

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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In the Matter of:	:	Docket No. CWA-03-2010-0404
Anne Arundel County	:	
The Arundel Center	:	Proceeding to Assess Class II
44 Calvert Street	:	Administrative Penalty Under
Annapolis, Maryland 21404	:	Section 309(g) of the Clean Water Act
	:	
	:	ADMINISTRATIVE PENALTY COMPLAINT
	:	AND NOTICE OF OPPORTUNITY TO
Respondent.	:	REQUEST HEARING

I. STATUTORY AUTHORITY

1. Pursuant to Section 309(g) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to assess administrative penalties against persons who violate Section 301(a) of the Act, 33 U.S.C. § 1311(a). The Administrator of EPA has delegated this authority to the Regional Administrator of EPA, Region III, who in turn has delegated this authority to the Water Protection Division Director (Complainant).

2. This action is governed by 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; Final Rule," 40 C.F.R. Part 22 (hereinafter, Part 22 Procedural Rules), a copy of which is enclosed.

II. FACTUAL AND LEGAL ALLEGATIONS

3. Anne Arundel County (hereinafter, "the County" or "Respondent") is a political subdivision of the State of Maryland, and therefore a "person" as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.

4. At all times relevant to this Complaint, Respondent has owned and/or operated a municipal separate storm sewer system (MS4) as that term is defined in 40 C.F.R. § 122.26(b)(8).

5. Respondent's MS4 is located within the geographic boundaries of Anne Arundel County, Maryland.

6. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Act, 33 U.S.C. § 1342.

7. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.

8. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Maryland Department of the Environment (MDE) to issue NPDES permits in 1989.

9. MDE issued NPDES MS4 Discharge Permit No. MD0068306 to Respondent on November 8, 2004 (hereinafter "MS4 Permit"). The MS4 Permit expired on November 8, 2009, and has been administratively extended since that date.

10. Respondent submitted an application for renewal of the MS4 Permit along with its Year 4 Annual Report to MDE in or about November 2008.

11. Respondent's stormwater discharges associated with industrial activities are covered by Maryland's General Discharge Permit for Stormwater Associated with Industrial Activities, Permit No. 02-SW/MDR (hereinafter, "Maryland Industrial GP").

12. On December 9 – 10, 2008, duly-authorized representatives of EPA conducted an inspection (including a file review) of the Respondent's MS4 Program (hereinafter referred to as "December 2008 Inspection").

III. FINDINGS OF VIOLATION

Count 1: Failure to Conduct Preventative Maintenance Inspections

13. The MS4 Permit, at Part III.E.1.a., requires the Respondent to, among other things, conduct preventative maintenance inspections of all stormwater management facilities on at least a triennial basis.

14. The December 2008 Inspection revealed that since at least 2003, Respondent has failed to conduct preventative maintenance inspections of all stormwater management facilities on at least a triennial basis.

15. Respondent's failure to conduct preventative maintenance inspections of all stormwater management facilities on at least a triennial basis violates the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count 2: Failure to Use Appropriate Enforcement Procedures

16. The MS4 Permit, Part III.E.3.d, requires the Respondent to use appropriate enforcement procedures for investigating and eliminating illicit discharges, illegal dumping, and spills, and to report significant discharges to MDE for enforcement and/or permitting.

17. The December 2008 Inspection revealed that since at least 2007, Respondent has failed to use appropriate enforcement procedures for investigating and eliminating illicit discharges, illegal dumping, and spills, and to report significant discharges to MDE for enforcement and/or permitting, by, inter alia, failing to address illicit discharges from the Shoreline Seafood site.

18. Respondent's failure to use appropriate enforcement procedures for investigating and eliminating illicit discharges, illegal dumping, and spills, and to report significant discharges to MDE for enforcement and/or permitting violates the MS4 Permit and section 301 of the Act, 33 U.S.C. § 1311.

Count 3: Failure to Develop and Implement Adequate Pollution Prevention Plans

19. The Maryland Industrial GP, Part IV.B, requires the Respondent to, among other things, develop, update, and implement a storm water pollution prevention plan (SWPPP) for each facility covered by such permit.

20. The December 2008 Inspection revealed that, at the time of the inspection, Respondent had failed to adequately develop, update, and implement SWPPPs for eight vehicle maintenance facilities operated by the County.

21. Respondent's failure to develop and implement SWPPPs for eight vehicle maintenance facilities operated by the County violates the Maryland Industrial GP and Section 301 of the Act, 33 U.S.C. § 1311.

