



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I  
5 POST OFFICE SQUARE, SUITE 100  
BOSTON, MA 02109-3912

August 27, 2012

RECEIVED

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EPA ORC  
Office of Regional Hearing Clerk

**BY HAND**

Wanda Santiago, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Codes ORA 18-1  
Boston, MA 02109-3912

Re: In the matter of Strategic Materials, Inc., Docket No. CWA-01-2012-0056

Dear Ms. Santiago:

Enclosed are an original and one copy of the Complaint and Certificate of Service for filing with respect to the above-captioned matter.

Kindly file the documents in the usual manner. Thanks very much for your help.

Sincerely,

A handwritten signature in blue ink that reads "Christine M. Foot".

Christine M. Foot  
Enforcement Counsel

Enclosures

cc: William Waltz, Strategic Materials, Inc.  
Hamilton Hackney, Esq., Greenberg Traurig, LLP  
Lisa Thuot, EPA Region 1

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

\_\_\_\_\_  
IN THE MATTER OF )  
 )  
STRATEGIC MATERIALS, INC. )  
Franklin, MA )  
 )  
Respondent. )  
 )  
Proposing to Assess a Civil Penalty )  
Under Section 309(g) of the Clean )  
Water Act, 33 U.S.C. § 1319(g) )  
\_\_\_\_\_ )

Docket No. CWA-01-2012-0056

**COMPLAINT AND NOTICE OF  
OPPORTUNITY FOR HEARING**



**I. STATEMENT OF AUTHORITY**

1. The United States Environmental Protection Agency (“EPA”) issues this administrative Complaint and Notice of Opportunity for Administrative Hearing (“Complaint”) to Strategic Materials, Inc. (“Respondent” or “SMI”) pursuant to Section 309(g) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. § 1319(g), and 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 (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. The Complainant is the Director, Office of Environmental Stewardship, EPA Region 1.

2. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice, EPA hereby provides notice that it seeks to assess penalties for discharging pollutants into navigable waters of the United States in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

**II. STATUTORY AND REGULATORY AUTHORITY**

Discharge of Pollutants

3. The CWA is designed to restore and maintain the chemical, physical, and biological

integrity of the nation's waters. 33 U.S.C. § 1251(a) (Section 101(a) of the CWA). To accomplish these objectives, Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into navigable waters except in compliance with the terms and conditions of a permit issued pursuant to Section 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, and EPA's implementing regulations, found at 40 C.F.R. Part 122.

4. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), authorizes the Administrator of EPA to issue National Pollutant Discharge Elimination System ("NPDES") permits for the discharge of pollutants into navigable waters in compliance with the CWA.

5. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines "person" to include "an individual, corporation, [or] partnership."

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

7. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines "pollutant" to include, *inter alia*, dredged spoil, solid waste, garbage, biological materials, rock, sand, and industrial waste discharged into water.

8. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines "point source" to include "any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged."

9. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as "the waters of the United States, including the territorial seas."

#### Storm Water Permits

10. Pursuant to Section 402(p)(2)(B), 33 U.S.C. § 1342(p)(2)(B), and EPA's implementing regulations at 40 C.F.R. § 122.26, any storm water discharge "associated with industrial activity"

must be authorized by a NPDES permit.

11. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes the Administrator of EPA to require the owner or operator of any point source to provide such information as the Administrator may reasonably need to carry out the objectives of the CWA, which includes, among other things, the development and issuance of NPDES permits under Section 402 of the CWA, 33 U.S.C. § 1342.

12. Pursuant to Sections 308 and 402 of the CWA, 33 U.S.C. §§ 1318 and 1342, EPA promulgated storm water discharge regulations at 40 C.F.R. § 122.26.

13. Forty C.F.R. § 122.26(b)(13) defines “storm water” to include storm water runoff, snow melt runoff, and surface runoff and drainage.

14. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulation 40 C.F.R. § 122.26(a)(1)(ii) require that facilities discharging storm water associated with industrial activity obtain a permit. Under 40 C.F.R. § 122.26(c)(1), dischargers of storm water “associated with industrial activity” must apply for an individual permit or seek coverage under a general permit.

15. Forty C.F.R. § 122.26(b)(14)(vi) specifies that facilities “engaging in ‘industrial activity’” includes facilities “involved in the recycling of materials,” including those classified under Standard Industrial Classification (“SIC”) code 5093 (scrap and waste materials).

16. On September 29, 2008, EPA issued the “Multi-Sector General Permit for Industrial Activities” (“2008 MSGP”), which was effective on the date of issuance. 73 Fed. Reg. 56,527 (Sept. 29, 2008).

17. Under the 2008 MSGP, a facility discharging storm water “associated with industrial activities” is required to submit a Notice of Intent (“NOI”) to be covered under the permit,

prepare and implement a Storm Water Pollution Prevention Plan (“SWPPP”), conduct inspections, and meet other eligibility requirements.

