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

MAY 29 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Robert Kalinoski
Street Commissioner
Throop Borough
436 Sanderson Street
Throop, Pennsylvania, 18512

Re: Docket No. CWA-03-2014-0169 DN
Administrative Order for Compliance and Request for Information

Dear Mr. Kalinoski:

The United States Environmental Protection Agency ("EPA") has reviewed the 2010 and 2011 Annual Reports that Throop Borough submitted to the Pennsylvania Department of Environmental Protection (PADEP) to assess compliance with PADEP's General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems, PAG-13 ("General Permit"). Based on the information disclosed in the Annual Reports, EPA has determined that Throop Borough is in violation of Federal regulations at 40 C.F.R. § 122.34 and the General Permit because it: a) failed to adequately implement the minimum control measures required by the General Permit; and/or b) failed to adequately document compliance in the Annual Reports as required by the terms of the General Permit.

Enclosed with this letter is a document entitled Findings of Violation and Administrative Order for Compliance ("Findings and Order") issued pursuant to Section 309(a) of the Federal Clean Water Act ("Act"), 33 U.S.C. §§ 1319(a). This document contains findings that Throop Borough has violated Section 301 of the Act, 33 U.S.C. § 1311, and requires Respondent to provide additional evidence of compliance and to submit a work plan and schedule upon EPA's request. You should carefully read the contents of the enclosed Findings and Order, and communicate to each responsible official, agent or employee the actions which each such person must take to ensure compliance with its terms. Failure to comply with the terms of the Order and Request may result in further enforcement action being taken, including a civil suit for penalties and injunctive relief that may be required to comply with the permit.

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If you require any information or assistance regarding this matter, please contact Mr. Peter Gold, NPDES Permits and Enforcement Branch, 215-814-5236.

Sincerely,

Jon M. Capacasa, Director
Water Protection Division

Enclosure

cc: Mike Brunamonti, PADEP
Sean Furjanic, PADEP

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Philadelphia, Pennsylvania 19103-2029

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In the Matter of: Borough of Throop 436 Sanderson Street Throop, PA 18512 Respondent.	:	Proceeding Under Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a) Docket No. CWA-03-2014-0169 DN FINDINGS OF VIOLATION AND ORDER FOR COMPLIANCE

I. STATUTORY AUTHORITY

The following Findings of Violation and Order for Compliance ("Order") are issued under the authority vested in the United States Environmental Protection Agency ("EPA") by Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a) ("CWA" or "the Act"). The Administrator has delegated this authority to the Regional Administrator of EPA Region III who in turn has redelegated it to the Director of the Water Protection Division of EPA Region III.

II. FINDINGS

A. NPDES and MS4 Programs

1. 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.

2. 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.

3. "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.

4. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." *Id.* § 122.26(b)(13).

5. The term "municipal separate storm sewer system" or "MS4" includes, *inter alia*, "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains): (i) 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).

6. The term "small municipal separate storm sewer system" or "small MS4" means "all separate storm sewers that are: (i) Owned or operated by the United States, a State, city, town, borough . . . or other public body (created by or pursuant to State law) having jurisdiction over disposal of . . . storm water. . . .; [and] (ii) Not defined as 'large' or 'medium' municipal separate storm sewer systems." 40 C.F.R. § 122.26(b)(16).

7. Small MS4s are regulated pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p) and the regulations promulgated thereunder. Pursuant to 40 C.F.R. §122.26(a)(9)(i), small MS4s require an NPDES permit if they are required to be regulated pursuant to 40 C.F.R. § 122.32.

B. Pennsylvania's Small MS4 Program

8. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Commonwealth of Pennsylvania to issue NPDES permits in 1978. In 1991, EPA authorized PA to issue General NPDES Permits.

9. On December 2, 2002, PADEP published a guidance document entitled "Municipal Separate Storm Sewer System (MS4) Stormwater Management Program Protocol," 3900-PM-WM0100h (Dec. 2, 2002), http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-54734/3900-PM-WM0100h.pdf ("the Protocol").

10. On March 9, 2003, PADEP issued a NPDES Permit for Stormwater Discharges to Throop Borough ("the Permit"). The Permit expired on March 9, 2008, and was reissued/administratively extended.

11. The 2003 MS4 Permit, Part A.2, required permittees to implement a Stormwater Management Program meeting the following Minimum Control Measures: (1) Public Education and Outreach on Stormwater Impacts, (2) Public Participation and Involvement, (3) Illicit Discharge Detection and Elimination, (4) Construction Site Runoff Control, (5) Post-Construction Stormwater Management in New Development and Redevelopment, and (6) Pollution Prevention and Good Housekeeping for Municipal Operations and Maintenance.

12. Further, the 2003 MS4 Permit, Part A.3., required Permittees to either: (a) implement the Protocol; or (b) develop and implement their own stormwater management program.

13. The 2003 MS4 Permit, Part A.3., additionally provided that for Permittees that chose to implement the Protocol, the Protocol and its underlying requirements became incorporated into the 2003 MS4 Permit.

14. The 2003 MS4 Permit, Part C.2., also required permittees to submit Annual Reports to PADEP to report on stormwater management activities performed during the permit year. The Permit further required the Annual Reports to be in the format required by the Department, see http://www.elibrary.dep.state.pa.us/dsweb/Get/Document-73109/03%203930-PM-WM0100u%202009%20Form.pdf. The Annual Report Form was incorporated into the Permit.

15. The 2003 MS4 Permit, Part B.3.a, required permittees to "comply with all terms and conditions of this Permit."

C. Respondent

16. The Borough of Throop, Pennsylvania ("Respondent") is a "municipality" within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).

