

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. Environmental
Protection Agency
2016 DEC -1 PM 8:04
REGIONAL ADMINISTRATOR
EPA REGION 2

IN THE MATTER OF:

Village of Voorheesville
29 Voorheesville Avenue
Voorheesville, New York 12186

SPDES Permit No. NYR20A210

Respondent

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)

**PROCEEDING TO ASSESS A CLASS I CIVIL
PENALTY**

DOCKET No. CWA-02-2017-3301

**ADMINISTRATIVE COMPLAINT
FINDINGS OF VIOLATION, NOTICE OF PROPOSED
ASSESSMENT OF AN ADMINISTRATIVE PENALTY, AND
NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

I. STATUTORY AND REGULATORY AUTHORITIES

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing (“Complaint”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g)(2)(A) of the Clean Water Act (“Act” or “CWA”), 33 U.S.C. § 1319(g)(2)(A). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Division of Enforcement and Compliance Assistance (“DECA”) of EPA, Region 2 (“Complainant”).
2. Pursuant to Section 309(g)(2)(A) of the Act, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“CROP”), 40 C.F.R. Part 22 (2001), a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against Respondent, as a result of Complainant’s determination that the Respondent is in violation of Section 301 of the Act, 33 U.S.C. § 1311, by failing to comply with the terms of the New York Department of Environmental Conservation’s (“NYSDEC’s”) State Pollutant Discharge Elimination System (“SPDES”) General Permit for Storm Water Discharges from Municipal Separate Storm Sewer Systems (“MS4s”) for the MS4 that the Respondent owns and operates.

II. DEFINITIONS AND STATUTORY PROVISIONS

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source into waters of the United States, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The NYSDEC is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA. Additionally, under the authority granted to the NYSDEC by the EPA under Section 402(b) of the CWA, 33 U.S.C. § 1342(b), a SPDES permit is required to be issued to facilities by the NYSDEC for the discharge of pollutants from said facilities from a point source to a navigable water of the United States.
3. “Person” is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State.
4. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include, among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal, biological materials and agricultural waste discharged into water.
5. “Navigable waters” is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), to include the waters of the United States.
6. “Discharge of a pollutant” is defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12), to include any addition of any pollutant to navigable waters from any point source.
7. “Point source” is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
8. Section 402(p) of the CWA, 33 U.S.C. § 1342(p) sets forth the permit requirements for the discharge of stormwater, including discharges of stormwater from Municipal Separate Storm Sewer Systems (“MS4s”).
9. 40 C.F.R. § 122.26(b)(8), defines an MS4 as 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, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law).....that discharges into waters of the United States; (ii) designed or used for collecting or conveying stormwater; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works...”

10. 40 C.F.R. § 122.26(b)(3) defines “incorporated place,” in part, as a city, town, township, or village that is incorporated under the laws of the State in which it is located.
11. 40 C.F.R. § 122.26(b)(16)(ii) defines “small municipal separate storm sewer system,” in part, as not defined as “large” or “medium” MS4s.
12. Pursuant to 40 C.F.R. § 122.32(a)(1), all small MS4s located in an “urbanized area” (as determined by the latest Decennial Census by the Bureau of Census) are regulated small MS4s.
13. 40 C.F.R. §§ 122.33(a) and (b)(1) require operators of regulated small MS4s to seek authorization to discharge under the applicable NPDES general permit issued by the permitting authority, by submitting a Notice of Intent (“NOI”) for coverage under such permit.
14. NYSDEC issued a SPDES General Permit for Storm Water Discharges from MS4s (GP-0-15-003) (“Permit”) on May 1, 2015 and it expires on April 30, 2017. The Permit supersedes the previous SPDES permit (GP-0-10-002), which became effective on May 1, 2010 and expired on April 30, 2015, and SPDES permit (GP-0-08-002), which became effective on May 1, 2008 and expired on April 30, 2010.
15. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a civil penalty for violations of Section 301 of the CWA, 33 U.S.C. § 1311, or any permit condition or limitation implementing, inter alia, Section 301, and contained in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

