

US EPA ARCHIVE DOCUMENT

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 9**

<b>IN THE MATTER OF:</b>	)	
	)	
Arizona Department of Transportation	)	EPA Docket No. CWA-09-2012-2004
	)	
<i>Proceedings under Sections 308(a)</i>	)	<b>ADMINISTRATIVE ORDER ON</b>
<i>and 309(a) of the Clean Water Act,</i>	)	<b>CONSENT</b>
<i>as amended, 33 U.S.C. §§ 1318(a)</i>	)	
<i>&amp; 1319(a)</i>	)	
_____	)	

**I. INTRODUCTION**

1. This Administrative Order on Consent (“AOC”) is entered into voluntarily by the United States Environmental Protection Agency, Region 9 (“EPA”) and the Arizona Department of Transportation (“Respondent”). This AOC requires Respondent to remedy deficiencies, as specified herein, in its storm water management and control program under its current Statewide National Pollutant Discharge Elimination System (“NPDES”) permit, issued by the Arizona Department of Environmental Quality (“ADEQ”) in implementation of the Clean Water Act (“CWA”), 33 U.S.C. § 1251, et seq.

- 2. EPA will provide notice of the AOC to the State of Arizona upon execution.
- 3. EPA and Respondent acknowledge that this AOC has been negotiated in good faith, is fair and reasonable, and is in the public interest.

**II. JURISDICTION**

4. The following Findings are made and the AOC is issued under the authority vested in the EPA Administrator under CWA Sections 308(a) and 309(a), 33 U.S.C. §§ 1318(a) and 1319(a). This authority has been re-delegated to the Director of the Enforcement Division, EPA Region 9.

- 5. Respondent expressly consents and agrees as follows:
  - a. Respondent agrees to undertake and complete all actions required by the terms and conditions of this AOC;
  - b. In any action by EPA to enforce the AOC, Respondent agrees not to contest EPA’s jurisdiction or authority to enter into or enforce this AOC or the validity of any terms and conditions of this AOC; and
  - c. Respondent agrees to waive any and all claims for relief and otherwise available rights or remedies to judicial or administrative review it may have with respect to any issue of fact or law set forth in the AOC, including but not limited to any right of

judicial review of this AOC under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

### III. PARTIES BOUND

6. This AOC shall be binding on Respondent and its officials, officers, directors, partners, agents, employees, successors and assigns, and on all persons, independent contractors, contractors, and consultants acting in concert with Respondent.

7. No transfer of any interest in real property owned, operated or controlled by Respondent shall alter or relieve Respondent of its obligations under this AOC. Respondent shall reserve all rights necessary to comply with this AOC as a condition of the transfer and shall provide a copy of this AOC to the successor in interest at least thirty (30) days prior to the transfer.

8. The undersigned signatory for Respondent certifies that he has the authority to legally bind Respondent.

9. By executing and taking actions under this AOC, Respondent is not admitting to any liability or agreeing with the findings or conclusions set forth in Section IV below.

### IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

10. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into a water of the United States except in compliance with, *inter alia*, a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

11. Section 402 of the CWA establishes the NPDES program, under which EPA or an EPA-authorized state, such as the State of Arizona, may issue a permit authorizing the discharge of a pollutant into waters of the United States.

12. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires NPDES permits for certain municipal and industrial storm water discharges. EPA's implementing regulations at 40 C.F.R. § 122.26 require NPDES permits for, among other things: storm water discharges from a "municipal separate storm sewer system" ("MS4") serving a population meeting certain threshold sizes, 40 C.F.R. § 122.26(a)(3), (b)(4), (b)(7) and (b)(8); and storm water discharges associated with enumerated categories of industrial activity, including construction activity that result in disturbance of one acre or more, 40 C.F.R. § 122.26(a)(1), (b)(14) and (b)(15).

