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

In the Matter of:	Proceeding to Assess Class I Administrative Penalty Under Section 309(g) of the Clean Water Act
Virginia Department of Transportation Richmond, Virginia	Docket No. CWA-03-2015-0084
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 the Virginia Department of Transportation ("VDOT" 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 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 Adjustment Rule, 40 C.F.R. Part 19 (effective December 6, 2013), any person who has violated any NPDES permit conditions 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 $ 187,500 for each action filed after December 6, 20013.

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

4. The Virginia Department of Transportation (VDOT), 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 the Commonwealth of Virginia.

7. Stormwater from VDOT's MS4 drains to the numerous rivers, creeks and tributaries within the Commonwealth of Virginia, 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.

8. 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.

9. 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.

10. "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.

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

12. 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).

13. 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 (crated 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) and (17).

14. An NPDES permit is required for discharges from small MS4s. Section 402(p)(2)(C) of the Act, 33 U.S.C. § 1342(p)(2)(C); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.

15. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Commonwealth of Virginia NPDES program on March 31, 1975. The Virginia Department of Environmental Quality (VADEQ) was authorized to issue general NPDES permits on April 20, 1991. On December 30, 2004, EPA approved the Commonwealth's request to transfer the issuance of general and individual NPDES permits from VADEQ to the Virginia Department of Conservation and Recreation (VDCR), On July 1, 2013 EPA approved the Commonwealth's request to transfer issuance of NPDES permits from VDCR to VADEQ.

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

17. On July 15, 2008, VDCR determined that discharges from VDOT's MS4 would be permitted under the General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems, General Permit No. VAR04 (MS4 General Permit) with an effective date of July 9, 2008.

18. An NPDES permit is also required for discharges of storm water associated with construction activities, as well as for stormwater discharges which Virginia 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.

19. VDCR issued a General Permit for Discharges of Stormwater from Construction Activities (Construction General Permit or CGP), effective July 1, 2009, which authorized the VDOT to discharge stormwater from construction activities within Virginia in accordance with the requirements of the Construction General Permit.

20. On October 22 through October 26, 2012, representatives of EPA conducted an inspection of VDOT's MS4 program and NPDES construction program (EPA's October 2012 Inspection) at various VDOT locations within Virginia.

21. In March 2014, EPA issued Virginia Department of Transportation NPDES

Municipal Separate Storm Sewer System (MS4) Program & NPDES Construction Program Inspection Report (Inspection Report).

22. VDOT received a copy of the Inspection Report which was sent by mail on March 24, 2014. VDOT prepared and submitted multiple responses to EPA following VDOT's receipt of the Inspection Report.

23. Based upon EPA's October 2012 Inspection, EPA identified four categories of violations, which it has concluded were violations of the MS4 General Permit and the CGP and Section 301 of the Act, 33 U.S.C. § 1311. This Consent Order addresses these categories.

24. Section II.B.3.of the MS4 General Permit requires VDOT to develop, implement and enforce a program to detect and eliminate illicit discharges into VDOT's MS4. Section II.B.3. also requires VDOT to develop and maintain an updated storm sewer system map, showing the location of all known outfalls of the VDOT MS4 including those physically connected to VDOT's MS4, to track the number of illicit discharges identified and provide a narrative on how they were controlled or eliminated, and to notify, in writing, any downstream regulated MS4 to which VDOT is physically connected.

25. During EPA's October 2012 Inspection, the EPA representatives found that: VDOT had not identified all of the known outfalls that ultimately discharged into waters of the United States; had not developed an updated storm sewer system map which included the location of all the known outfalls at the time of EPA's October 2012 Inspection; and that VDOT had not fully implemented its established protocol at the time of EPA's October 2012 Inspection for sending its inspection reports of verified illicit discharges to the appropriate MS4s that would be responsible for eliminating such an illicit discharge.

26. VDOT's failure to fully implement its program to detect and eliminate illicit discharges into the VDOT MS4 is a violation of Section II.B.3. of the MS4 General Permit.

27. Section II.B.5 of the MS4 General Permit requires that VDOT develop, implement and enforce procedures to address stormwater runoff to the VDOT MS4 from new development and redevelopment projects that disturb greater than or equal to one acre or equal to or greater than 2,500 square feet in areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Act, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into VDOT's MS4. Section II.B.5.b. further requires VDOT to develop and implement strategies which include a combination of structural and/or nonstructural best management practices (BMPs) appropriate for the community. Section II.B.5.b.(5) of the MS4 General Permit requires VDOT to conduct site inspections of post construction stormwater management facilities and to enforce measures consistent with the Virginia Stormwater Management Act (VSMA). Section 4VAC50-60-200 B. of VSMA requires, at a minimum, that VDOT inspect post construction stormwater management facilities on an annual basis and after any storm which causes the capacity of the facility principal spillway to be exceeded.

28. At the time of EPA's October 2012 Inspection, VDOT reported that it owned and maintained approximately 618 post construction stormwater management facilities within its MS4. EPA examined VDOT's records of inspections of its post construction stormwater management facilities for the years 2010, 2011 and 2012. EPA found that VDOT's records of inspections for all of its post construction stormwater management facilities for each of the years 2010, 2011 and 2012 were incomplete in that there was not an annual record of inspections for each of its approximately 618 facilities for each of the years examined.

29. VDOT's failure to record annual inspections of all of its post construction stormwater management facilities for the years 2010, 2011 and 2012 is a violation of Section II.B.5. of the MS4 General Permit.

