



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

SEP 30 2013

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2013 OCT 21 P 3:58
REGIONAL HEARING
CLERK

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5966 3646

Mr. Frank Ciolli, Owner
Waterfront Home Marina, Inc. DBA City Island Yacht Sales
673 City Island Avenue
Bronx, New York 10464

Re: Notice of Proposed Assessment of a Civil Penalty
Docket No. CWA-02-2013-3315
Waterfront Home Marina, Inc. DBA City Island Yacht Sales

Dear Mr. Ciolli:

Enclosed is a Complaint which the U.S. Environmental Protection Agency ("EPA") is issuing to you as a result of our determination that Waterfront Home Marina, Inc. DBA City Island Yacht Sales located at 673 City Island Avenue, Bronx, New York has discharge pollutants without authorization in violation of Section 301. This Complaint is filed pursuant to the authority of §309(g) of the Act, 33 U.S.C. §1319(g). The Complaint proposes a penalty of \$27,500.00 be assessed jointly and severally against Waterfront Home Marina, Inc. DBA City Island Yacht Sales for these violations.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or they are found to be true after you have had an opportunity for a hearing on them, you have the right to contest the penalty proposed in the Complaint. I have enclosed a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" ("CROP") (40 Code of Federal Regulations ("C.F.R.") Part 22) which the Agency follows in cases of this kind. Please note the requirements for an Answer at 40 C.F.R. §22.15. **If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file an Answer within thirty (30) days of your receipt of the enclosed Complaint to the EPA Regional Hearing Clerk at the following address:**

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

If you do not file an Answer within thirty (30) days of receipt of this Complaint, you may be judged to have defaulted (See, §22.17 of the CROP). If a default order is entered, the entire proposed penalty may be assessed without further proceedings.

Whether or not you request a formal hearing, you may informally confer with EPA concerning the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement as a result of such informal conference with the

Agency. The Agency also encourages the use of Supplemental Environmental Projects, where appropriate, as part of the settlement. Enclosed is a copy of the EPA Supplemental Environmental Projects Policy (May 1, 1998) for your consideration. You may represent yourself or be represented by an attorney at any stage of the proceedings, including any informal discussions, whether in person or by telephone. Please note that a request for an informal conference does not substitute for a written Answer or affect what you may choose to say in an Answer, nor does it extend the thirty (30) days by which you must file an Answer requesting a hearing. Any hearing held in this matter will be conducted in accordance with the CROP, including Subpart I thereof.


In Addition, Securities and Exchange Commission ("SEC") Regulation S-K, Item 103 - Legal Proceedings (17 CFR §229.103) requires registrants with the SEC (e.g., publicly-traded companies) to periodically disclose a broad array of environmental legal proceedings in statements filed with the Commission. In an effort to increase awareness of this duty, and encourage greater disclosure of environmental legal proceedings, we are enclosing a "Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings."

If you have any questions or wish to discuss a settlement of this matter with the EPA by an informal conference, please immediately contact:

Eduardo J. Gonzales, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
(212) 637-3223

Finally, we are enclosing an Information Sheet which may be helpful to you, if you are a small business, as defined at 13 C.F.R. §121.201, in obtaining compliance assistance or if you wish to comment on this action to the Small Business and Agriculture Regulatory Enforcement Ombudsman and Regional Fairness Board.

Sincerely,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

1. Complaint
2. CROP
3. EPA Supplemental Environmental Projects Policy
4. Notice of SEC Registrants Duty to Disclose Environmental Legal Proceedings
5. Small Business Information Sheet

cc: Karen Maples, Regional Hearing Clerk (w/Complaint only)
Joseph DiMura, NYSDEC (w/Complaint only)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

SEP 30 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5966 3653

Joseph DiMura, P.E., Director
Bureau of Water Compliance Programs
Division of Water
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-3506


Re: Notice of Proposed Assessment of a Civil Penalty
Docket No. CWA-02-2013-3315
Waterfront Home Marina, Inc. DBA City Island Yacht Sales

Dear Mr. DiMura:

Enclosed is a copy of the Administrative Complaint and Notice of Proposed Assessment which the United States Environmental Protection Agency ("EPA") has issued to Waterfront Home Marina, Inc. DBA City Island Yacht Sales pursuant to Section 309(g) of the Clean Water Act ("Act"). EPA has issued the Complaint to begin the process to assess a Class I administrative penalty of \$27,500.00 against Waterfront Home Marina, Inc. DBA City Island Yacht Sales for violations of the Act. Because the violations have occurred in the State of New York, EPA is offering an opportunity for you to confer with us regarding the proposed assessment.

