



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

JUL 20 2015

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Ron Brynside  
City of Dunbar  
2800 Charles Avenue  
Dunbar, West Virginia 25604

Re: Docket No. CWA-03-2015-0140 DN  
Administrative Order for Compliance

Dear Mr. Brynside:

The United States Environmental Protection Agency Region III, (EPA) has conducted a file review of the 2012 and 2013 Annual Reports that Phase II Clean Water Act (CWA) municipalities submitted to the West Virginia Department of Environmental Protection's (WVDEP) Division of Water and Waste Management (DWWM). EPA's action was conducted to assess compliance with WVDEP's General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (MS4s). During this review, EPA was unable to find Annual Reports from your Phase II MS4.

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 CWA, 33 U.S.C. § 1319(a). This document contains findings that the City of Dunbar Phase II program is not in compliance with Section 301 of the CWA, 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.



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

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Enclosure

cc: Joe Hickman, WVDEP  
Connie Anderson, WVDEP



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

REGIONAL HEARINGS CLERK  
EPA REGION III, PHILA, PA

2015 JUL 21 PM 1:50

RECEIVED

In the Matter of:

City of Dunbar  
P.O. Box 483  
Dunbar, WV 25064

Proceeding Under Section 309(a) of the  
Clean Water Act, 33 U.S.C. § 1319(a)

Docket No. CWA-03-2015-0140DN

Respondent.

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 OF FACT AND CONCLUSIONS OF LAW**

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 systems” or “small MS4s” 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.

#### A. West Virginia’s Small MS4 Program

8. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the State of West Virginia to issue NPDES individual and general permits on May 10, 1982.

9. On July 22, 2009, the West Virginia Department of Environmental Protection (WVDEP) issued a General NPDES Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4s) a/k/a Authorization to Discharge (“the 2009 MS4 General Permit”). The Permit was scheduled to expire on July 22, 2014. On July 11, 2014, WVDEP issued a new MS4 General Permit which became effective August 11, 2014 with an expiration date of August 11, 2019.

10. Part C.b. of the 2009 MS4 General Permit required permittees to implement a Stormwater Management Program meeting the following Minimum Control Measures: (1) Public Education and Outreach on Stormwater Impacts, (2) Public Involvement and Participation, (3) Illicit Discharge Detection and Elimination, (4) Controlling Runoff from Construction Sites, (5) Controlling Runoff from New Development and Redevelopment, and (6) Pollution Prevention and Good Housekeeping for Municipal Operations and Maintenance.

11. Part IV of the 2009 MS4 General Permit documented the Monitoring, Recordkeeping, Reporting and Program Review requirements of the permit.



12. Part IV.D of the 2009 MS4 General Permit required permittees to submit Annual Reports to the WVDEP Division of Water and Waste Management (DWWM) on its stormwater management activities, performance and fiscal health.

13. Per page 26 of the permit, "The permittee must comply with all terms and conditions of this Permit..."

B. Respondent

14. The City of Dunbar, West Virginia ("Respondent") is a "municipality" within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).

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

16. At all times relevant to this Order, Respondent owned and/or operated a regulated small MS4, located in Dunbar, Kanawha County, West Virginia (hereinafter, Dunbar MS4).

17. Pursuant to 40 C.F.R. §122.32(a)(1), the West Virginia Department of Environmental Protection ("WVDEP" or "the Department") has determined that Dunbar is a small MS4 located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census, and accordingly requires an NPDES permit.

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

19. The Dunbar MS4 discharges stormwater to the Kanawha River and its associated tributaries.

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

21. On or about December 7, 2009, Respondent submitted a signed Notice of Intent ("NOI") to WVDEP for coverage under the 2009 MS4 General Permit.

22. On or about December 17, 2009, WVDEP notified Respondent that it was approved for coverage under the 2009 MS4 General Permit.

23. The 2009 MS4 General Permit authorizes discharges of storm water from the Dunbar MS4 to the Kanawha River and its tributaries, but only in accordance with the conditions of the Permit.

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

### III. VIOLATIONS

#### Failure to Submit Annual Reports

1. The 2009 MS4 General Permit (Part IV.D) requires permittees to annually "submit a report to the DWWM," including, *inter alia*, a description of activities undertaken and implemented for each of the minimum control measures and the status of compliance with each of the best management practices (BMPs) that were specified in the permittee's stormwater management program.
2. The Review revealed that Respondent had failed to annually submit a report to the DWWM for at least years 2012 and 2013.
3. Respondent's failure to annually submit a report to the DWWM violates the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

### IV. ORDER FOR COMPLIANCE

1. 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 . . . he shall issue an order requiring such person to comply with such condition or limitation.

2. Therefore, this 27<sup>th</sup> day of July 2015, 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:

3. Within thirty (30) days of receipt of this Order, Respondent shall:
  - a. Provide Annual Reports for Calendar Years 2013 and 2014; and/or
  - b. Submit a work plan and schedule for annual report development and to achieve compliance with the permit.
  - c. Respondent shall submit all information required her in to the following address:

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

**V. GENERAL PROVISIONS**

1. Issuance of this Order shall not be deemed an election by 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 alleged herein.

2. 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.

3. 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 this Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Respondent is free to seek counsel from an attorney regarding its response.

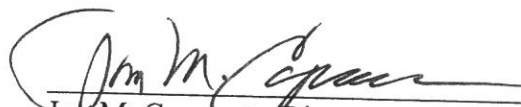
**VII. OPPORTUNITY TO CONFER**

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 on which it is received by the Respondent.

Date: JUL 21 2019



Jon M. Capacasa, Director  
Water Protection Division  
U.S. Environmental Protection  
Agency, Region III