13. The Arizona Department of Transportation ("ADOT" or "Respondent") is a state agency and a "person" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

14. Respondent has its headquarters in Phoenix and operates nine engineering and maintenance districts: Flagstaff, Globe, Holbrook, Kingman, Phoenix, Prescott, Safford, Tucson, and Yuma.

15. Respondent is primarily responsible for the design, construction, management and maintenance of Arizona's highway system. It operates or controls, on a statewide basis:

- a. an MS4, including drainage systems, catch basins, curbs, gutters, ditches, man-made channels, and storm drains;
- b. construction activities resulting in disturbance of at least one acre of total land area;
- c. maintenance activities, including highway maintenance (such as slope stabilization, vegetation control, and drain inlet cleaning) and storm sewer maintenance (such as spill and illicit connection/discharge reporting and response); and
- d. maintenance facilities, including vehicle maintenance facilities, salt and sand storage facilities, material and equipment storage facilities.

16. Storm water discharges from Respondent's above-listed activities and facilities to "waters of the United States," as defined in 40 C.F.R. §122.2, in the State of Arizona are regulated under AZPDES No. AZS0000018-2008 (the Permit), a statewide NPDES permit issued by the ADEQ. The Permit has been in effect since September 18, 2008.

17. From October 25 through 29, 2010, EPA representatives audited Respondent's compliance with the Permit at its headquarters and four of its districts: Phoenix, Flagstaff, Tucson and Prescott. The audit included interviews with Respondent's headquarters and district representatives, document reviews, and inspections of approximately 57 individual construction activities, maintenance facilities, and maintenance activities located in Respondent's rights-of-way or served by Respondent's MS4 in those four districts. The audit results, which indicated multiple deficiencies in Respondent's stormwater program, are summarized in EPA's May 10, 2011 report (the "Audit Report"), attached hereto as Exhibit 1.

18. On October 28, 2011, Respondent responded to the Audit Report in writing (the "Audit Response"), attached hereto as Exhibit 2, and proposed a schedule to comply with the relevant permit requirements. Since then, Respondent has modified and provided several updates on its schedule and corrective efforts.

19. Respondent has made progress in addressing the issues identified in the EPA Audit; however, compliance with the following Permit requirements and deadlines must be delivered:

- a. **Illicit Discharges/Illegal Dumping Detection and Elimination Measures** (Permit Section 3.2.3)
  - i. **Map Storm Sewer System:**
    - 1) Permit Section 3.2.3.2.b requires Respondent to develop, by September 19, 2012, a storm sewer system map "identifying the location of all its major outfalls identified to date and their receiving waters in Arizona statewide" and containing specified details.
    - 2) As more fully set forth in Section 2.2.5 of the Audit Report, Respondent has not yet completed the required mapping for the following districts: Globe, Holbrook, Phoenix, Prescott, Safford, and Tucson.
  - ii. **Inspect and Track Outfalls for Dry Weather Discharges:**
    - 1) Permit Section 3.2.3.2.d requires Respondent to inspect 35 of the 71 major outfalls already identified in its *September 2005 Phase I and Phase II Storm Water Systems Maps* (the "71 Major Outfalls") for dry weather

discharges by September 2009, and to inspect the remainder by September 2010. Permit Section 3.2.3.2.e further requires Respondent to implement and maintain a system to track and record findings of outfall inspections, including the conditions of outfalls, potential sources of pollutants, and maintenance needs.

- 2) As more fully set forth in Section 2.2.1 of the Audit Report, Respondent did not complete the dry weather screening of the 71 Major Outfalls by the permit deadlines, or create a system to track and record results of the dry weather screening program. From July 1, 2011 to June 30, 2012, Respondent completed dry weather screening for 51 of the 71 Major Outfalls.

**b. Inventory, Inspection and Maintenance of Post-Construction Best Management Practices (“BMPs”) (Permit Section 3.2.5)**

- i. Permit Section 3.2.5.3 requires Respondent to “inventory, inspect, and maintain all post-construction stormwater pollution control BMPs in accordance with its *Post-Construction Stormwater Control BMP Manual*.”
- ii. As more fully set forth in Section 2.3.3 of the Audit Report, Respondent is still in the process of developing the required inventory of its post-construction BMPs.
- iii. As more fully set forth in Section 2.3.4 of the Audit Report, Respondent has not yet commenced the required inspection and maintenance of its post-construction BMPs.