III. FINDINGS OF VIOLATION

1. The Village of Voorheesville (“Village” or “Respondent”) is a public body chartered under the laws of the State of New York, and as such, the Respondent is a person, as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2, and is an “incorporated place” as defined in 40 C.F.R. § 122.26(b)(3).
2. Respondent owns and operates the MS4, located in the Village of Voorheesville, Albany County, New York and is an “owner or operator” within the meaning of 40 C.F.R. § 122.2.
3. The MS4 owned and operated by the Respondent is a small MS4 located in a urbanized area within the meaning of 40 C.F.R. § 122.26(b)(16)(ii) and 40 C.F.R. § 122.32(a)(1).
4. The MS4 in the Village is a point source within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
5. Respondent discharges stormwater, which is a pollutant within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to Vly Creek, a Hudson River tributary, waters of the United States within the meaning of 40 C.F.R. § 122.2, via its MS4. As such, Respondent discharges pollutants within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).
6. The Village submitted a Notice of Intent (“NOI”) to NYSDEC and subsequently received authorization in May 2003 under the MS4 General Permit pursuant to permit No. NYR20A210.

Permit coverage was maintained under the subsequent, and current permit which became effective on May 1, 2015.

7. EPA, accompanied by NYSDEC, conducted a compliance Audit of the Village's MS4 on June 16, 2015 through June 18, 2015.
8. NYSDEC General Permit for Storm Water Discharges from Municipal Separate Storm Sewer Systems (GP-0-15-003) was the effective permit at the time of the audit.
9. At the time of the Audit, EPA identified the following violations of the Permit:
 - a. Part IV.A of the Permit states that all permittees under GP-0-10-002 must have prepared a Stormwater Management Program ("SWMP") Plan documenting modifications to their SWMP. Part X of the Permit states that documents to include in the SWMP Plan are procedures and materials for each minimum control measure, and measurable goals. In accordance with the 2003 permit, the Village was required to develop and have fully implemented its SWMP by January 8, 2008. While the Village provided EPA with a SWMP Plan dated May 22, 2013, the SWMP Plan did not include the following elements required by the Permit, in violation of Parts IV.A and X of the Permit:
 - i. Updates to incorporate the most recent Permit which became effective on May 1, 2015, as required by Part IV.A of the Permit;
 - ii. Updates to reflect the Village leaving the Coalition in January of 2014, as required by Part IV.A of the Permit;
 - iii. Updates to reflect the role of the Village Designated Engineers, as required by Part IV.A of the Permit;
 - iv. Pollutants of Concern ("POCs"), as required by Part VII.A.1.a of the Permit;
 - v. Waterbodies of Concern ("WOCs"), as required by Part VII.A.1.a of the Permit;
 - vi. Geographic Areas of Concern ("GOCs"), as required by Part VII.A.1.a of the Permit;
 - vii. Target Audiences, as required by Part VII.A.1.a of the Permit;
 - viii. Measurable goals for each of the six (6) Minimum Control Measures, as required by Parts VII.A.1.d, VII.A.2.e, VII.A.3.k, VII.A.4.a.xiv, VII.A.5.d, and VII.A.6.d of the Permit. The Village lists measurable goals in the submitted annual reports, however, these measurable goals are inconsistent with the Village's SWMP Plan;
 - ix. Public education and outreach program, including but not limited an accurate description of the catch basin stenciling/curb marking program, as required by Part VII.A.1 of the Permit;
 - x. Public involvement and participation program, including but not limited to the draft Annual Report presentation procedures, as required by Part VII.A.2 of the Permit;
 - xi. A program to detect and address non-stormwater discharges to the small MS4 which must include: procedures for identifying priority areas of concern (geographic, audiences, or otherwise) for the IDDE program; description of priority areas of concern; available equipment, staff, funding, etc.; procedures for identifying and locating illicit discharges (trackdown); procedures for eliminating illicit discharges; and procedures for documenting actions, as required by Part VII.A.3.g of the Permit;