18. Under the 2008 MSGP, permit coverage becomes effective thirty days after EPA has posted a copy of the NOI on the Internet.

19. Section 309(g) of the CWA, 33 U.S.C. § 1319, provides for the assessment of penalties for violations of Section 301 of the CWA, 33 U.S.C. § 1311, and for violating any permit condition or limitation issued under Section 402 of the CWA, 33 U.S.C. § 1342.

### **III. GENERAL ALLEGATIONS**

20. At all times relevant to the allegations in this Complaint, SMI was a corporation organized under the laws of the State of Delaware with its principal place of business in Houston, Texas.

21. SMI is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

22. At all times relevant to the allegations in this Complaint, SMI operated a facility with an address of 45 Kenwood Circle in Franklin, Massachusetts (“Facility”).

23. At all times relevant to the allegations in this Complaint, SMI controlled all daily business and industrial operations at the Facility, and otherwise met the definition of an “operator” of the Facility, as defined at 40 C.F.R. § 122.2

24. At all times relevant to the allegations in this Complaint, SMI conducted glass recycling operations (SIC code 5093) at the Facility and engaged in “industrial activity” within the meaning of 40 C.F.R. § 122.26(b)(14)(vi).

25. At all times relevant to the allegations in this Complaint, the Facility included the operations building, canopied storage bays and stockpiles containing received and processed

material, an equipment maintenance area, a detention basin, and surrounding surface areas.

26. Four outdoor catch basins at the Facility drain to a detention basin at the southern edge of the Facility's operational area. Water exits the detention basin by traveling through one or both of two overflow pipes and discharging from an outfall ("Outfall #001") at a point to the southeast of the Facility's operational area.

27. The Facility is bounded by commercial property to the west and by woods and wetlands to the south and east. The wetlands to the southeast abut, and discharge to, Mine Brook, a tributary of the Charles River.

28. During certain wet weather events, storm water, including snow melt, from the Facility flows into the catch basins, detention basin, and pipes, and discharges through Outfall #001. From Outfall #001, storm water from the Facility flows as surface rivulets and sheets and enters the bordering southeastern wetlands abutting Mine Brook. Storm water also drains off the canopy of the inbound/receiving material storage bay to the rear, into a gravel swale, and into the bordering wetlands abutting Mine Brook.

29. Mine Brook flows into the Charles River, which flows into the Atlantic Ocean.

30. The southeastern wetlands abutting Mine Brook that receive discharge from Outfall #001, Mine Brook, and the Charles River are "waters of the United States," as defined at 40 C.F.R. § 122.2, and thereby are "navigable waters," as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

31. The storm water discharges described in paragraph 28 are contaminated with glass particles and dust, and solid waste and debris that can include papers, plastics, ceramics, and metals. These materials discharging into waters of the United States constitute "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

32. The catch basins, detention basin, pipes, outfalls, rivulets, and swales discharging pollutants constitute “point sources” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

33. The storm water discharges described in paragraphs 28, 31, and 32 result in the “discharge of pollutants,” as defined at Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

34. At all times relevant to the allegations in this Complaint, SMI operated a glass recycling facility that discharged “storm water associated with industrial activity,” as defined at 40 C.F.R. § 122.26(b)(14)(vi), to waters of the United States.

35. As “operator” of the Facility, SMI was required to obtain NPDES permit coverage for the industrial activity at the Facility, and then to comply with all requirements and conditions for operation under the CWA, its regulations, and the applicable permit.

36. Respondent did not apply for an individual NPDES permit and did not apply for coverage under the 2008 MSGP until it submitted a NOI to EPA on March 4, 2009.

37. Respondent’s coverage under the 2008 MSGP became effective April 3, 2009.

#### **IV. VIOLATIONS**

##### **COUNT I**

##### **Unauthorized Discharge of Storm Water Associated with Industrial Activity**

38. Paragraphs 1 through 37 are incorporated by reference as if fully set forth herein.

39. By discharging storm water associated with industrial activity at the Facility during storm events from at least June 2008 through March 2009 without authorization under any NPDES permit, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

## COUNT II

### 2008 MSGP Violations

40. Paragraphs 1 through 39 are incorporated by reference as if fully set forth herein.

41. Since April 2009, Respondent was authorized under the 2008 MSGP to discharge storm water to the southeastern wetlands bordering the Facility and abutting Mine Brook. The 2008 MSGP contains a variety of terms and conditions designed to ensure the implementation of practices to reduce the pollutants in storm water discharges associated with industrial activity at the Site.