**c. Enforcement of Applicable Construction Project Requirements (Permit Section 5.3.1)**

- i. Permit Section 5.3.1 requires, among other things, that Respondent ensure compliance by its contractors with the AZPDES Construction General Permit (“Construction General Permit”) for regulated projects (Section 5.3.1.1), implement a system to enforce the Construction General Permit and the Permit for its projects, and be responsible for inspection oversight (Section 5.3.1.3).
- ii. As more fully set forth in Section 2.6.3 of the Audit Report, Respondent has lagged behind in carrying out its inspection oversight responsibility and implementing the enforcement system to ensure compliance with applicable permit requirements at its construction projects in various districts.

20. By failing to comply fully with the above-referenced permit requirements, Respondent has violated and continues to violate CWA Section 301(a), 33 U.S.C. § 1311(a).

## V. WORK TO BE PERFORMED

21. **Definitions for the “Work to Be Performed” Section.** The following definitions shall apply to this section. Other terms used in this section that are defined in the Permit shall have the meaning assigned to them in the Permit.

- a. “AOC” shall mean this Administrative Order on Consent and any amendments thereto.
- b. “AOC Outfall” or “Outfall” shall mean any and all of the following:
  - i. any of the 71 Major Outfalls;
  - ii. any outfall, regardless of size, that discharges to any “impaired water,” as the term is defined in Permit Section 12 at page 103;
  - iii. any outfall, regardless of size, that discharges to any “unique (or outstanding) water,” as the term is defined in Permit Section 12 at page 108; and
  - iv. any outfall, regardless of size, that is known to have an illicit discharge that is ongoing or intermittent, excluding:
    - 1) spills from accidents and other isolated events that Respondent may respond to during the term of this AOC or has responded to in the past five years; and
    - 2) incoming or run-on flow from an adjacent municipality which passes through Respondent’s storm water conveyances and for which Respondent has an agreement in place with the municipality or has documentation to characterize such pass-through.
- c. “Task I AOC Outfalls” shall mean any and all of the following:
  - i. any and all of the 71 Major Outfalls; and
  - ii. other AOC outfalls in Respondent’s Globe, Holbrook and Phoenix Districts.
- d. “Task II AOC Outfalls” shall mean any and all AOC Outfalls in Respondent’s Prescott, Safford and Tucson Districts, excluding the 71 Major Outfalls.
- e. “Water Quality Post-Construction BMPs” shall mean the post-construction stormwater BMPs for the following structures, as described in Respondent’s Water Quality Post-Construction BMP Manual:
  - i. manufactured treatment devices;
  - ii. bioretention structures;
  - iii. filtration structures;
  - iv. infiltration basins;
  - v. infiltration trenches; and
  - vi. retention and detention basins (designed for water quality improvements prior to discharge)<sup>1</sup>.

<sup>1</sup> Any basins or infiltration devices included in and subject to the prescriptions or guidance in the Manual will be mapped only if designed for water quality improvements prior to discharge; those constructed to retain, detain, or infiltrate for traffic interchanges, or created for managing source materials or other flood containment would not be captured in this data.

- f. "Water Quality Post-Construction BMP Manual" (Manual) shall mean Respondent's document entitled "Water Quality Post-Construction Best Management Practices" and any amendments and revisions thereto made in accordance with applicable requirements of the Permit.
- g. "Work" shall mean all the actions and measures Respondent is required to undertake by this AOC.

22. To address the program deficiencies set forth in the Findings section above, Respondent shall complete the Work as specified below. Should the due date fall on a Saturday, Sunday or a federal holiday, it shall automatically extend to the close of business of the next business day.