- xii. Construction site and post-construction Stormwater Pollution Prevention Plan (“SWPPP”) review procedures, SWPPP acceptance procedures and procedures for documenting actions, as required by Parts VII.A.4.a.vii and VII.A.5.a.v of the Permit;
 - xiii. Procedures for receipt, follow up, and documentation of complaints or other information submitted by the public regarding construction site storm water runoff, as required by Part VII.A.4.a.viii of the Permit;
 - xiv. Procedures for construction site inspections and enforcement of erosion and sediment control measures, including steps to identify priority sites for inspection and enforcement, as required by Part VII.A.4.a.ix of the Permit;
 - xv. A program that ensures that construction site operators have received erosion and sediment control training before they do work within the covered entity’s jurisdiction and maintain records of that training, as required by Part VII.A.4.a.xi of the Permit;
 - xvi. An inventory of active construction sites and post-construction stormwater management practices, as required by Parts VII.A.4.a.xii and VII.A.5.a.vi of the Permit;
 - xvii. A program that ensures adequate long-term operation and maintenance of management practices identified in Part VII.5.a.vi by trained staff, including inspections to ensure that practices are performing properly, as required by Part VII.A.5.a.vii of the Permit;
 - xviii. Pollution prevention and good housekeeping program, including but not limited to catch basin cleaning, maintenance and inspection procedures, as required by Part VII.A.6 of the Permit; and
 - xix. Techniques to reduce the use of fertilizers, pesticides, and herbicides, as well as potential impact to surface water, as required by Part VII.A.6.d of the Permit.
- b. Part IV.D of the Permit requires that all permittees shall continue to fully implement their SWMP. At the time of the Audit, the Village was not fully implementing its SWMP as detailed below, in violation of Part IV.D of the Permit:
- i. The Village’s SWMP Plan states that the Target Audience Analysis Worksheet will be completed by March 9, 2013. Village representatives were unable to provide the completed Target Audience Analysis Worksheet to EPA representatives.
 - ii. The Village’s SWMP Plan states that the Village will coordinate volunteer catch basin-stenciling/curb marker, door hanger projects by March 9, 2009. The Village’s SWMP Plan also states that the Village will analyze Geographic Areas of Concern then identify suitable areas for stenciling and markers, coordinate and track the number of catch basins marked or stenciled. In addition, the Village’s SWMP Plan states that the Village will stencil/curb mark twenty (20) catch basins in the reporting year by March 9, 2015. According to Village representatives, the Village has not completed any catch basin-stenciling or curb markings.
 - iii. The Village’s SWMP Plan states that all Department of Public Works (“DPW”) employees are trained at least annually on the use of spill containment equipment as part of the Good Housekeeping program. However, at the time of the Audit the most recent stormwater related trainings were held on December 5,

2013 and included five (5) employees and on March 22, 2013 and included six (6) employees.