You may confer with me at (212) 637-4000. A copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits", 40 Code of Federal Regulations Part 22, is enclosed for your reference.

Sincerely,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
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REGIONAL HEARING
CLERK

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REGION 2
2013 OCT 21 P 3:58
REGIONAL CLERK
HEARING

-----X
IN THE MATTER OF

Waterfront Home Marina, Inc.
DBA City Island Yacht Sales
673 City Island Avenue
Bronx, NY 10464

Proceeding to Assess Class I
Civil Penalty Under Section
309(g) of the Clean Water Act

Docket No. CWA-02-2013-3315

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

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

I. Statutory Authority

1. This Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil 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”), 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 and the Revocation/Termination or Suspension of Permits” (“CROP”), 40 Code of Federal Regulations (“C.F.R.”) Part 22 (July 1, 2011), a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against Waterfront Home Marina, Inc. DBA City Island Yacht Sales (“Respondent”) for its violation of Section 301(a) of the Act, 33 U.S.C. §1311(a).

II. Statutory Background

3. Section 301(a) of the Act, 33 U.S.C. §1311(a), provides, in part that the discharge of any pollutants by any person from a point source to a navigable water of the United States shall be unlawful except in accordance with the terms and conditions of a duly issued permit. The facility is subject to the National Pollutant Discharge Elimination System (“NPDES”) requirements pursuant to Section 402 of the Act, 33 U.S.C. §1342 and Section 301(a) of the Act, 33 U.S.C. §1311(a).

4. Section 308 of the Act, 33 U.S.C. §1318, provides, in relevant part, that the Administrator of EPA may require the owner or operator of any point source to, among other things: Maintain such records; make such reports; install, use and monitor such equipment; sample such effluents; and provide such other information as may reasonably be required in order to carry out Section 402 of the Act, 33 U.S.C. §1342.
5. Section 402 of the Act, 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 Act and conditions which the Administrator determines are necessary. In addition, pursuant to Section 402(b) of the Act, 33 U.S.C. §1342(b), EPA granted authority to the New York State Department of Environmental Conservation ("NYSDEC") to issue State Pollutant Discharge Elimination System ("SPDES") permits to facilities in New York State for the discharge of pollutants from said facility point sources to a navigable water of the United States.
6. The terms "Industrial Stormwater Permit", "Multi Sector General Stormwater Permit" or "MSGP" mean the NYSDEC SPDES Multi-Sector General Permit ("MSGP") Permit for Stormwater Discharges Associated with Industrial Activity (GP-0-12-001) and/or the previous interim Industrial Stormwater Permit (GP-0-11-009). The current MSGP (GP-0-12-001) was issued by the NYSDEC, became effective on October 1, 2012 and expires on September 30, 2017. GP-0-12-001 replaced GP-0-11-009, which became effective on March 28, 2012 and expired on September 30, 2012.
7. The Administrator of EPA has promulgated regulations, 40 CFR §122.26(a)(1)(ii) and §122.26(b)(14), which require operators to obtain a NPDES permit for stormwater discharges associated with industrial activity. The regulations at 40 CFR §122.26(b)(14) establish requirements for stormwater discharges associated with industrial activity.
8. Operators regulated under 40 CFR §122.26(b)(14) must seek MSGP coverage by filing a Notice of Intent ("NOI") form under the terms and conditions of the MSGP GP-0-12-001 (or previous MSGP, GP-0-11-009), or if all of the conditions of No Exposure certification apply, they must be submitted in accordance with 40 CFR §122.26.

III. Factual Findings

9. Respondent is a corporation organized under the laws of the State of New York and Respondent's place of business is located at 673 City Island Avenue, Bronx, New York.
10. Respondent is primarily involved in the operation of a marina in addition to yacht sales and service.
11. The facility is classified under SIC code 4493.
12. Respondent has been in operation since, at least, January 1999.