#### A. Failure to Develop Adequate Storm Water Pollution Prevention Plan

42. Section 5 of the 2008 MSGP requires Respondent to develop and implement a Storm Water Pollution Prevention Plan ("SWPPP") for the Facility in accordance with requirements specified in the Permit. A SWPPP must be developed before submission of an NOI. Among other things, the SWPPP must identify potential sources of pollution which could reasonably affect the quality of the storm water discharges, and must describe and ensure implementation of practices to decrease pollutants in storm water.

43. SMI developed a SWPPP on May 19, 2009. SMI modified and reissued its SWPPP on September 1, 2011.

44. From at least April 3, 2009 until May 18, 2009, Respondent failed to develop an adequate SWPPP as required by the 2008 MSGP, which violated the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and therefore, violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### B. Failure to Design and Implement Adequate Control Measures

45. Part 2.1 of the 2008 MSGP requires that a facility select, design, install, and implement, the type and location of control measures, including best management practices (“BMPs”), selected for each of the areas where industrial materials or activities are exposed to storm water and describe these measures in the SWPPP. The BMPs must be designed to minimize the exposure of manufacturing, processing, and material storage areas to rain, snow, snowmelt, and runoff, by either locating these materials and activities indoors or protecting them with coverings.

46. Respondent’s SWPPP identifies certain control measures in the section titled “Existing and Planned Management Section Practices and Measures to Improve Storm Water Runoff.” Respondent’s control measures and BMPs were missing, improperly designed, and/or inadequately implemented, such that they did not minimize contact of storm water with the materials at the Facility and otherwise minimize pollutant discharges. In particular, Respondent: 1) failed to maintain the detention basin to its design capacity; 2) failed to conduct regular sweeping of the Facility to reduce solid debris and minimize particulate buildup; 3) failed to sufficiently minimize non-glass materials in the inbound materials; 4) failed to maintain a well-organized work area, including using fencing adequate to prevent wind-blown litter from entering wetlands; 5) failed to have an adequate contingency plan in place for managing excess material in the event of processing, shipping, or other delays; 6) failed to prevent large debris from entering the detention basin discharge pipes; 7) failed to manage inventories and/or maintain storage bays to keep inbound and outbound materials within bunkers and covered by canopies; and 8) failed to provide an annual employee training program focused on the operation, maintenance, and inspection of industrial machinery and processes to prevent pollutant discharge to, or mixing with, storm water.

47. From at least May 2009 until November 2011, Respondent discharged storm water associated with industrial activity to a “water of the United States” without selecting, designing, installing, and implementing adequate control measures, in violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and therefore, violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### C. Failure to Conduct Routine Facility Inspections

48. Part 4.1 of the 2008 MSGP requires that qualified personnel conduct routine inspections of the Facility and that records of the inspections be maintained with the SWPPP. Part 4.1 and Part 3 of the 2008 MSGP require that appropriate follow-up corrective actions be taken in response to observations of any deficiencies in implementation of the SWPPP and that information regarding the corrective action be submitted in the annual report required in Part 7.2 and a copy retained with the SWPPP.

49. On page 11, Respondent’s SWPPP specifies that Respondent is to conduct quarterly inspections of storm water control measures at the Facility and maintain documentation thereof.

50. Respondent reported performing quarterly Routine Facility Inspections starting June 2011.

51. From at least April 2009 until May 2011, Respondent discharged storm water associated with industrial activity to a “water of the United States” without conducting quarterly Routine Facility Inspections, taking appropriate follow-up actions in response to those inspections, and/or failed to maintain records thereof, in violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and therefore, violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### D. Failure to Conduct Quarterly Visual Assessments

52. Section 4.2 of the 2008 MSGP requires Quarterly Visual Assessments of the storm water at each outfall at a site pursuant to the requirements of that Section.

53. SMI reported conducting Quarterly Visual Assessments of Outfall #001 starting June 2011.

54. Respondent failed to conduct Quarterly Visual Assessments of the storm water outfall at the Facility pursuant to the requirements of Section 4.2 during the following quarters: 2009 (2<sup>nd</sup> Quarter, 3<sup>rd</sup> Quarter, 4<sup>th</sup> Quarter), 2010 (1<sup>st</sup> Quarter, 2<sup>nd</sup> Quarter, 3<sup>rd</sup> Quarter, 4<sup>th</sup> Quarter), and 2011 (1<sup>st</sup> Quarter). Respondent discharged storm water associated with industrial activity to a “water of the United States” without conducting Quarterly Visual Assessments, and/or failed to maintain documentation thereof, in violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and therefore, violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### **V. NOTICE OF PROPOSED ASSESSMENT OF CIVIL PENALTY**

55. Based on the foregoing allegations and pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g); the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, *et seq.*; the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, *et seq.*; and the Civil Monetary Penalty Inflation Adjustment Rule, 73 Fed. Reg. 75,340 (Dec. 11, 2008) (codified at 40 C.F.R. Part 19), Complainant proposes that a Final Order assessing civil penalties be issued against Respondent of up to eleven thousand dollars (\$11,000) per day for each day during which the violations continued through January 12, 2009, and up to sixteen thousand dollars (\$16,000) per day for each day after January 12, 2009 during which the violations continued, up to a maximum of one hundred and seventy-seven thousand and five hundred dollars (\$177,500).

