

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGIONS**

In the Matter of:)
)
City of Cahokia Heights,) **Administrative Order on Consent**
) **Under Section 309(a) of the Clean Water**
Respondent.) **Act, 33 U.S.C. § 1319(a)**
)
)
_____)

I. INTRODUCTION

1. The U.S. Environmental Protection Agency ("EPA") makes the findings of fact set forth below (Section IV) and is issuing this Administrative Order on Consent ("Order on Consent" or "Order") to the City of Cahokia Heights ("Respondent") under the authority of Section 309(a) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(a). The Administrator of EPA has delegated the authority to issue such orders to the Regional Administrator of EPA Region 5, who has re-delegated this authority to the Director of the Enforcement and Compliance Assurance Division, EPA, Region 5.
2. This Order is mutually entered into by EPA and Respondent.
3. Respondent owns roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, and storm drains that constitute a "municipal separate storm sewer system" ("MS4") as defined at 40 C.F.R. § 122.26(b)(8).
4. As further described below, EPA alleges that Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), by discharging a pollutant or pollutants into the navigable waters from a point source without a permit to do so.
5. By entering into this Order, Respondent: (1) consents to EPA's authority to issue this Order; (2) neither admits nor denies the factual allegations as set forth in this Order; (3) agrees to undertake all actions required by the terms and conditions of this Order; (4) agrees not to contest the authority of EPA to issue this Order or the validity of any terms or conditions in this Order; and (5) waives otherwise available rights to judicial review of this Order under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

II. STATUTORY AUTHORITY

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except, *inter alia*, in compliance with an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

7. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes states to request approval from EPA to administer their own permit programs for discharges into navigable waters within their jurisdictions.
8. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the State of Illinois requested approval from EPA to administer its own permit program for discharges into navigable waters within Illinois, and such approval was granted by EPA on October 23, 1977, 42 Fed. Reg. 58,566 (Nov. 10. 1977). Therefore, pursuant to the State's permit program, the Illinois Environmental Protection Agency ("EPA") has issued NPDES permits. Violation of an NPDES permit is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).
9. Promulgated pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA regulations pertaining to stormwater discharges from municipal separate storm sewer systems are set forth in 40 C.F.R. Part 122, Subpart B.
10. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), provides that, whenever EPA finds that any person is in violation of requirements of, *inter alia*, Sections 301 or 402 of the CWA, 33 U.S.C. §§ 1311, 1342, or is in violation of any condition or limitation that implements those sections in an NPDES permit, EPA shall issue an order requiring such person to comply with such requirements, conditions, or limitations. Section 309(a)(5) of the CWA, 33 U.S.C. § 1319(a)(5), requires that any such order shall specify a time for compliance that EPA determines to be reasonable taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

III. DEFINITIONS

11. All terms used, but not defined, in this Order have the meanings provided to them in the CWA, 33 U.S.C. § 1251 *et seq.*, and the effective EPA regulations promulgated under the CWA.
12. "Act" or "CWA" means the Clean Water Act, 33 U.S.C. § 1251 *et seq.*
13. "Day" or "days" means a calendar day or calendar days unless expressly stated to be a business day. When computing any period of time under this Order, should the last day fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next business day.
14. "Discharge of a pollutant," as defined in Section 502(12) of the CWA, means *inter alia*, "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12).
15. "Effective Date" has the definition provided in Section VIII of this Order.
16. "EPA" means the United States Environmental Protection Agency.

17. "Illinois EPA" or "IEPA" means the Illinois Environmental Protection Agency and any successor departments, agencies, or instrumentalities of the State.
18. The term "municipal separate storm sewer" (MS4) is defined at 40 C.F.R § 122.26(b)(8) and includes:

a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) Owned or operated by a State, city...or other public body (created by or pursuant to State law) having jurisdiction over disposal of...storm water ...
19. A "small municipal separate storm sewer system" (small MS4) is defined at 40 C.F.R. § 122.26(b)(16) and means all municipal separate storm sewer systems that are owned or operated by the United States, 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; and are not defined as "large" or "medium" municipal separate storm sewer systems pursuant to 40 C.F.R. § 122.26 (b)(4) and (b)(7), or designated under 40 C.F.R. § 122.26 (a)(1)(v).
20. "Municipality" is defined in Section 502(4) of the CWA, 33 U.S.C. § 1362(4), and means, among other things, a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes.
21. "NPDES Permit" and "Permit" and "2016 Permit" means General NPDES Permit ILR40 for Discharge from Small Municipal Separate Storm Sewer Systems with the effective date of March 1, 2016, and the expiration date of February 28, 2021. The 2016 Permit is administratively extended pending renewal. For purposes of Sections IV through VII of this Order, "Permit" also means any subsequent General NPDES Permit for Discharge from Small Municipal Separate Storm Sewer Systems issued by the State of Illinois for small MS4s in Illinois, until such time as this Order is terminated.
22. "Navigable waters," as defined in Section 502(7) of the CWA, means "the waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7).
23. "Order on Consent" and "Order" means this document, all attachments hereto, and all subsequent modifications thereto, including incorporated submissions from Respondent, as described in Paragraph 52.

24. "Paragraph" means a portion of this Order identified by an Arabic numeral.
25. "Parties" means the EPA and Respondent.
26. "Person," as defined in Section 502(5) of the CWA, means an "individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body." 33 U.S.C. § 1362(5).
27. "Point source," as defined in Section 502(14) of the CWA, means "any discernible, confined and discrete conveyance, including but not limited to any pipe [or] ditch ... from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).
28. "Pollutant," as defined in Section 502(6) of the CWA, means "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6).
29. "Respondent" means the City of Cahokia Heights, which resulted from a merger of the Village of Cahokia, the City of Centreville, and the Village of Alorton on or about May 6, 2021.
30. "State" means the State of Illinois.
31. "Work" means any and all activities Respondent is required to undertake and accomplish to achieve compliance under this Order.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

32. Respondent is a municipality chartered under the laws of the State of Illinois, and, as such, is a "municipality" and a "person" as those terms are defined in Section 502(4) and (5) of the CWA, 33 U.S.C. § 1362(4) and (5), and 40 C.F.R. § 122.2.
33. Respondent owns roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, and storm drains that constitute an MS4.
34. Respondent's MS4 is located in the St. Louis, MO-IL urbanized area (UACE#77770), as determined by the latest Decennial Census by the Bureau of the Census.
35. Respondent's MS4 is a small MS4, as defined at 40 C.F.R. § 122.26(b)(16), because the City of Cahokia Heights' municipal separate storm sewer systems are owned or operated by a city (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, that discharges to waters of the United States and does not meet the definition of a "large" or "medium" municipal separate storm sewer systems

pursuant to 40 C.F.R. § 122.26 (b)(4) and (b)(7), or designated under 40 C.F.R. § 122.26 (a)(1)(v).

36. Respondent's MS4 discharges to Canal #1, Harding Ditch, and perennial Prairie Du Pont Creek (among other surface waters). Canal #1 flows to Harding Ditch which flows to Prairie Du Pont Creek which then flows to the Mississippi River, a traditional Navigable Water within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362(7).
37. Illinois EPA included Canal #1, Harding Ditch, and Prairie Du Pont Creek in its 2020/2022 CWA Section 303(d) impaired waters list. Canal #1 is impaired for aquatic life use (due to cover loss, flow and stream alteration, total phosphorus, and other unknown causes); Harding Ditch is impaired for aquatic life use (due to flow modification and habitat alteration) and primary contact use (due to fecal coliform); and Prairie Du Pont Creek is impaired for aquatic life use (due to unknown causes).
38. Under the authority of Section 402(a) of the CWA, 33 U.S.C. § 1342(a), the Illinois EPA issued General NPDES Permit ILR40 for Discharge from Small Municipal Separate Storm Sewer Systems, with an effective date of March 1, 2016. The 2016 Permit expiration date was February 28, 2021. However, the 2016 Permit is in effect until a new General NPDES Permit for Discharge from Small MS4s is reissued. The Permit establishes certain limitations and other provisions governing the discharge of storm water from small MS4s in Illinois.
39. In a July 13, 2021 letter, Illinois EPA notified Respondent of its obligation, as a newly formed community made up of previously regulated small MS4 communities, to either submit a Notice of Intent ("NOI") for coverage under the 2016 Permit, or apply for a waiver.
40. On July 25-28, 2022, the EPA conducted an inspection to assess the status of Respondent's MS4 programs. During the inspection, Respondent's representatives confirmed that Cahokia Heights had not submitted an NOI or waiver for coverage under the 2016 Permit, and had not developed any of the storm water management programs required under the 2016 Permit. EPA documented the July 25-28, 2022 inspection observations and findings in EPA's August 5, 2022 inspection report provided to Respondent on August 5, 2022.
41. On July 26, 2022, EPA inspectors observed storm water flowing into roadside ditches on N 82nd Street and N 80th Street, in Cahokia Heights, that discharged to a ditch and through twin culverts into Canal #1, which flows into Harding Ditch, and from there flows to perennial Prairie Du Pont Creek, which flows to the Mississippi River.
42. During all times relevant to this Order, Respondent owned or operated a small MS4 that "discharged" storm water to waters of the United States.
43. Pursuant to 40 C.F.R. § 122.32(a), Respondent is subject to regulation under the NPDES storm water program as a small MS4 located in an urbanized area (St. Louis, MO-IL) that discharges storm water to navigable waters and waters of the United States.