23. **Description of Task I Work.**

- a. **No later than April 15, 2013**, Respondent shall complete the following Work:
  - i. ***Ensure Placement of Contractor Oversight and Compliance Personnel in All Nine Districts:*** Respondent shall have in place, for each of its districts, a Resident Engineer or equivalent who shall have the authority and responsibility for:
    - 1) overseeing, directing, and conducting inspections of all construction activities initiated or controlled by Respondent within the district; and
    - 2) taking appropriate enforcement actions to ensure compliance by Respondent's contractors with the General Construction Permit and this Permit.
  - ii. Submit a report with the name and contact information for the designated Residential Engineer or equivalent for each district.
- b. **No later than May 15, 2013**, Respondent shall obtain a draft Water Quality Post-construction BMP Manual from its consultant for review and comment.
- c. **No later than June 30, 2013**, Respondent shall provide its comments on the draft Water Quality Post-construction BMP Manual to its consultant.
- d. **No later than August 30, 2013**, Respondent shall complete the following Work:
  - i. ***Complete Mapping of the Task I AOC Outfalls:*** The storm sewer system map(s) for each identified Outfall shall contain the following information for:
    - 1) its location;
    - 2) its drainage pattern and the water quality status (impaired or unique/outstanding) of its receiving water;
    - 3) the associated storm water collection and conveyance structures (e.g. drainage pipes, streets, floodway structures, AOC Outfalls, drywells, retention/detention basins);
    - 4) its surrounding highway system; and

- 5) its relevant district boundary.
  - ii. **Complete Water Quality Post-Construction BMP Manual modifications:** Respondent shall update the Manual with BMPs utilized by the State for a water quality benefit.
- e. **No later than September 15, 2013** , Respondent shall complete the following Work:
- i. **Submit 1<sup>st</sup> Compliance Report:** Respondent shall submit a compliance report with the following information:
    - 1) verification of compliance with the required mapping for the reporting period;
    - 2) a summary of the mapping work performed during the reporting period; and
    - 3) any amendment or revision made to the Water Quality Post-Construction BMP Manual during the reporting period.
- f. **No later than October 31, 2013** , Respondent shall complete the following Work:
- i. **Complete Dry Weather Outfall Screening Work for Task I AOC Outfalls:** Respondent shall complete inspection of Task I AOC Outfalls for any dry weather discharges in accordance with the updated Dry Weather Field Screening Sites part of its Stormwater Monitoring Guidance Manual for MS4 Activities.
  - ii. **Complete Water Quality Post-Construction BMP Mapping, Inspection and Maintenance Work for Globe, Holbrook and Phoenix:** Respondent shall complete the Work in accordance with the updated Water Quality Post-Construction BMP Manual, including the inspection requirements listed in the BMP Sheets.
- g. **No later than November 15, 2013**, Respondent shall complete the following Work:
- i. **Submit 2<sup>nd</sup> Compliance Report:** The Compliance Report shall contain the following information:
    - 1) verification of compliance with the AOC requirements for the reporting period;
    - 2) a summary table of the location of each Task I AOC Outfall screened within the reporting period, the inspection date, the inspection finding, and any follow-up action taken or planned;
    - 3) a summary table of the location of each Water Quality Post-Construction BMP inspected, the inspection date, the inspection finding, and any follow-up action taken or planned; and a summary table of the construction sites inspected within the reporting period for each of the nine districts, the inspection date, the inspection finding, and any follow-up action taken or planned.