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

18. At all times relevant to this Order, Respondent owned and/or operated a regulated small MS4, located in Throop Borough, Lackawanna County, Pennsylvania (hereinafter, Throop Borough MS4).

19. Pursuant to 40 C.F.R. § 122.32(a)(1), the Throop Borough 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.

20. Therefore, the Throop Borough MS4 is a "small MS4" within the meaning of 40 C.F.R. § 122.26(b)(16).

21. The Throop Borough MS4 discharges stormwater to the Lackawanna River and its associated tributaries.

22. The Lackawanna River and its associated tributaries, to which storm water flows and, at all times relevant to this Order, has flowed from the Throop Borough MS4, are each a "water of the United States" as that term is defined at 40 C.F.R. § 122.2.

23. On or about March 7, 2003, Respondent submitted a signed Notice of Intent ("NOI") to PADEP for coverage under the 2003 MS4 Permit, after which PADEP notified and approved the respondent for coverage under the Permit.

24. The 2003 MS4 Permit authorizes discharges of storm water from the Throop Borough MS4 to the Lackawanna River and its tributaries, but only in accordance with the conditions of the Permit.

25. Upon information and belief, Respondent chose to implement the Protocol.

26. Therefore, the Protocol and its underlying requirements were incorporated into the 2003 MS4 Permit coverage for Throop Borough MS4.

27. On March 4-7, 2013, duly-authorized EPA representatives conducted a review of the Throop Borough MS4 program's annual report (hereinafter referred to as "the Review").

III. VIOLATIONS

Minimum Control Measure #5: Post-Construction Stormwater Runoff Management

30. Federal regulations at 40 C.F.R. § 122.34(b)(5), the 2003 MS4 Permit (Part A.2) and the Protocol (pp. 23-26) require the Respondent to implement and enforce a program to reduce pollution in any stormwater runoff to the MS4 from new development and redevelopment that result in a land disturbance of greater than or equal to one acre through, *inter alia,* the following activities: enacting, implementing and enforcing a stormwater control ordinance using DEP model language; coordinating the review and approval of post-construction BMPs; and ensuring long-term operation and maintenance of BMPs.

31. The Review revealed that Respondent had failed to comply and/or to document its compliance with the Federal regulations and the 2003 MS4 Permit, including the Protocol, by not implementing and enforcing a program to reduce pollution in any stormwater runoff to the MS4 from new development and redevelopment that result in a land disturbance of greater than or equal to one acre through, *inter alia,* the following activities: enacting and/or implementing and/or enforcing a stormwater control ordinance using DEP model language; and/or coordinating the review and approval of post-construction BMPs; and/or ensuring long-term operation and maintenance of BMPs.

32. Respondent's failure to comply and/or to document its compliance with the Federal regulations and the 2003 MS4 Permit, including the Protocol, by failing to implement and enforce a program to reduce pollution in any stormwater runoff to the MS4 from new development and redevelopment through post-construction controls violates the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

IV. ORDER FOR COMPLIANCE

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 him the Administrator finds that any person is in violation of any condition or limitation which implements section 1342 of the Act, he shall issue an order requiring such person to comply with such condition or limitation.

Therefore, this 29TH day of MAY, 2014, Respondent is hereby ORDERED, pursuant to Section 309(a) of the Clean Water Act, 33 U.S.C. §1319(a), to conduct the following activities:

Within thirty (30) days of receipt of this Order, Respondent shall:

a. Within 30 days of the effective date of this Order, provide additional evidence of compliance absent from the Annual Report to the extent that inadequate documentation is alleged in this Order; and
b. Within 30 days of EPA's request, submit a work plan and schedule to achieve compliance with all Minimum Control Measures and/or Best Management Practices which are noncompliant in terms of the Federal regulations and Permit as alleged in this Order. Respondent shall submit the additional compliance evidence work plan and/or schedule to:

Peter Gold
NPDES Enforcement Branch (3WP42)
Water Protection Division
U.S. Environmental Protection Agency
1650 Arch St, Philadelphia, PA 19103

V. GENERAL PROVISIONS

33. Issuance of this Order shall not be deemed an election by the EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited.

34. Respondent's compliance with the terms of this Order shall not constitute compliance with the Clean Water Act or any other Federal, State or local law, regulation ordinance or permit. Nor does this Order constitute a waiver or modification of the terms or conditions of any issued permit.

35. Violation of the terms and conditions of this Order constitutes an additional violation of the Act, and may result in a civil action for injunctive relief and/or a penalty not to exceed $37,500 per day of such violation, pursuant to Sections 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d). In addition, Section 309(c) provides criminal sanctions for knowing or negligent violations of the Act including imprisonment and fines of up to $50,000 per day of violation.

VI. JUDICIAL REVIEW

Respondent may seek federal judicial review of the Order for compliance pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at http://uscode.house.gov/download/pls/05C7.txt, states the scope of such review. Respondent is free to seek counsel from an attorney regarding its response.

VII. OPPORTUNITY TO CONFER

Respondent is invited to confer with the Agency about the findings and conclusions reflected in this Order and Request and the terms and conditions contained herein. Any such conference can be in person or by electronic means. Respondent may also submit any written material it believes to be relevant to the Agency's determinations. If such a conference is desired, Respondent should contact Peter Gold at (215) 814-5236.

VIII. EFFECTIVE DATE

The effective date of this Order shall be the date it is received by the Respondent.

Date: MAY 29 2014

Jon M. Capacasa, Director
Water Protection Division