44. Pursuant to 40 C.F.R. § 122.33(a), the operator of any regulated small MS4 under Section 122.32 must seek coverage under an NPDES permit issued by the applicable NPDES permitting authority.
45. During all times relevant to this Order, Respondent did not apply for and was not issued an NPDES Permit under Section 402 of the CWA, 33 U.S.C. § 1342, authorizing the discharge of storm water pollutants to navigable waters and waters of the United States.
46. Respondent is a person who discharged storm water into navigable waters and waters of the United States, without a permit authorizing such discharges under Section 402 of the CWA, 33 U.S.C. § 1342. Accordingly, each instance in which Respondent discharged storm water to navigable waters without a permit authorizing such discharges, is a violation of Section 301 of the CWA, 33 U.S.C. § 1311.

V. ORDER ON CONSENT

47. Based on the foregoing findings and the authority vested in the undersigned Director, Enforcement and Compliance Assurance Division, it is hereby ordered in accordance with Section 309(a) of the CWA, 33 U.S.C. § 1319(a), that Respondent comply with the following actions:
 - A. NOI for Small MS4 Permit Coverage: Within 30 days of the Effective Date, Respondent shall submit to IEPA (along with a copy to EPA) a complete NOI for coverage under the Permit. Respondent shall comply with the specific requirements for submitting an NOI that are included in the "Notice of Intent (NOI) Requirements" part of the Permit (Part II of the 2016 Permit).
 - B. MS4 Storm Water Management Program Plan: Within 210 days of submitting a complete NOI to IEPA pursuant to Paragraph 47.A., Respondent shall submit, for EPA review and approval, a Storm Water Management Program Plan ("SWMPP") that, at a minimum, describes in detail how Respondent intends to comply with (i) the Permit's requirements for each minimum control measure, pursuant to 40 C.F.R. § 122.34(b); and (ii) the "Storm Water Management Programs" part of the Permit (Part IV of the 2016 Permit). The SWMPP must include a detailed schedule for full implementation of all minimum control measures within the timeframe established by Illinois EPA in its Permit authorization, if authorized.
 - C. Implementation of SWMPP: Respondent must implement the SWMPP upon EPA approval and pursuant to the Permit.
 - D. Monitoring Requirements:
 1. Within 90 days of submitting a complete NOI to IEPA pursuant to Paragraph 47.A., Respondent must develop and submit to EPA, for review and approval, a Monitoring