56. In determining the amount of the penalty to be assessed under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), EPA takes into account the statutory factors listed in Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), including the nature, circumstances, extent and gravity of the violations; Respondent's prior compliance history; Respondent's degree of culpability for the cited violations; any economic benefit or savings accruing to Respondent resulting from the violations; Respondent's ability to pay the proposed penalty; and such other matters as justice may require.

57. EPA seeks to assess civil penalties for each day of violation for Count 1 (discharge of storm water), which was for a total of up to 298 days, and for Count 2 (MSGP violations), which was for a total of up to 972 days, up to a maximum of one hundred and seventy-seven thousand five hundred dollars (\$177,500).

58. The storm water violations alleged in Counts 1 and 2 represent significant violations of the CWA because of the extent and duration of the violations: SMI's violations deviated almost completely from the requirements and continued for over twelve hundred days. Compliance with the federal storm water program is important for ensuring that storm water runoff does not contribute to the impairment of water quality. Among other concerns, untreated and unmanaged storm water from recycling operations may contain pollutants that reduce the oxygen levels in surface waters and have the potential to stress aquatic animals and plants.

**VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING AND FILE AN ANSWER**

59. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.14, notice is hereby given that Respondent has the right to request a hearing on any material fact alleged in this Complaint and on the appropriateness of any proposed penalty. Any such hearing

would be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is enclosed. Members of the public, to whom EPA is obliged to give notice of this proposed action, have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C.

§ 1319(g)(4)(B), to comment on any proposed penalty and to be heard and to present evidence at the hearing.

60. To be entitled to a hearing, Respondent must include its request for a hearing in an Answer to the Complaint. Respondent's Answer must comply with 40 C.F.R. § 22.15 and must be filed with the Regional Hearing Clerk at the address listed below within thirty (30) days of receipt of the Complaint.

61. In its Answer, Respondent may also: (1) dispute any material fact in the Complaint; (2) contend that the proposed penalty is inappropriate; or (3) contend that it is entitled to judgment as a matter of law. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. If Respondent has no knowledge of a particular factual allegation and so states, the allegation is considered denied. The failure to deny an allegation constitutes an admission of that allegation. The Answer must also include the grounds for any defense and the facts Respondent intends to place at issue.

62. The original and one copy of the Answer, as well as a copy of all other documents which Respondent files in this action, must be sent to:

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (Mail Code: ORA18-1)  
Boston, Massachusetts 02109-3912

Respondent should also send a copy of the Answer, as well as a copy of all other documents

which Respondent files in this action, to Christine M. Foot, the attorney assigned to represent EPA and designated to receive service in this matter at:

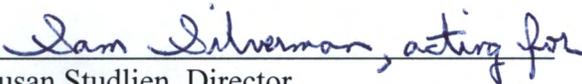
Christine M. Foot  
Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (Mail Code: OES04-2)  
Boston, Massachusetts 02109-3912

63. If Respondent fails to file a timely Answer to this Complaint, it may be found to be in default, pursuant to 40 C.F.R. § 22.17, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing.

64. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in any default order shall become due and payable by Respondents without further proceedings thirty (30) days after the default order becomes final.

#### **VII. CONTINUED COMPLIANCE OBLIGATION**

65. Neither assessment nor payment of a civil penalty pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), shall affect Respondent's continuing obligation to comply with the CWA, the regulations promulgated thereunder, or any other applicable requirements of Federal, State, or local law.

  
Susan Studien, Director  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency  
Region 1 – New England

8-24-12  
Date

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Complaint and Notice of Opportunity for a Hearing has been sent to the following persons on the date noted below:

Original and one copy,  
hand-delivered:

Ms. Wanda I. Santiago  
Regional Hearing Clerk  
U.S. EPA, Region I  
5 Post Office Square, Suite 100  
Mail Code ORA18-1  
Boston, MA 02109-3912

Copy of Complaint (with the Consolidated  
Rules of Practice), first class mail,  
return receipt requested:

William Waltz  
Chief Executive Officer  
Strategic Materials, Inc.  
16365 Park Ten Place  
Houston, TX 77084

Copy of Complaint, first class mail:

Mr. Hamilton Hackney, Esq.  
Greenberg Traurig, LLP  
1 International Place  
Boston, MA 02110

Dated:

Aug. 27, 2012



Christine Foot, Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code OES04-2  
Boston, MA 02109-3912  
Phone: 617-918-1333  
Fax: 617-918-0333  
E-mail: [foot.christine@epa.gov](mailto:foot.christine@epa.gov)