

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

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In the Matter of)

TOWN OF CONCORD)

Town House)

22 Monument Square)

Concord, Massachusetts 01742)

Respondent)

Docket No. CWA-01-2009-0071

OFFICE OF
REGIONAL HEARING CLERK

ADMINISTRATIVE

COMPLAINT

Proposing to Assess a Civil Penalty

Under Section 309(g) of the

Clean Water Act

STATUTORY AND REGULATORY AUTHORITY

1. This Administrative Complaint (“Complaint”) is issued under the authority vested in the U.S. Environmental Protection Agency (“EPA”) by Section 309(g) of the Clean Water Act (the “Act”), 33 U.S.C. § 1319(g), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” 40 C.F.R. §§ 22.1-22.52 (“the Consolidated Rules of Practice”).
2. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice, Complainant hereby provides notice of a proposal to assess a civil penalty against the Town of Concord (“Respondent”) for failing to comply with the National Pollutant Discharge Elimination System (“NPDES”) General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (“Permit”).

ALLEGATIONS

3. The Respondent is a municipality, as defined in Section 502(4) of the Act, 33 U.S.C. § 1362(4).
4. The Respondent is a person under Section 502(5) of the Act, 33 U.S.C. § 1362(5).
5. The Respondent is the owner and operator of a regulated small municipal separate storm sewer system ("Regulated Small MS4") as defined at 40 C.F.R. §§ 122.26(b)(16) and 122.32(a)(1).
6. Respondent discharges from its Regulated Small MS4 storm water containing pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), from catch basins through one or more outfalls constituting "point sources" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14), to waters including, but not limited to: the Assabet River; the Sudbury River; Warner's Pond; Mill Brook; wetlands tributary to Bates Pond; Kennedy's Pond; Great Meadows; Spencer Brook; Jennie Dugan Brook; Elm Brook; and Second Division Brook.
7. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person from a point source into waters of the United States except in compliance with, among other things, a NPDES permit issued under Section 402 of the Act, 33 U.S.C. § 1342.
8. Pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p), and the Storm Water Regulations set forth at 40 C.F.R. §§ 122.26(a)(9), 122.32, and 122.33, Regulated Small MS4s must have permit coverage to discharge storm water to waters of the United States.

9. On April 18, 2003, the Director of the Office of Ecosystem Protection of EPA, Region I (the "Director of OEP"), issued the Permit pursuant to the authority given to the Administrator of EPA by Section 402 of the Act, 33 U.S.C. § 1342. The Permit authorizes Regulated Small MS4s to discharge storm water to the waters of the United States when certain conditions are met.
10. The Permit became effective on May 1, 2003 and expired at midnight on April 30, 2008. Part VI.B. of the Permit provides that if the Permit is not reissued prior to the expiration date, it will be administratively continued and will remain in force. As of the date of the Complaint, the Permit has not been reissued. Accordingly, pursuant to 40 C.F.R. Part 122.6 and Part VI.B. of the Permit, the conditions of the Permit continue in force and the Permit remains fully effective and enforceable.
11. Part II.A. of the Permit requires, among other things, that permittees "must develop, implement and enforce a [storm water management] program to reduce the discharge of pollutants from the MS4 to the maximum extent practicable; protect water quality; and satisfy the water quality requirements of the Clean Water Act and Massachusetts Water Quality Standards."
12. Part II.A.1. of the Permit requires that permittees "must develop a storm water management program implementing the minimum measures" described in the Permit.
13. Part II.A.2. of the Permit requires that "All elements of the storm water management program must be implemented by the expiration date of this permit."