- and Assessment Program Plan to evaluate the effectiveness of the Best Management Practices (BMPs) being implemented to reduce pollutant loadings and water quality impacts and in accordance with the requirements in the "Monitoring" part of the Permit (Part V.A. of the 2016 Permit).
2. Respondent must implement the approved Monitoring and Assessment Program to evaluate the effectiveness of the BMPs being implemented to reduce pollutant loadings and water quality impacts within 210 days of submitting a complete NOI to IEPA pursuant to Paragraph 47.A., and in accordance with the requirements in the "Monitoring" part of the Permit (Part V.A. of the 2016 Permit).
 3. Within 210 days of submitting a complete NOI to IEPA pursuant to Paragraph 47.A., Respondent shall initiate an evaluation of its storm water program. Evaluation and/or monitoring results shall be provided in the first Annual Report, due June 1, 2023, pursuant to the "Reporting" part of the Permit (Part V.C. of the 2016 Permit).
- E. Storm Sewer Maps: Within 60 days of the Effective Date, Respondent shall submit to EPA electronic copies of all available storm sewer maps for the City's MS4. Storm sewer maps may be withheld from web site posting requirements in subparagraph F, below, for security reasons.
- F. Recordkeeping: Respondent shall comply with the recordkeeping provisions of the Permit, (Part V.B. of the 2016 Permit). Respondent shall post the following documents on Respondent's web page:
1. Permit NOI: post within 30 days of submission to IEPA;
 2. State's authorization to discharge storm water pursuant to the Permit: post within 30 days of receipt of authorization;
 3. Approved SWMPP: post within 30 days of EPA approval.
 4. Approved Monitoring and Assessment Program Plan: post within 30 days of EPA approval; and
 5. Permit annual reports: post within 30 days of submission to IEPA and EPA.

VI. DOCUMENTATION AND SUBMISSIONS

48. Annual Reporting: Respondent shall submit a copy of its annual reports pursuant to the "Reporting" part of the Permit (Part V.C. of the 2016 Permit) to EPA by the first day of June each year and until termination of the Order.
49. All reports, notifications, documentation, submissions, and other correspondence required to be submitted by this Order must be submitted to EPA electronically, to the extent possible. If electronic submittal is not possible, the submissions must be made by certified mail (return receipt requested) with an email notification to all addresses provided below notifying them that a submission is being made by certified mail. Electronic submissions must be sent to the following addresses: r5weca@epa.gov, maraldo.dean@epa.gov, carlson.deboraha@epa.gov, rogers.joan@epa.gov, Todd.Bennett@Illinois.gov, and Joe.Stitely@Illinois.gov. The subject

line of all email correspondence must include the facility name ("Cahokia Heights"), NPDES ID #ILU330001 and the subject of the deliverable. All electronically-submitted materials must be in final and searchable format, such as Portable Document Format (PDF) with Optical Character Recognition (OCR) applied. Any information containing confidential business information must be submitted and asserted as set forth at 40 C.F.R. Part 2 Subpart Band must be submitted by email to maraldo.dean@epa.gov and carlson.deboraha@epa.gov or by mail (see below) but not to the r5weca@epa.gov, rogers.joan@epa.gov, Todd.Bennett@Illinois.gov, and Joe.Stitely@Illinois.gov addresses. Mailed submissions must be sent to the following addresses:

Attn: Dean Maraldo, EPA Case Manager
Water Enforcement and Compliance Assurance Branch (ECW-151)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Attn: Deborah Carlson
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

50. Within 10 days of the Effective date of this Order, Respondent must designate a Project Coordinator and provide EPA's Case Manager (above) with the Project Coordinator's name, address, phone number, and email address.
51. In the event of a change to the Project Coordinator, Respondent must provide notification in writing, pursuant to Paragraphs 49 and 50 above, within 15 days after the change.
52. EPA may require additional status reports, or fewer status reports, for the purpose of documenting the progress of the Work performed pursuant to this Order. Should EPA require additional status reports, EPA will provide Respondent with at least 15 days from the date of EPA's request to submit the reports.
53. All reports, notifications, documentation, and submissions required by this Order must be signed by a duly authorized representative of Respondent as specified by 40 C.F.R. § 122.22(b) and (d) and must include the following statement:

"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."