With Respect to the Process Wastewater Discharges

13. The Respondent's facility discharges pollutants from pipes connected to sumps located in the maintenance room building directly to the Long Island Sound without authorization of a NPDES permit.

With Respect to the Stormwater Discharges

14. The Respondent discharges stormwater runoff from discrete locations at the Respondent's facility to the Long Island Sound without authorization of a NPDES permit for stormwater discharges associated with industrial activity.

15. An EPA inspection of the facility was conducted on July 25, 2013 and the findings of said inspection fully supports the Factual Findings as herein stated in this AO.

IV. Conclusions of Law

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

17. Without authorization via a SPDES permit, the Respondent has directly discharged process waste water associated with industrial activity and stormwater as regulated under the MSGP, into the Long Island Sound, as follows:

With Respect to the Process Waste Water Discharges

18. At all times relevant to this Administrative Complaint, Respondent discharged pollutants from pipes connected to sumps located in the maintenance room building which is a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. §1362(14), into the Long Island Sound, a water of the United States, pursuant to Section 502(7) of the CWA, 33 U.S.C. §1362(7).

With Respect to the Stormwater Discharges

19. The Respondent's discharge of Stormwater Associated with Industrial Activity from the facility is regulated under 40 CFR §122.26 and the NYSDEC MSGP, because the Respondent's facility is classified under SIC code 4493.

20. At all times relevant to this Administrative Complaint, stormwater runoff from discrete locations at the Respondent's facility, which are a "point sources" within the meaning of Section 502(14) of the Act, 33 U.S.C. §1362(14), is discharged into the Long Island Sound which is water of the United States, pursuant to Section 502(7) of the CWA, 33 U.S.C. §1362(7).

21. Based upon Paragraphs 1-20 above, Respondent has violated Sections 301, 308, and 402 of the Act.

V. 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 penalty of \$27,500.00. 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 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 has been found to have violated the Act in instances cited in Section II of this Administrative Penalty Order.

VI. Procedures Governing This Administrative Litigation

The rules of procedure governing this civil administrative litigation have been set forth in the CROP which has been codified at 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, New York 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 Respondent has any knowledge. 40 C.F.R. §22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in their 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 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 to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of its defense may preclude the 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 Subparts D and I 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 its 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 [i.e. in accordance with the thirty (30)-day period set forth in 40 C.F.R. §22.15(a)] Answer to the Complaint, 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 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. §22.17(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.

VII. Informal Settlement Conference

Whether or not 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 that it believes is 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, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. 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:

Eduardo J. Gonzalez, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
(212) 637-3223

The parties may engage in settlement discussions irrespective of whether Respondent has requested a hearing. 40 C.F.R. §22.18(b)(1). Respondent's request for a formal hearing does not prevent them 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. Complainant does not deem a request for an informal settlement conference as a request for a hearing as specified in 40 C.F.R. §22.15(c).

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. No penalty reduction, however, 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 its right to contest the allegations in the Complaint and waives its 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).

Respondent's entering into a settlement through the signing of such Consent Agreement and its complying with the terms and conditions set forth in the such Consent Agreement terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Respondent's entering into a settlement does not extinguish, waive, satisfy or otherwise affect its obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VIII. 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 within thirty (30) days after receipt of the Complaint, provided that Respondent files 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 Assistant Regional Counsel identified on the previous page. 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:

**Regional Hearing Clerk
U. S. Environmental Protection Agency, Region 2
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000**

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. 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 regulations and requirements, and to maintain such compliance.

IX. Filing of Documents

1. 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, New York 10007-1866**


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

**Eduardo J. Gonzalez, Esq.
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866
(212) 637-3223**

X. General Provisions

1. Respondent has the 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 thereunder, 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 30th DAY OF SEPTEMBER, 2013.


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
United States Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007

CWA-02-2013-3315

To: (40 C.F.R. §22.5(b)(1))

Mr. Frank Ciolli, Owner
Waterfront Home Marina, Inc.
DBA City Island Yacht Sales
673 City Island Avenue
Bronx, New York 10464