

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

In the Matter of)	
)	
The City of Philadelphia Water Department)	Proceeding Under Sections 308 and 309(a) of the Clean Water Act, 33 U.S.C. §§ 1318 and
)	1319(a)
and)	
)	ADMINISTRATIVE ORDER FOR
The City of Philadelphia)	COMPLIANCE ON CONSENT
)	
Respondents)	Docket No. CWA-03-2012-0264

ADMINISTRATIVE ORDER FOR COMPLIANCE ON CONSENT

I. STATUTORY AUTHORITY

1. This Administrative Order for Compliance on Consent (“AOCC” or “Order”) is issued under the authority vested in the United States Environmental Protection Agency (“EPA”) by Sections 308 and 309(a) of the Clean Water Act, 33 U.S.C. §§ 1318 and 1319(a) (“CWA” or “Act”). The Administrator of EPA 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.

II. STATUTORY AND REGULATORY BACKGROUND

2. 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, and 40 C.F.R. Part 122.

3. Section 502(6) of the Act, 33 U.S.C. § 1362(6), defines “pollutant” to include, inter alia, sewage, sewage sludge, biological material and industrial, municipal and agricultural waste.

4. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

5. Section 502(14) of the Act, 33 U.S. C. § 1362(14), defines “point source” as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well [or] discrete fissure...”

6. Discharges from combined sewer overflow (“CSO”) discharge points are discharges of a pollutant from a point source which are subject to the requirements of an appropriate NPDES permit pursuant to Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

7. Section 402(q)(1) of the Act, 33 U.S.C. § 1342(q)(1), provides: “Each [NPDES] permit, order, or decree issued pursuant to this chapter after December 21, 2000, for a discharge from a municipal combined storm and sanitary sewer shall conform to the Combined Sewer Overflow Control Policy signed by the Administrator on April 11, 1994 (referred to hereafter as the CSO Control Policy).”

8. The purpose of the CSO Control Policy is to “coordinate the planning, selection, design and implementation of CSO management practices and controls to meet the requirements of the CWA ...” 59 Fed. Reg. 18688, 18689 (April 19, 1994). Among the objectives of the CSO Control Policy is “[t]o bring all wet weather CSO discharge points into compliance with the technology-based and water quality-based requirements of the CWA.” *Id.*

9. EPA is authorized under Section 308 of the Act, 33 U.S.C. § 1318, to require owners and operators of point sources to establish records and make such reports as may be necessary to carry out the purpose of the Act.

III. FACTUAL BACKGROUND

10. The City of Philadelphia (“City”) is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

11. The City, through the Philadelphia Water Department (“PWD”), owns and operates three Water Pollution Control Plants (“WPCPs”), referred to as the Southwest, Southeast, and Northeast WPCPs each operated under its own NPDES permit. Each WPCP receives wastewater from specific drainage areas which are referred to as the southwest, southeast and northeast drainage districts. Collectively, these drainage districts are referred to as the “collection system.” The collection system includes sanitary sewer pipes, combined sewer pipes, interceptors, pump stations, force mains, overflow structures, manholes, and other facilities to convey wastewater and storm water to the WPCPs.

12. The combined sewer system (“CSS”) includes outfalls from which it discharges pollutants, as defined in Section 502(6) and (12) of the CWA, 33 U.S.C. § 1362(6) and (12), from point sources, as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to waters of the United States, including the Delaware and Schuylkill Rivers, and the Cobbs, Pennypack, Tacony, and Frankford Creeks.

13. The Delaware and Schuylkill Rivers, and the Cobbs, Pennypack, Tacony, and Frankford Creeks are navigable waters under Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and implementing regulations at 40 C.F.R. Part 122.

14. On August 15, 2007, the Pennsylvania Department of Environmental Protection (“PADEP”) issued NPDES permits for the Southwest (PA0026671), Southeast (PA0026662), and Northeast (PA0026689) WPCPs to the PWD. The permits expired on August 31, 2012 but have been administratively extended.

15. The NPDES Permits authorize the PWD to discharge pollutants from combined sewer outfalls to the Delaware and Schuylkill Rivers, and to the Cobbs, Pennypack, Tacony, and Frankford Creeks under conditions and limitations prescribed in the permits.

16. PADEP approved a 25 year implementation schedule for the PWD to implement its Updated Long Term Control Plan (“LTCP”), which is referred to by the City as its *Green City, Clean Waters* program, to achieve the elimination of the mass of the pollutants that otherwise would be removed by the capture of 85% by volume of the combined sewage collected in the CSS. The LTCP targets the conversion of 34% of the CSS drainage to “greened acres” which will manage the first inch of rainfall runoff from directly connected impervious areas. Overall LTCP costs, which include the management of green acres, are estimated at 1.2 billion dollars in net present value.