54. Respondent may not withhold information based on a claim that it is confidential. However, pursuant to 40 C.F.R. Part 2, Subpart B, Respondent may assert a claim of business confidentiality regarding any portion of the information submitted in response to this Order. The manner of asserting such claims is specified in 40 C.F.R. § 2.203(b). Certain information related to effluent data (as defined in 40 C.F.R. § 2.302(a)(2)) and NPDES permit applications may not be entitled to confidential treatment. 40 C.F.R. § 122.7. Information subject to a business confidentiality claim is available to the public only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B. If Respondent does not assert a claim of business confidentiality when it submits the information, EPA may make the information available to the public without further notice. 40 C.F.R. § 2.203(c).
55. If Respondent finds at any time after submitting information that any portion of that information is false or incorrect, the signatory must notify EPA immediately. Knowingly submitting false information to EPA may subject Respondent to criminal prosecution under Section 309(c) of the CWA, 33 U.S.C. § 1319(c), as well as 18 U.S.C. §§ 1001 and 1341.
56. Submissions required by this Order must be deemed submitted on the date they are sent electronically or on the date postmarked if sent by U.S. mail.
57. After review of the submissions required pursuant to Paragraphs 47, 52, and 72 of this Order, EPA may approve or disapprove the submissions, in whole or in part. EPA shall approve the submissions or any portion so long as the submissions fulfill the requirements under this Order.
58. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 57, above, Respondent must proceed to take all actions and provide all submissions required under this Order, including any actions required under any non-deficient portion(s) of its submission, if such action can be undertaken independent of the deficient portion of Respondent's submission.
59. Absent an extension of time granted in writing by EPA, EPA may determine that late submissions fail to meet the requirements of this Order.
60. Upon EPA approval, submissions by Respondent are incorporated and enforceable as part of this Order. In case of inconsistency between any submission by Respondent and this document and its subsequent modifications, this document and its subsequent modifications shall control.
61. EPA may use any information submitted in response to this Order in support of an administrative, civil, or criminal action against Respondent.

62. The information required to be submitted pursuant to this Order is not subject to the approval requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq.*

VII. GENERAL PROVISIONS

63. Respondent has had the opportunity to confer with and submit information to EPA concerning the validity and provisions of this Order.
64. The terms of this Order are binding on Respondent and its assignees and successors. Respondent must give notice of this Order to any successors in interest prior to transferring ownership, and must simultaneously verify to EPA, at the address specified in Paragraph 49, that Respondent has given the notice.
65. The undersigned signatory for each party has the authority to bind each respective party to the terms and conditions of this Order.
66. Failure to comply with the requirements of this Order may subject Respondent to penalties up to \$59,973 per day for each violation (or as penalty levels may be later adjusted at 40 C.F.R. Part 19) pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), and 40 C.F.R. Part 19.
67. This Order does not affect Respondent's responsibility to comply with the CWA and any other local, state, and federal laws, regulations, or permits.
68. This Order does not restrict EPA's authority to enforce the CWA or its implementing regulations.
69. EPA reserves all rights and remedies, legal and equitable, available to address any violation cited in this Order and any other violation of the CWA or of this Order. Neither issuance of this Order by EPA nor compliance with its terms precludes further enforcement action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, for the violations cited in this Order, for any other violations of the CWA or of this Order committed by Respondent.

VIII. EFFECTIVE DATE

70. This Order shall become effective upon signature by EPA below and will remain in effect until EPA has notified Respondent of termination of the Order pursuant to Paragraphs 71 or 73.

IX. FINAL REPORT AND TERMINATION OF THIS ORDER

71. EPA may terminate this Order at any time by written notice to Respondent.

72. Unless terminated by EPA pursuant to Paragraph 71, and within 30 days after Respondent concludes that it has achieved compliance with Sections V and VI of the Order, Respondent must submit to the EPA Case Manager a written final report and certification of completion describing all actions taken to comply with all requirements of this Order. Respondent must follow the procedures set forth at Section VI of this Order.

73. After receipt and review of Respondent's final report and certification of completion submitted pursuant to Paragraph 72, EPA will notify Respondent whether it has satisfied all requirements of this Order under the procedures set forth at Section VI of this Order. If EPA concludes that Respondent has satisfied the requirements of this Order, EPA shall terminate this Order by written notice to Respondent. If EPA concludes that Respondent has failed to satisfy the requirements of this Order, EPA may require further actions as set forth under this Order or it may pursue administrative or civil judicial actions.

IT IS SO AGREED AND ORDERED:

FOR RESPONDENT, CITY OF CAHOKIA HEIGHTS:

Signature Curtis L McCall, Mayor _____ Date 11-30-22
Name _____
Title _____
Mayor

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

MICHAEL HARRIS Digitally signed by MICHAEL HARRIS Date: 2022.12.06 12:42:05 -06'00'
Michael D. Harris _____ Date _____
Director
Enforcement and Compliance Assurance Division
U.S. EPA Region 5 _____