14. Part II.B.3. of the Permit, entitled "Illicit Discharge Detection and Elimination," requires that permittees "develop, implement and enforce a program to detect and eliminate illicit discharges" ("IDDE Program"). Part II.B.3. of the Permit provides that "An illicit discharge is any discharge to a municipal separate storm sewer that is not composed entirely of storm water [with limited exceptions set forth elsewhere in the Permit]." Part II.B.3.(a)-(d) of the Permit requires that the IDDE Program contain the following components:
- (a) A storm sewer map reflecting, at a minimum, the location of all outfalls and names of all waters that receive discharges from those outfalls;
 - (b) An ordinance or other regulatory mechanism that prohibits non-storm water discharges into the system and the permittee must implement appropriate enforcement procedures and actions;
 - (c) A plan to detect and address non-storm water discharges that includes:
 - (i) procedures to identify priority areas;
 - (ii) procedures for locating illicit discharges;
 - (iii) procedures for locating the source of illicit discharges and procedures for the removal of the source; and
 - (iv) procedures for documenting actions and evaluating impacts on the storm sewer system subsequent to removal;and
 - (d) The permittee must inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper waste disposal.
15. Respondent submitted to EPA its Notice of Intent dated, February 19, 2004, that the discharges from its MS4 would be covered by the Permit.

16. On or about March 19, 2004, EPA granted Respondent authorization to discharge storm water from its MS4 subject to the terms and conditions of its Permit (Permit No. MAR041187).

**COUNT 1: FAILURE TO COMPLY WITH THE PERMIT
REQUIREMENT TO PROHIBIT NON-STORMWATER DISCHARGES INTO
THE MS4 THROUGH AN ORDINANCE OR OTHER
REGULATORY MECHANISM**

17. The Complaint incorporates Paragraphs 1 through 16 by reference.
18. During the Permit term through the present, Respondent has failed to comply with Part II.B.3.(b) of the Permit by failing to prohibit, through an ordinance or other regulatory mechanism, non-storm water discharges into its storm sewer.
19. Respondent's failure to prohibit, through an ordinance or other regulatory mechanism, non-storm water discharges into its storm sewer in compliance with Part II.B.3.(b) of the Permit is a violation of a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

**COUNT 2: FAILURE TO COMPLY WITH THE PERMIT
REQUIREMENT TO DEVELOP AND IMPLEMENT AN IDDE PLAN**

20. The Complaint incorporates Paragraphs 1 through 19 by reference.
21. During the Permit term through the present, Respondent has failed to comply with Part II.B.3.(c) of the Permit by failing to develop and implement a plan to detect and address non-storm water discharges into the storm sewer system.
22. Respondent's failure to develop a plan to detect and address non-storm water discharges into the storm sewer system in compliance with Part II.B.3.(c) of the Permit is a violation of a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

**COUNT 3: FAILURE TO COMPLY WITH THE PERMIT
REQUIREMENT TO PUBLICIZE HAZARDS OF ILLEGAL DISCHARGES AND
IMPROPER WASTE DISPOSAL**

23. The Complaint incorporates Paragraphs 1 through 22 by reference.
24. During the Permit term through the present, Respondent has failed to comply with Part II.B.3.(d) of the Permit by failing to inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper waste disposal.
25. Respondent's failure to publicize hazards associated with illegal discharges and improper waste disposal in compliance with Part II.B.3.(e) of the Permit is a violation of a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

PROPOSED ASSESSMENT OF CIVIL PENALTY

26. Pursuant to Section 309(g) of the Act, 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.*; the rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.1-19.4; and pursuant to the 2008 Civil Monetary Penalty Inflation Adjustment Rule, effective January 12, 2009 (73 Fed. Reg. 75,340 (Dec. 8, 2008)), Respondent is subject to civil penalties of up to sixteen thousand dollars (\$16,000) per day for each day during which the violation continued, up to a maximum of one hundred seventy-seven thousand five hundred dollars (\$177,500).
27. Based on the foregoing allegations, EPA is seeking a penalty under Counts 1 through 3 from Respondent in the amount of fifty thousand dollars (\$50,000).