30. Section II.B.6. of the MS4 General Permit, "Pollution prevention/good housekeeping for municipal operations", requires VDOT to develop and implement an operation and maintenance program consistent with the MS4 Program Plan that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from VDOT's maintenance yards. VDOT's MS4 Program Plan, which was approved by VDCR in 2009 and which was thereby incorporated by reference as part of the MS4 General Permit governing VDOT's stormwater discharges, requires VDOT to conduct, at a minimum, annual inspections of District Facilities to ensure that pollution prevention practices are implemented, and that records of these facilities are to remain on file at the inspected facility. VDOT Part I, MS4 Program Plan, (page 6) "Action To Comply With General Permit".

31. During EPA's October 2012 Inspection, EPA inspected nine VDOT maintenance yards. During the inspections EPA found that the established protocols for pollution prevention and good housekeeping for maintenance yards were not effectively implemented at each maintenance yard prior to 2012.

32. VDOT's failure to fully implement its program for pollution prevention at all of its maintenance facilities at the time of the October 2012 MS4 Inspection is a violation of Section II.B.6. of the MS4 General Permit.

33. Section II.B.4 of the MS4 General Permit, "Construction site stormwater runoff control", requires that VDOT develop, implement, and enforce procedures to reduce pollutants in any stormwater runoff to VDOT's MS4 from construction activities that result in a land disturbance of greater than or equal to one acre or equal to or greater than 2,500 square feet in all areas of the jurisdictions subject to the Chesapeake Bay Preservation Act. Such procedures must include requirements for construction site owners and operators to implement appropriate erosion and sediment control best management practices as part of an erosion and sediment control plan that is consistent with Virginia's Erosion and Sediment Control Law, as well as procedures for site inspection and enforcement of control measures.

34. Section II. of Virginia's CGP requires that VDOT develop and implement a stormwater pollution prevention plan (SWPPP) for all construction activities covered by the

CGP. SectionII.A.3. of the CGP allows the SWPPP requirements to be fulfilled by incorporating by reference other State and local plans such as an erosion and sediment control (ESC) plan and a stormwater management plan. All SWPPPs must include controls to minimize pollutants from construction activities. Section II.D.4. of the CGP (inspections) requires that each inspection report include the corrective actions that were required to come into compliance with the CGP. In October 2009 VDCR authorized VDOT to implement its own construction program, with one of the conditions being that all VDOT land disturbing construction activities comply with the requirements of the Virginia Stormwater Management program (VSMP) permit regulations.

35. During EPA's October 2012 Inspection, EPA representatives visited eleven VDOT active construction sites. EPA found deficiencies at all eleven of the active construction sites, including failure to maintain erosion and sediment management controls and failure to take the required corrective actions at the construction sites, as well as deficiencies in the inspection reports maintained by VDOT for its construction activities.

36. VDOT's failure to maintain required erosion and sediment management controls at all of the active construction sites inspected by EPA during the October 2012 Inspection, failure to take corrective actions required to come into compliance with the CGP at all times at the construction sites, and failure to maintain accurate and complete records of its inspections of all of its construction sites is a violation of Section II.B.4 of the MS4 General Permit.

37. VDOT's failure to maintain required erosion and sediment management controls at all of the active construction sites inspected by EPA during the October 2012 MS4 Inspection, and failure to maintain accurate and complete records of its inspections of all of its construction sites is a violation of Section II. of the Construction General Permit.

38. Based upon EPA's October 2012 Inspection, EPA has concluded that Respondent's failures to: 1) fully implement its program to detect and eliminate illicit discharges; 2) provide readily-available annual inspection records of all of its post construction stormwater management facilities; 3) fully implements its program for pollution prevention at maintenance facilities; and 4) failure to maintain required erosion and sediment controls at all of its construction sites and record all such inspections; violate the MS4 General Permit, the Construction General Permit, and Section 301 of the Act, 33 U.S.C. § 1311.

III. CONSENT AGREEMENT AND FINAL ORDER

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

40. For the purpose of this proceeding, Respondent neither admits nor denies the Findings of Fact, and Conclusions of Law set forth in this CAFO.

41. 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.

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

43. 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.

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

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

46. 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.

47. 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 VADEQ regarding this action, and will mail a copy of this document to the appropriate VADEQ official.

48. 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 six thousand dollars ($36,000) in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.

49. Respondent shall pay the total administrative civil penalty of thirty six thousand dollars ($36,000) 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

50. 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.

51. 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).

52. 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).

53. 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.

54. 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.

55. The penalty specified in Paragraph 48 shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

56. 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.

57. 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.

58. 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), unless a petition to set aside this CAFO is filed pursuant to 40 C.F.R. §22.45(c)(4).

FOR RESPONDENT, VIRGINIA DEPARTMENT OF TRANSPORTATION:

Date: 4/27/15

Charles A. Kilpatrick, P.E.
Commissioner of Highways

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

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

This 10th day of August, 2015

Date: August 10, 2015

Jon M. Capacasa, Director
Water Protection Division

Virginia Department of Transportation
Docket No. CWA-03-2015-0084

CERTIFICATE OF SERVICE

I certify that on this date I caused to be sent by certified mail, return receipt requested, a copy of this "Consent Agreement and Final Order" to the following persons:

Ellen Porter, Esquire
Senior Assistant Attorney General
Virginia Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219

And the original and a copy delivered by hand to:

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Additionally, I caused to be sent by first class mail a copy of this "Consent Agreement and Final Order" to the following persons:

Jerome Brooks
Office of Water Compliance
Virginia Department of Environmental Quality
P.O. Box 1105
Richmond, Virginia 23218

Date: August 10, 2015

Robert J. Smolski
Senior Assistant Regional Counsel