17. The City has widely demonstrated its deep commitment to addressing issues in its watersheds and improving quality of the human and the water environment. That commitment is embodied in the *Green City, Clean Waters* program. The vision for this program grew out of the City’s history and from broad engagement efforts among City departments, and is built upon extensive watershed analysis and planning. The City has employed an integrated watershed management planning approach that encompasses: comprehensive water body characterizations, river conservation planning, Act 167 stormwater management planning, source water protection planning, wetlands assessments, stream habitat and living resources restoration planning, wetland and stream mitigation and in-lieu fee planning, improving public access to local waterways, and a number of other innovative integrated approaches. The development of extensive watershed partnerships now facilitates outreach and coordination with neighboring and ‘upstream’ communities and the educating of citizens in City neighborhoods and nearby communities about the value of the local water resources and the presence of CSO discharges.

18. The City’s innovations in coordinating wastewater and stormwater planning embody many of the principles embraced by EPA in its encouragement of integrated planning for municipal wastewater and stormwater management under the CWA. For instance, the City has uniquely synthesized its wastewater NPDES and stormwater NPDES planning, compliance and reporting efforts through the development of integrated watershed management plans. The City’s financial strategy and capability assessment integrates the sewer and stormwater efforts across the City with *Green City, Clean Waters*, an important element of the EPA integrated planning framework. In seeking efficient sustainable integrated solutions to wastewater and stormwater issues, the City has fully embraced the application of green stormwater infrastructure, asset management, comprehensive integrated engineering alternatives analyses,

triple bottom line goal setting, and a number of other approaches suggested in the EPA's integrated planning framework.

19. The City seeks and encourages active public participation in its *Green City, Clean Waters* program. The *Green City, Clean Waters* Advisory Committee, numerous watershed groups, environmental groups, civic associations, etc., all participated in the creation of the program and continue to be involved with its implementation. The City will continue these public participation efforts as it moves forward to implement its *Green City, Clean Waters* program.

20. On June 1, 2011, PADEP also entered into a Consent Order and Agreement ("CO&A") with the City of Philadelphia, requiring among other things, implementation of the LTCP and its supplemental documentation. PADEP will determine compliance with the CO&A.

21. The City has committed to expenditures of approximately one billion dollars of green infrastructure to be implemented in its LTCP.

22. On April 10, 2012, EPA and the City entered into a Partnership Agreement to advance green infrastructure ("GI") for urban wet weather pollution control. This Partnership Agreement demonstrates EPA's strong support for sustainable storm water management yielding multiple benefits for community livability and other urban environment improvements. This Order is in concert with the goals of the Partnership Agreement and is intended to provide information that will assist the City in achieving the commitments of its LTCP and the obligations of the CWA.

23. The CSO Control Policy requires, inter alia, that a LTCP be enforced through a civil judicial action, an administrative order, or other enforceable mechanism requiring compliance with the CWA.

24. The City's NPDES Permits prohibit CSO discharges during dry weather ("dry weather CSOs"). The City has had dry weather CSOs from its CSS.

25. The conditions described in Paragraph 24 are violations of Section 301 of the CWA, 33 U.S.C. § 1311, and permit conditions and limitations in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342. The City has agreed to the entry of this AOCC.

IV. ORDERED PROVISIONS

Based upon the foregoing and pursuant to the authority of Sections 308 and 309(a)(3) of the CWA, it is hereby ORDERED that the Respondents do the following to ensure that the goals of the CWA are achieved:

26. Simultaneous with submission to PADEP, submit to EPA for review and comment, a copy of all deliverables required by the PADEP CO&A, as well as a copy of each of the Annual Reports and Evaluation and Adaptation Plans required under the PADEP CO&A.

27. Pursuant to the PADEP CO&A the City will be creating a Comprehensive Monitoring Plan ("CMP") by December 1, 2012. The CMP will set forth how the City will use monitoring and metered data along with hydrologic and hydraulic modeling and will be augmented to include an on the ground verification process, all of which will document the ability of the LTCP to achieve the performance standards set forth therein. The City shall at a minimum consider the following factors in developing its proposal: potential impact on the CSS, sufficient scale to assess the effectiveness of integrated controls, an array of controls reflective of the intended LTCP controls, the ability to monitor changes in the CSS regarding the efficacy of the controls in removing wet weather flow from the system, the technical feasibility of installing controls in areas throughout the City (including, but not limited to, an evaluation of soil types and water table elevations), the ability to model flow reductions outside of the monitoring period, schedule of implementation, and the selection of areas that include land uses and owners representative of the CSS. Upon review of the CMP by EPA and PADEP the parties shall meet with the City to discuss any questions or proposed changes to the CMP. The City shall report to EPA on the progress made with the project(s) through the Annual Reports, which are the annual reporting requirements established in the PADEP CO&A. The City shall also submit to EPA the Evaluation and Adaptation Plan report that will include the results of the verification process by October 30, 2016.

28. Simultaneous with submission to PADEP, submit to EPA for review and comment the reports of the Tributary Water Quality Models for Bacteria and Dissolved Oxygen required to be submitted pursuant to PADEP's CO&A.

29. Simultaneous with submission to PADEP, submit to EPA for review and comment the reports of the Tidal Waters Water Quality Models for Bacteria and Dissolved Oxygen required to be submitted pursuant to PADEP's CO&A.