- iv. The Village's SWMP Plan states that the Village will clean out 100% of catch basins in the jurisdiction by March 9, 2015. However, at the time of the Audit the Village had only documented the cleaning of seven (7) catch basins and according to Village representatives, the Village only cleans catch basins on an as needed basis.
- c. Part IV.G of the Permit requires that all permittees must, through a signed certification statement, contract or agreement, provide adequate assurance that the third parties will comply with permit requirements applicable to the work performed by the third party. Third parties conducting SWMP-related work within the Village include the Village Designated Engineering firm, Barton & Loguidice, D.P.C., which performs MS4 mapping and SWPPP review. At the time of the Audit, the Village was unable to provide a signed certification statement, contract or agreement that provided adequate assurance that the third parties will comply with permit requirements, in violation of Part IV.G of the Permit.
- d. Part VII.A.1.a of the Permit requires permittees to identify Pollutants of Concern ("POCs"), waterbodies of concern, geographic areas of concern and target audiences. At the time of the Audit, the Village had not identified POCs, waterbodies of concern, geographic areas of concern and target audiences, in violation of Part VII.A.1.a of the Permit. Additional Permit requirements not met by the Village due to the lack of identified POCs include Parts III.B.1, VII.A.1.b.ii, VII.A.1.d, VII.A.3.f, VII.A.3.k, VII.A.4.a.xiv, VII.A.5.d and VII.A.6.d of the Permit.
- e. Part VII.A.1.b of the Permit states that at a minimum all permittees must develop and implement an ongoing Public Education and Outreach program designed to describe to the general public and target audiences: the impacts of stormwater discharges on waterbodies, POCs and their sources, and steps that contributors of these pollutants can take to reduce pollutants in stormwater runoff. At the time of the Audit, the Village had not developed and implemented a public education and outreach program designed to describe to target audiences, POCs and their sources, in violation of Part VII.A.1.b of the Permit.
- f. Part VII.A.2.b.iv of the Permit states that at a minimum all permittees must develop and implement a public involvement/participation program that will provide the opportunity for the public to participate in the development, implementation and revision of the SWMP. At the time of the Audit, the Village did not provide the public with the opportunity to participate in the development or revision of the SWMP, in violation of Part VII.A.2.b.iv of the Permit.
- g. Part VII.A.2.d of the Permit states that prior to submitting the final annual report to the NYSDEC all permittees are required to present the draft annual report in a format that is open to the public, where the public can ask questions about and make comments on the report. According to Mr. Hebert, providing a draft of the Annual Report to the public for comments is not part of the pre-submission process, in violation of Part VII.A.2.d of the Permit.

- h. Part VII.A.3.a of the Permit states that at a minimum all permittees must implement and enforce a program to detect and eliminate illicit discharges into the small MS4. According to outfall inspection documentation provided by the Village, the Village identified a potential illicit connection discharging soapy water at Outfall 160001 (#1) on November 21, 2011. At the time of the Audit, the Village was unable to provide documentation or a description of any follow up actions performed by the Village in response to the potential illicit connection observation, in violation of Part VII.A.3.a of the Permit.
- i. Part VII.A.3.b.i of the Permit states that all permittees must develop and maintain a map showing the location of all outfalls. At the time of the Audit, the Village had a map dated May 2015 developed by Barton & Loguidice, D.P.C. depicting MS4 pipe segments and catch basins which did not include a point location for outfalls, only the ends of pipe segments could be inferred as outfalls. In addition, the Village had an outfall map produced in 2007 which depicted eleven (11) outfalls. According to Village representatives, the Village had approximately nineteen (19) outfalls at the time of the Audit. Connections from the Village MS4 to another MS4, including the County and State were not depicted on either maps. Therefore, Respondent violated Part VII.A.3.b.i of the Permit.
- j. Part VII.A.3.d of the Permit requires all permittees to conduct an Outfall Reconnaissance Inventory (“ORI”), as described in the EPA publication entitled “Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessment,” addressing every outfall within the urbanized area and additionally designated area within the permittee’s jurisdiction at least once every five years, with reasonable progress each year. The NYSDEC SPDES MS4 General Permit GP-0-08-002 with the effective date of May 1, 2008, includes this requirement; therefore, the five year deadline was May 1, 2013. At the time of the Audit, the Village had conducted ORI activities at eleven (11) outfalls in 2011. The Village has yet to conduct ORI for at least eight (8) additional outfalls plus connections to other MS4s, at the time of the Audit. In addition, the ORI conducted at Outfall 160011 (#11) was conducted on December 16, 2011 when 0.16 inches of rain was received during the previous 24 hours which is not as described in the EPA publication entitled “Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessment,” which specifies dry weather. In addition, EPA inspectors observed water flowing along and under Outfall 130006 (#1), eroding the bank around the pipe and potentially undermining the integrity of the structure. Therefore, Respondent violated Part VII.A.3.d of the Permit.
- k. Part VII.A.3.f of the Permit requires all permittees to prohibit, through a law, ordinance or other regulatory mechanism, illicit discharges into the small MS4 and implement appropriate enforcement procedures and actions. This mechanism must be equivalent to the State’s model Illicit Discharge, Detection and Elimination (“IDDE”) local law “NYSDEC Model Local Law to Prohibit Illicit Discharges, Activities and Connections to Separate Storm Sewer Systems”. The mechanism must be certified by the attorney representing the small MS4 as being equivalent to the State’s model illicit discharge local law. Part V.B of the Permit states that all permittees must keep records required by this SPDES general permit (records that document SWMP, records included in SWMP Plan, other records that verify reporting required by the permit, Notice of Intent (“NOI”)),