24. Description of Task II Work.

- a. No later than January 15, 2014, Respondent shall complete the following Work:
- i. **Complete Mapping and Dry Weather Screening for Task II AOC Outfalls:** The storm sewer system map(s) for the Task II AOC Outfalls shall contain information for each identified Outfall as specified in 23.d.i.
  - ii. **Complete Water Quality Post-Construction BMP Inventory Mapping, Inspection and Maintenance for Prescott, Safford and Tucson:** Respondent shall conduct the inventory mapping in accordance with the updated Water Quality Post-Construction BMP Manual.
- b. No later than March 15, 2014, Respondent shall complete the following Work:
- i. **Submit 3rd Compliance Report:** The Compliance Report shall contain the following information:
    - 1) verification of compliance with the AOC requirements for the reporting period;
    - 2) a summary of the mapping work performed during the reporting period;
    - 3) a summary table of the construction sites inspected within the reporting period for each of the nine districts, the inspection date, the inspection finding, and any follow-up action taken or planned;
    - 4) a summary table of the location of each Task II AOC Outfall screened within the reporting period, the inspection date, the inspection finding, and any follow-up action taken or planned; and
    - 5) a summary table of the location of each Water Quality Post-Construction BMP inspected, the inspection date, the inspection finding, and any follow-up action taken or planned.

25. **AOC Compliance Schedule Table.** The following table summarizes the Work required for each phase and the accompanying deadlines:

<b>AOC COMPLIANCE SCHEDULE TABLE</b>				
	<b>Deadline</b>	<b>Mapping</b>	<b>Inspection &amp; Maintenance</b>	<b>Contractor Oversight</b>
<b>Task I</b>	4/15/13	NA	NA	Have designated personnel in place for every district.  Submit list of personnel to EPA.
	5/15/13	Draft Water Quality Post-Construction BMP Manual submitted from consultant to ADOT for review and comment.	NA	NA
	6/30/13	ADOT comments to consultant.	NA	NA
	8/30/13	Complete mapping of Task I AOC Outfalls in Globe, Holbrook and Phoenix.  Finalize modification of the Water Quality Post-Construction BMP Manual.	NA	NA
	9/15/13	<i>First Compliance Report Due</i>		
	10/31/13	Complete Water Quality Post-Construction BMPs mapping for Globe, Holbrook and Phoenix.	Complete dry weather screening of Task I AOC Outfalls.  Complete inspection and maintenance of Water Quality Post-Construction BMPs mapped for Globe, Holbrook and Phoenix.	NA
	11/15/13	<i>Second Compliance Report Due</i>		
<b>Task II</b>	1/15/14	Complete outfall mapping for Prescott, Safford and Tucson.  Complete Water Quality Post-Construction BMP inventory mapping for Prescott, Safford and Tucson.	Complete dry weather screening of all Task II AOC Outfalls.  Complete inspection and maintenance of Water Quality Post-Construction BMPs for Prescott, Safford and Tucson.	NA
	3/15/14	<i>Third Compliance Report Due</i>		

## VI. SUBMISSIONS AND NOTIFICATIONS

26. All submittals required by this AOC shall be signed by a principal executive officer, ranking elected official, or duly authorized representative of Respondent, as specified by 40 C.F.R. § 122.22(b), and shall 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 persons properly gather and evaluate the information submitted. Based on my inquiry of those responsible for managing or gathering the information, the submitted information 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.

27. Unless otherwise specified by EPA, Respondent shall make all submittals required by this AOC by first-class mail or email to:

U.S. ENVIRONMENTAL PROTECTION AGENCY  
75 Hawthorne Street  
San Francisco, CA 94105  
Attn: Rick Sakow, Clean Water Act Compliance Office  
[Sakow.rick@epa.gov](mailto:Sakow.rick@epa.gov)

## VII. DELAY OF PERFORMANCE/FORCE MAJEURE

28. Respondent shall perform the Work required under this AOC within the time limits set forth or approved herein, unless the performance is prevented or delayed by a Force Majeure event, or as otherwise agreed to in writing by EPA and Respondent.

29. For purposes of this AOC, a "Force Majeure" event is any event arising from causes beyond the control of Respondent or any entity controlled by Respondent that, notwithstanding due diligence by Respondent or any entity controlled by Respondent, delays or prevents performance of an obligation under this AOC. The due diligence requirement includes using due diligence to anticipate any such event and to minimize the delay caused by any such event to the greatest extent practicable. A Force Majeure event does not include, inter alia, increased costs of performance, changed labor relations, financial or business difficulties, normal inclement weather, or changed circumstances arising from the sale, lease or other transfer or conveyance of real estate interest.