30. Upon EPA's and PADEP's review of the City's first Evaluation and Adaptation Plan ("EAP"), due on October 30, 2016 pursuant to PADEP's CO&A, as well as the results of the Tributary and Tidal Waters Water Quality Model reports described in paragraphs 28 and 29, and EPA's review of the City's Financial Capability Analysis, the City shall make revisions to its EAP and/or LTCP, as appropriate. Examples of such modifications may include the green infrastructure or gray infrastructure CSO controls to be employed, an assessment of the expected level of control, the expected cost, the predicted water quality of receiving waters as a result of the proposed controls and the implementation schedule. The City shall public notice and consider any public comments on the revisions to its program set forth in its EAP and/or LTCP. The City shall submit the revised EAP and/or LTCP to PADEP and EPA. The City shall make the appropriate revisions to the EAP within the time frames set forth in the CO&A. Any revisions to the LTCP shall be submitted to EPA, for review and approval, within 120 days unless granted additional time by EPA.

31. Within thirty (30) days of the effective date of this Order, the City shall submit to EPA information documenting the number of dry weather CSOs that have occurred in its CSS on an annual basis, including the number, location, duration, and reason for the discharges to each water body since January 2007.

32. Simultaneous with submission to PADEP, the City shall submit to EPA copies of its Combined Sewer Management Program and Stormwater Management Program Annual Report. This report shall document the number and volume of CSOs discharged to each water body within the City of Philadelphia. The report shall also include an analysis of the number, location, duration, and reason that dry weather CSOs are occurring.

33. All notices and submissions required under this Order shall be sent to:

Dana Walker
Water Protection Division
NPDES Permits Branch
U.S. Environmental Protection Agency
Region III (Mail Code 3WP41)
1650 Arch Street
Philadelphia, PA 19103-2029

34. All submissions provided pursuant to this Order shall be signed by the appropriate City official and shall include the following certification:

“I certify that the information contained in or accompanying this submission is 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.”

V. GENERAL PROVISIONS

35. EPA in coordination with PADEP may comment on the submissions required by the PADEP CO&A, and will coordinate responses with PADEP.

36. 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. The EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited.

37. 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 for any violation of the Act not cited herein. The EPA reserves the right to seek any remedy available under the law that it deems appropriate for violations of the CWA.

38. The City's compliance with the terms of this Order and with the terms of the PADEP CO&A shall constitute compliance with the CSO Control Policy.

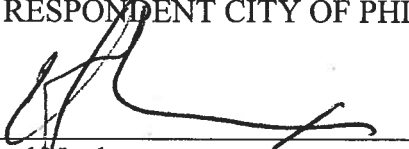
39. Violation of the terms of this Order may result in further EPA enforcement action for violation of the Order and for the underlying violations including, but not limited to, imposition of administrative penalties, 33 U.S.C. § 1319(g), and/or initiation of judicial proceedings that allow for civil penalties of up to \$37,500 per day, 33 U.S.C. § 1319(b) and (d), for each day of violation, 40 C.F.R. Part 19, and/or for the criminal sanctions of imprisonment and fines of up to \$50,000 per day, 33 U.S.C. § 1319(c).

40. Respondents waive any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondents may have with respect to any issue of fact or law set forth in this Order, including, but not limited to, any right of judicial review of this Order under the Administrative Procedure Act, 5 U.S.C. § 701-708.

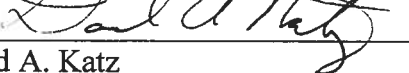
VI. EFFECTIVE DATE

41. The effective date of this Order shall be the date that the fully executed Order is received by the City.

FOR RESPONDENT CITY OF PHILADELPHIA WATER DEPARTMENT

By: 
Howard Neukrug
Water Commissioner

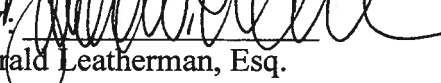
Date: 9/14/12

By: 
David A. Katz
Deputy Water Commissioner

Date: 9/14/12

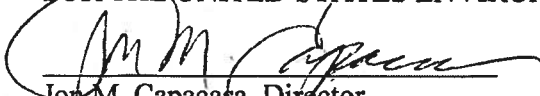
FOR RESPONDENT CITY OF PHILADELPHIA

Shelley Smith, City Solicitor

By: 
Gerald Leatherman, Esq.
Divisional Deputy City Solicitor
City of Philadelphia Law department

Date: 9/14/12

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION III



Jon M. Capacasa, Director
Water Protection Division

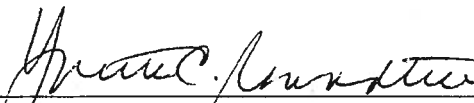
Date: 9-20-12

CERTIFICATE OF SERVICE

I hereby certify that on the date listed below, I filed the original attached Administrative Order for Compliance on Consent with the Regional Hearing Clerk, and directed that a copy thereof be sent to the following person via certified mail, return receipt requested:

David A. Katz
Deputy Commissioner, Compliance
City of Philadelphia Water Department
1101 Market Street
Philadelphia, PA 19107

9-21-12
Date



Yvette C. Roundtree
Senior Assistant Regional Counsel
U.S. EPA, Region III