past annual reports, and comments from the public and the NYSDEC, etc.) for at least five (5) years after they are generated. According to the Annual Report submitted by the Village in 2015, an Attorney representing the Village has certified that the IDDE ordinance is equivalent, however, Village representatives were unable to provide documentation confirming this certification. Therefore, Respondent violated Part VII.A.3.f of the Permit.

- l. Part VII.A.3.g of the Permit requires permittees to develop and implement a program to detect and address non-stormwater discharges to the small MS4 which must include: procedures for identifying priority areas of concern (geographic, audiences, or otherwise) for the IDDE program; description of priority areas of concern; available equipment, staff, funding, etc.; procedures for identifying and locating illicit discharges (trackdown); procedures for eliminating illicit discharges; and procedures for documenting actions. At the time of the Audit, the Village had not developed or implemented procedures for identifying, locating and eliminating illicit discharges, in violation of Part VII.A.3.g of the Permit.
- m. Part VII.A.4.a.i of the Permit requires all permittees to develop, implement and enforce a program that provides equivalent protection to the New York State General Permit for Stormwater Discharges from Construction Activities (“CGP”), unless more stringent requirements are contained within the MS4 SPDES general permit. At the time of the Audit, EPA observed that the Village had not implemented and enforced a program that provided equivalent protection to the CGP, as detailed below, in violation of Part VII.A.4.a.i of the Permit:
 - i. Part II.C.1 of the CGP requires the owner or operator to ensure that the provisions of the SWPPP are implemented from commencement of construction activity until all areas of disturbance have achieved final stabilization and a Notice of Termination (“NOT”) has been submitted to the NYSDEC in accordance with Part V of the Permit. At the time of the Audit, EPA identified that the North Grandview Terrace construction site (SPDES ID No. NYR10J460) failed to submit an NOT to the NYSDEC as required by Part V of the CGP, has since ceased construction activities and no longer conducts site inspections.
 - ii. Part IV.A.1. of the CGP states that the owner or operator must ensure that all erosion and sediment control practices identified in the SWPPP are maintained in effective operating conditions at all times. Part IV.C.5 of the CGP states that the contractor or subcontractor shall begin implementing corrective actions within one (1) business day of qualified inspector notification and shall complete the corrective actions in a reasonable time frame. At the time of the Audit, EPA and the Village identified the following deficiencies at the Quail Run construction site (SPDES ID No. NYR10R883) which were communicating to the Developer at the time of the Audit, it is unclear if these deficiencies have been corrected:
 1. Construction entrance lacking material with some sediment tracking onto Quail Run with unprotected catch basins; and