30. If Respondent believes that a Force Majeure event is likely to occur, is occurring, or has occurred that may affect its ability to perform an obligation under this AOC, Respondent shall notify EPA by telephone or email within two (2) business days of when Respondent first became

aware of such event, and shall follow up with a formal notice to EPA within 15 days after the event with the following information:

- a. the action that may be or has been affected;
- b. the reasons for the delay;
- c. the length or anticipated duration of the delay;
- d. the measures taken or to be taken to prevent or minimize the delay;
- e. a schedule for implementing such measures; and
- f. any additional information deemed appropriate by Respondent to support its Force Majeure claim.

Failure to comply with the notice requirement of this paragraph shall constitute a waiver of any Force Majeure claim by Respondent as to the event in question.

31. If EPA agrees that an actual or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligation shall be extended by written agreement of the parties. An extension of the time for performing an obligation affected by a Force Majeure event shall not, of itself, extend the time for performing a subsequent obligation.

32. Respondent shall have the burden of proving that a Force Majeure event was the cause of the noncompliance and the duration of the noncompliance.

33. For any other non-Force Majeure event that nevertheless may delay the performance of any obligation under the AOC, Respondent shall notify EPA in writing as soon as it becomes aware of such event and provide the same information as specified in Paragraph 30 above.

#### **VIII. SCOPE OF THE AOC**

34. This AOC is not a CWA permit.

35. Compliance with this AOC shall be no defense to any actions commenced pursuant to any applicable federal, state or local laws, regulations or permits.

36. Issuance of and compliance with this AOC shall in no way affect the rights of EPA or the United States with respect to any person not a party hereto.

37. This AOC shall in no way affect EPA's authority to enter, inspect, sample or monitor compliance under any law, permit, court order or agreement, and Respondent shall use its best efforts to arrange for access by EPA or its authorized representatives for determining compliance with this AOC. For purposes of this AOC, EPA's authorized representatives shall include all EPA employees and contractors and such other persons as EPA may designate.

#### **IX. RESERVATION OF RIGHTS/FAILURE TO COMPLY WITH THE AOC**

38. EPA reserves all rights, claims and remedies available under the law to enforce CWA violations, including without limitation any violation of the Permit or this AOC.

39. Failure to comply with this AOC is a violation of the CWA and may subject Respondent to civil penalties not to exceed \$37,500 per day for each violation under CWA § 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4.

**X. TERMINATION AND SATISFACTION**

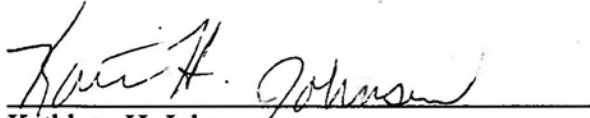
40. This AOC shall terminate upon written notice from EPA to the effect that it considers Respondent to have addressed the requirements of this AOC in a satisfactory manner; or, as otherwise ordered by a court of competent jurisdiction.

**XI. EFFECTIVE DATE**

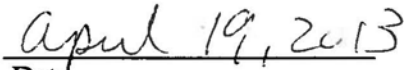
41. This AOC shall become effective upon signature by EPA and Respondent.

IT IS SO AGREED AND ORDERED:

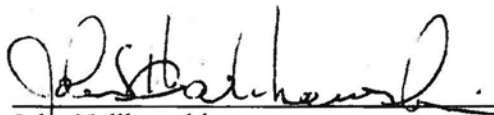
FOR U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 9



Kathleen H. Johnson  
Director  
Enforcement Division  
Environmental Protection Agency, Region 9

  
Date

FOR ARIZONA DEPARTMENT OF TRANSPORTATION



John Halikowski  
Director  
Arizona Department of Transportation

4/16/13

Date