IV. PROPOSED CIVIL PENALTY

22. Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), provides that any person who has violated any NPDES permit condition or limitation is liable for an administrative penalty not to exceed \$10,000 per day for each such violation, up to a total penalty amount of \$125,000.

23. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective March 15, 2004 through January 12, 2009), any person who has violated any NPDES permit condition or limitation after March 15, 2004, is liable for an administrative penalty not to exceed \$11,000 per day for each such violation occurring after March 15, 2004 through January 11, 2009), up to a total penalty amount of \$157,500.

24. Pursuant to the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective January 12, 2009), any person who has violated any NPDES permit condition or limitation after January 12, 2009 is liable for an administrative penalty not to exceed

\$16,000 per day for each such violation occurring after January 12, 2009, up to a total penalty amount of \$177,500.

25. Based upon the foregoing allegations, and pursuant to the authority of Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Complainant hereby proposes to issue a Final Order Assessing Administrative Penalties to the Respondent in the amount of Eighty-three thousand five hundred dollars (\$83,500.00) for the violations alleged herein. This does not constitute a “demand” as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

26. The proposed penalty was determined after taking into account the nature, circumstances, extent and gravity of the violation, Respondent’s prior compliance history, ability to pay the penalty, the degree of culpability for the cited violations, and any economic benefit or savings to Respondent because of the violations. 33 U.S.C. § 1319(g)(3). In addition, to the extent that facts or circumstances unknown to Complainant or EPA at the time of issuance of this Complaint become known after issuance of this Complaint, such facts or circumstances may also be considered as a basis for adjusting the proposed administrative penalty.

27. EPA may issue the Final Order Assessing Administrative Penalties after a thirty (30) day comment period unless Respondent either responds to the allegations in the Complaint and requests a hearing according to the terms of Section V, below, or pays the civil penalty in accordance with Section VI herein (Quick Resolution).

28. If warranted, EPA may adjust the proposed civil penalty assessed in this Complaint. In so doing, the Agency will consider any number of factors in making this adjustment, including Respondent's ability to pay. However, the burden of raising the issue of an inability to pay and demonstrating this fact rests with the Respondent.

29. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, shall affect Respondent’s continuing obligation to comply with the Clean Water Act, any other Federal or State laws, and/or with any separate Compliance Order issued under Section 309 of the Act, 33 U.S.C. § 1319, for the violations alleged herein.

V. ANSWER TO COMPLAINT AND OPPORTUNITY TO REQUEST HEARING

30. Respondent must file an Answer to this Complaint; failure to file an Answer may result in entry of a Default Judgment against Respondent. Respondent's default constitutes a binding admission of all allegations made in the Complaint and waiver of Respondent's right to a Hearing under the CWA. The civil penalty proposed herein shall then become due and payable upon issuance of the Default Order.

31. Upon issuance of a Default Judgment, the civil penalty proposed herein shall become due and payable.

32. Respondent's failure to pay the entire penalty assessed by a Default Order by the due date will result in a civil action to collect the assessed penalty, plus interest, attorney's fees, costs, and an additional quarterly nonpayment penalty pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9). In addition, a Default Penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.

33. Any Answer must clearly and directly admit, deny, and/or explain each of the factual allegations contained in the Complaint with respect to which the Respondent has any knowledge, or clearly and directly state that the Respondent has no knowledge as to particular factual allegations in the Complaint.

34. The Answer shall also indicate the following:

- a. the specific factual and legal circumstances or arguments which are alleged to constitute any grounds of defense;
- b. the specific facts that Respondent disputes;
- c. Respondent's basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing.

Failure to admit, deny or explain any of the factual allegations in the Complaint constitutes admission of the undenied allegations.

35. Pursuant to Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), Respondent may request a hearing on the proposed civil penalty within thirty (30) days of receiving this Complaint.

36. EPA is obligated, pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), to give members of the public notice of and an opportunity to comment on this proposed penalty assessment.

37. If Respondent requests a hearing on this proposed penalty assessment, members of the public who submitted timely comments on this proposed penalty assessment will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to not only be notified of the hearing but also to be heard and to present evidence at the hearing on the appropriateness of this proposed penalty assessment.

38. If Respondent does not request a hearing, EPA will issue a Final Order Assessing Administrative Penalties, and only members of the public who submit timely comments on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon. 33 U.S.C. § 1319(g)(4)(C). EPA will grant the petition and will hold a hearing if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.

