later than 12 weeks after the end of each Program Year; and

(b) Required for each of the first five (5) Program Years, and no longer thereafter.

50. This Consent Order requires compliance with "the MS4 Permit", which is either (1) the present MS4 permit, or (2) upon and after its effective date, the succeeding MS4 permit. The present MS4 permit is NPDES MS4 Discharge Permit No. DC0000221, that became effective on January 22, 2012.

51. **Respondent shall include a written certification** for each document required to be submitted to EPA by the preceding provisions of this Consent Order, signed by a responsible District officer, as defined in 40 CFR § 122.22(d), that reads as follows:

> *I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate,*

and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Date: _____
Signed _____
Title _____

52. All documents required herein shall be considered properly delivered when submitted in writing to:

Andrew Dinsmore (or his designee)
NPDES Enforcement Branch
Mail Code (3WP42)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
Email: Dinsmore.Andrew@epa.gov

a. Electronic submission to the stated email address shall be considered delivery.

b. Notwithstanding electronic submission, Respondent shall submit a hard copy within seven days of the submission of an electronic format writing.

53. For each calendar year in which a document is required to be submitted, Respondent shall include it, or a hyperlink to it, in the Annual Report required by the MS4 Permit for that year.

III. GENERAL PROVISIONS

54. Issuance of this Consent Order is intended to address the violations described 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. Further, EPA reserves any existing rights and remedies available to it under the CWA, 33 U.S.C. §1311, *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction. Further, EPA reserves any rights and remedies available to it under the CWA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this Consent Order, following its effective date.

55. This Consent Order does not constitute a waiver or modification of the terms or conditions of Respondent's NPDES Permit. Compliance with the terms and conditions of this Order does not relieve Respondent of its obligations to comply with any applicable federal, state, or local law, regulation or permit.

56. For the purposes of this proceeding, Respondent neither admits nor denies the factual allegations and conclusions of law set forth in this Consent Order.

57. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

58. EPA reserves all existing inspection authority otherwise available to EPA pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, or pursuant to any other statute or law.

59. 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 Consent Order and to execute and legally bind the party.

60. The parties agree that the issuance of this Consent Order is in the public interest and that it is the most appropriate means of resolving this matter.

IV. EFFECTIVE DATE

This ORDER is effective after receipt by Respondent of a fully executed document.

SO ORDERED:

Date: JUN 1 2 2018

Catharine McManus
Acting Director, Water Protection Division
U.S. EPA Region III