2. The most recent required weekly inspection report was not available on-site at the time of the inspection.
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- n. Part VII.A.4.a.iii of the Permit requires all permittees to develop, implement, and enforce a program that includes a law, ordinance or other regulatory mechanism to require a SWPPP for each applicable land disturbing activity that includes erosion and sediment controls that meet the NYSDEC's most current technical standards. This mechanism must be equivalent to one of the versions of the "NYSDEC Sample Local Laws for Stormwater Management and Erosion and Sediment Control" and the equivalence must be documented. According to the Annual Report submitted by the Village in 2015, an Attorney representing the Village has certified that the ordinance is equivalent, however, Village representatives were unable to provide documentation confirming this certification. Therefore, Respondent violated Part VII.A.4.a.iii of the Permit.
 - o. Parts VII.A.4.a.vii and VII.A.5.a.v of the Permit require all permittees to develop, implement and enforce a program that describes procedures for SWPPP review for both construction and post-construction minimum control measures. The Village did not have written procedures for SWPPP review at the time of the Audit, in violation of Parts VII.A.4.a.vii and VII.A.5.a.v of the Permit.
 - p. Part VII.A.4.a.viii of the Permit requires all permittees to develop, implement and enforce a program that describes procedures for receipt and follow up on complaints or other information submitted by the public regarding construction site stormwater runoff. At the time of the Audit, the Village did not have written procedures for receipt and follow up on complaints by the public regarding construction site stormwater runoff, in violation of Part VII.A.4.a.viii of the Permit.
 - q. Part VII.A.4.a.ix of the Permit requires all permittees to develop, implement and enforce a program that describes procedures for site inspections and enforcement of erosion and sediment control measures, including steps to identify priority sites for inspection and enforcement and Notice of Termination ("NOT") procedures for signing the MS4 acceptance statement on the NOT. Documentation of construction site inspections and enforcement were not provided by the Village at the time of the Audit. At the time of the Audit, the Village did not have written procedures for construction site inspections beyond an undated check mark, enforcement, identifying priority sites for inspection and NOT procedures that included signing the MS4 acceptance statement on the NOT. Therefore, Respondent violated Part VII.A.4.a.ix of the Permit.
 - r. Part VII.A.4.a.xi of the Permit requires all permittees to develop, implement and enforce a program that ensures that construction site operators have received erosion and sediment control training before they do work within the covered entity's jurisdiction and maintain records of that training. At the time of the Audit, Village representatives stated that while they do check to ensure that construction site operators have received the appropriate erosion and sediment control training at the pre-construction meeting, they do not retain records of that training. Therefore, Respondent violated Part VII.A.4.a.xi of the Permit.
 - s. Part VII.A.4.a.xii of the Permit requires all permittees to develop, implement and enforce a program that establishes and maintains an inventory of active construction sites,

including the location of the site and owner/operator contact information. At the time of the Audit, the Village did not maintain an active construction site inventory that included the required information, in violation of Part VII.A.4.a.xii of the Permit.