28. In determining the amount of the penalty to be assessed under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), EPA took into account the statutory factors listed in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). These factors include the nature, circumstances, extent and gravity of the violations, the Respondent's prior compliance history, the degree of culpability for the cited violations, any economic benefit or savings accruing to the Respondent resulting from the violations, the Respondent's ability to pay the proposed penalty, and such other matters as justice may require.
29. The violations alleged are significant because failure to develop, implement and enforce a program to detect and eliminate illicit discharges may result in storm water runoff that contributes to the impairment of water quality.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

30. 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 will be conducted in accordance with the Consolidated Rules of Practice, 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.

31. Respondent's Answer must comply with 40 C.F.R. § 22.15 and must be filed with the Regional Hearing Clerk at the following address within thirty (30) days of receipt of the Complaint:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region I
1 Congress Street, Suite 1100 RCA
Boston, Massachusetts 02114-2023

To be entitled to a hearing, Respondent must include its request for a hearing in its Answer to this Complaint.

32. Pursuant to Section 22.5(c)(4) of the enclosed Consolidated Rules of Practice, the following individual is authorized to receive service on behalf of EPA:


Kathleen E. Woodward
Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region I
1 Congress Street, Suite 1100 (SEL)
Boston, Massachusetts 02114-2023

33. If Respondent does not file a timely Answer to this Complaint, Respondent may be found in default. Default constitutes, for purposes of this action only, an admission of all facts alleged in the Complaint and a waiver of the Respondent's right to a hearing on factual allegations contained therein.

CONTINUED COMPLIANCE OBLIGATION

34. Neither assessment nor payment of an administrative penalty shall affect the Respondent's continuing obligation to comply with the Act and implementing regulations and other applicable federal, state and local laws.

Date: 8-10-09



Sam Silverman, Deputy Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region I
1 Congress Street, Suite 1100 SAA
Boston, Massachusetts 02114-2023

In the Matter of: Town of Concord, Massachusetts
Docket No. CWA-01-2009-0071

CERTIFICATE OF SERVICE

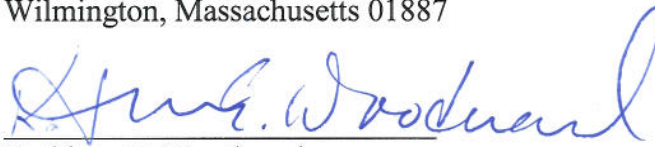
I certify that the foregoing complaint was sent to the following persons, in the manner specified on the date below:

Copy hand-delivered: Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I
One Congress Street, Suite 1100 (RAA)
Boston, Massachusetts 02114-2023

Copy by certified mail, return receipt requested: Christopher Whelan
Town Manager
Town House, P.O. Box 535
22 Monument Square
Concord, Massachusetts 01742

Copy by first-class mail to: Richard Chalpin, Regional Director
Massachusetts Department of Environmental Protection
Northeast Regional Office
205B Lowell Street
Wilmington, Massachusetts 01887

Dated: August 13, 2009



Kathleen E. Woodward
Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. EPA, Region I
One Congress Street, Suite 1100 (SEL)
Boston, MA 02114-2023
(617) 918-1780



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

Suite 1100, 1 Congress Street
Boston, MA 02114-2203

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EPA ORC
OFFICE OF
REGIONAL HEARING CLERK

BY HAND

August 13, 2009

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region I
One Congress Street
Suite 1100, Mail Code RAA
Boston, MA 02114-2023

Re: In the Matter of the Town of Concord, Massachusetts
Docket No.: CWA 01-2009-0071: Administrative Complaint

Dear Ms. Santiago:

For the above-referenced matter, please file the enclosed Administrative Complaint and Notice of Opportunity for a Hearing and the Certificate of Service. I have included the original and one copy of these documents. I have also included a copy of the letter notifying the Commonwealth of Massachusetts of the filing of this Complaint.

Thank you for your attention to this matter. Should you have any questions, please contact me at (617) 918-1780.

Sincerely,

A handwritten signature in blue ink that reads "Kathleen E. Woodward".

Kathleen E. Woodward
Senior Enforcement Counsel

Enclosure

cc: Christopher Whelan, Town Manager, Town of Concord