- t. Part VII.A.5.a.iii of the Permit requires all permittees to develop, implement, and enforce a program that includes a law, ordinance or other regulatory mechanism to require post construction runoff controls from new development and re-development projects to the extent allowable under State law that meet the State's most current technical standards. This mechanism must be equivalent to one of the versions of the "NYSDEC Sample Local Laws for Stormwater Management and Erosion and Sediment Control" and the equivalence must be documented. According to the Annual Report submitted by the Village in 2015, an Attorney representing the Village has certified that the ordinance is equivalent, however, Village representatives were unable to provide documentation confirming this certification. Therefore, Respondent violated Part VII.A.5.a.iii of the Permit.
- u. Part VII.A.5.a.vi of the Permit requires all permittees to develop, implement and enforce a program that maintains an inventory of post-construction stormwater management practices within the MS4's jurisdiction. At a minimum, it must include practices discharging to the small MS4 that have been installed since March 10, 2003, all practices owned by the small MS4, and those practices found to cause or contribute to water quality standard violations. The inventory shall include at a minimum: location of practice; type of practice; maintenance needed per the NYS Stormwater Management Design Manual, SWPPP, or other provided documentation; and dates and type of maintenance performed. At the time of the Audit, the Village provided EPA with a list of one (1) post-construction practice and did not include any privately owned practices or the required inventory items, as required by the Permit. Therefore, Respondent violated Part VII.A.5.a.vi of the Permit.
- v. Part VII.A.5.a.vii of the Permit requires all permittees to develop, implement and enforce a program that ensures adequate long-term operation and maintenance of management practices identified in Part VII.5.a.vi by trained staff, including inspections to ensure that practices are performing properly. At the time of the Audit, the Village had not developed and implemented a post-construction program by trained staff, including inspections to ensure that practices are performing properly, as required by the Permit. At the time of the Audit, the Village was unable to provide documentation of the maintenance of the Village's post-construction control located at 27 Locust Drive. In addition, EPA observed that the post-construction control had no designed outlet structure or pipe, however, there were two (2) observed eroded overflow points in low areas along the west side of the basin towards forested area and an abundance of trees and heavy woody vegetation located inside fence line in the structure. Therefore, Respondent violated Part VII.A.5.a.vii of the Permit.
- w. Part VII.A.6.a.ii of the Permit requires that all permittees must at a minimum frequency of once every three years, perform a self-assessment of all municipal operations addressed by the SWMP to: determine the sources of pollutants potentially generated by the permittee's operations and facilities and identify the municipal operations and facilities that will be addressed by the pollution prevention and good housekeeping program, if it is not done already. At the time of the Audit, the Village had not completed

and documented self-assessments as required at any of the municipal operated facilities, in violated of Part VII.A.6.a.ii of the Permit.

- x. Part VII.A.6.a.vi of the Permit requires that all permittees develop and implement a pollution prevention / good housekeeping program for municipal operations and facilities that includes an employee pollution prevention and good housekeeping training program and ensures that staff receive and utilize training. At the time of the Audit the most recent stormwater related trainings were held on December 5, 2013 and included five (5) employees and on March 22, 2013 and included six (6) employees. However, the Village's SWMP Plan specified that training would be held at least annually. Therefore, Respondent violated Part VII.A.6.a.vi of the Permit.
10. On October 21, 2015, EPA issued an Administrative Compliance Order ("AO" or "Order") (CWA-02-2016-3009). The AO directed the Respondent to comply with the requirements of the Permit in accordance with a compliance schedule.
11. Based on the Findings cited in paragraphs 1-10 above, Respondent violated Sections 301 of the Act, 33 U.S.C. § 1311.

IV. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), and the Debt Collection Improvement Act of 1996, EPA, Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties ("Final Order") to Respondent assessing a civil penalty of **\$11,000**. EPA determined the proposed penalty after taking into account the applicable factors identified at Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). EPA has taken account of the nature, circumstances, extent, and gravity of the violation (or violations), and Respondent's prior compliance history, degree of culpability, economic benefit or savings accruing to Respondent by virtue of the violations, and Respondent's ability to pay the proposed penalty. Based on the Findings set forth above, the **Respondent is liable for twenty-four (24) violations of the Act, one of which has continued for at least four hundred and twelve (412) days**. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after Respondent's receipt of this Notice, unless Respondent files an Answer to the Complaint within that time and requests a Hearing on this Notice pursuant to the following section.

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE ACTION

The rules of procedure governing this civil administrative litigation have been set forth in the CROP, 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

A. Answering The Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007-1866**

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a). Respondent's Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which the Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in the Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that the Respondent disputes (and thus intends to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether Respondent requests a Hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of a defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a Hearing.

B. Opportunity To Request A Hearing

If requested by Respondent in its Answer, a Hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If however, Respondent does not request a Hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a Hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any Hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A Hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

Should Respondent request a Hearing on this proposed penalty assessment, members of the public to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondent not request a Hearing, EPA will issue a Final Order, and only members of the public who submit timely comment on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a Hearing thereon. EPA will grant the petition and will hold a Hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

C. Failure To Answer

If Respondent fails in any Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely Answer to the Complaint [i.e. not in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)], Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file

an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondent, and to collect the assessed penalty amount, in Federal court.

VI. INFORMAL SETTLEMENT CONFERENCE

Regardless of whether Respondent requests a formal Hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint and Respondent may also provide whatever additional information is believed to be relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, in response to any relevant information previously not known to Complainant that demonstrates that any of the findings herein are without merit, or that the proposed penalty is not warranted. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Tim Murphy, Esq.
Water and General Law Branch
Office of Regional Counsel
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone (212) 637-3236
Fax: (212) 637-3202

The parties may engage in settlement discussions regardless of whether Respondent has requested a Hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal Hearing does not prevent Respondent from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint.

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. Note that no penalty reduction will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. § 22.18(b)(2). In accepting the Consent Agreement,

Respondent waives any right to contest the allegations in the Complaint and waive any right to appeal the Final Order that is to accompany the Consent Agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Entering into a settlement through the signing of such Consent Agreement and complying with the terms and conditions set forth in such Consent Agreement and Final Order terminates this administrative litigation and these civil proceedings against Respondent (note that a new enforcement action may be initiated based on continued non-compliance). Entering into a settlement agreement does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty **\$11,000** within 30 days after receipt of the Complaint, provided that Respondent file with the Regional Hearing Clerk, Region 2 (at the address noted above), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Attorney identified in Section VI above. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America", in the full amount of the penalty assessed in this complaint to the following addressee:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Docket No. CWA-02-2017-3301

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency".

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within thirty (30) days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order in accordance with 40 C.F.R. § 22.18(a)(3). In accordance with 40 C.F.R. § 22.45(c)(3), no Final Order shall be issued until at least ten (10) days after the close of the comment period on this Complaint. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint (note that a new enforcement action may be initiated based on continued non-compliance). Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of

Respondent's right both to contest the allegations made in the Complaint and to appeal said Final Order to Federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VIII. FILING OF DOCUMENTS

The Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

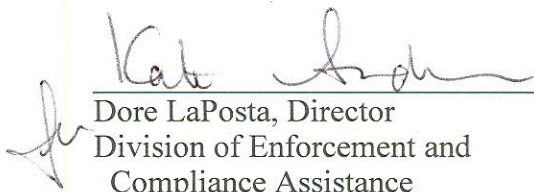
A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Tim Murphy, Esq.
Water and General Law Branch
Office of Regional Counsel
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone (212) 637-3236

IX. GENERAL PROVISIONS

1. Respondent has a right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated there under, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act will affect Respondent's continuing obligation to comply with the Act, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), for the violations alleged herein.

ISSUED THIS _____ DAY OF **NOV 23**, 2016.



Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U. S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007-1866

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Village of Voorheesville
29 Voorheesville Avenue
Voorheesville, New York 12186

SPDES Permit No. NYR20A210

Respondent

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. §1319(g)

**PROCEEDING TO ASSESS A CLASS I CIVIL
PENALTY**

DOCKET No. CWA-02-2017-3301

CERTIFICATE OF SERVICE

I certify that on NOV 29 2016, I served the foregoing fully executed Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing, bearing the above referenced docket number, on the persons listed below, in the following manner:

Original and One Copy
By Hand:

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Certified Mail
Return Receipt Requested:

Honorable Robert Conway
Village of Voorheesville
29 Voorheesville Avenue
Voorheesville, New York 12186

Copy by Certified Mail
Return Receipt Requested

Mr. Joseph DiMura, Director
Bureau of Water Compliance Programs
Division of Water
New York State Department of Environmental Conservation
625 Broadway – 4th Floor
Albany, New York 12233-3506

Dated: NOV 29 2016


Marie St. Germain, Branch Secretary
New York, NY