39. Any hearing that Respondent requests will be held and conducted in accordance with the Part 22 Procedural Rules.

40. At such a hearing, Respondent may contest any material fact contained in the Factual and Legal Allegations listed in Section II above, the Findings listed in Section III, above, and the appropriateness of the amount of the proposed civil penalty in Section IV, above.

41. Any Answer to this Complaint, and any Request for Hearing, must be filed within thirty (30) days of receiving this Complaint with the following:

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

42. Copies of any Answer and any Request for Hearing, along with any and all other documents filed in this action, shall also be sent to the following:

Lori G. Kier
Senior Assistant Regional Counsel (3RC20)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

43. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. Failure to deny any of the factual allegations in this Complaint constitutes admission of the undenied allegations. The Answer and any subsequent documents filed in this action should be sent to:

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

VI. SETTLEMENT CONFERENCE

44. EPA encourages settlement of proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the Act. Whether or not a hearing is requested, Respondent may request a settlement conference with Complainant to discuss the allegations of the Complaint and the amount of the proposed civil penalty. **A request for a settlement conference does not relieve the Respondent of the responsibility to file a timely Answer to the Complaint.**

45. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his delegatee. The execution of such a

Consent Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint or to appeal the Final Order accompanying the Consent Agreement.

46. If you wish to arrange a settlement conference, or if you have any questions related to this proceeding, please contact Mr. Charles Schadel at (215) 814-5761 before the expiration of the thirty (30) day period following your receipt of this Complaint. If you are represented by legal counsel, you may have your counsel contact Mr. Mark Bolender, Assistant Regional Counsel, at (215) 814-2642, on your behalf. **Such a request for a settlement conference does not relieve Respondent of the responsibility to file an Answer within thirty (30) days following Respondent's receipt of this Complaint.**

VII. QUICK RESOLUTION

47. In accordance with 40 C.F.R. § 22.18(a), and subject to the limitations in 40 C.F.R. § 22.45, Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint.

48. If Respondent pays the specific penalty proposed in this Complaint within forty (40) days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1), no Answer need be filed.

49. If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2), Respondent may file a written statement with the Regional Hearing Clerk within 40 days after receiving this Complaint stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the following:

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and a copy shall be provided to:

Lori G. Kier (3RC20)
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

If Respondent files such a written statement with the Regional Hearing Clerk within 40 days after receiving this Complaint, Respondent shall pay the full amount of the proposed penalty within 60 days of receiving the Complaint. Failure to make such payment within 60 days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17.

50. Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3), the Regional Administrator shall issue a final order. Payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the final order.

51. Payment of the penalty shall be made by one of the following methods below. Payment by respondent shall reference Respondent's name and address, and the EPA Docket Number of the Complaint. A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to Lydia Guy, Regional Hearing Clerk, and the case attorney.

Payment by check to "United States Treasury"

By Regular US Postal Service Mail:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Contact: Eric Volck, (513) 487-2105

By Private Commercial Overnight Delivery:

U.S. Environmental Protection Agency
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

Contact: Eric Volck, (513) 487-2105

Payment by EFT to:

Wire Transfers

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 wire transfer message should read:
"D 68010727 Environmental Protection Agency")

Automated Clearing House (ACH) Transfers for receiving U.S. currency (also known as REX or remittance express)

PNC Bank
ABA = 051036706
Environmental Protection Agency
Account = 310006
CTX Format
Transaction Code 22 – checking
808 17th Street, NW
Washington, DC 20074

Contact for ACH: John Schmid (202) 874-7026

ON LINE PAYMENTS:

There is now an On Line Payment Option, available through the Dept. of Treasury. This payment option can be accessed from the information below:

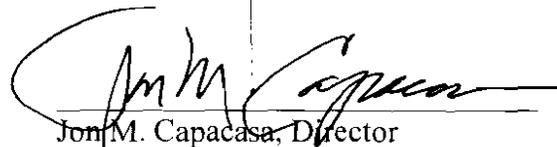
WWW.PAY.GOV
Enter sfo 1.1 in the search field
Open form and complete required fields.

52. At the same time payment is made, copies of the check shall be mailed to the addresses in Paragraph 46 above.

VIII. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

53. The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region III Office of Regional Counsel, the Region III Water Protection Division, the Office of the EPA Assistant Administrator for the Office of Water, and the EPA Assistant Administrator for Enforcement and Compliance Assurance. From the date of this Complaint until the final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Part 22 Procedural Rules prohibit any unilateral discussion or *ex parte* communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer after issuance of a Complaint.

Date: 9/30/2010



Jon M. Capacasa, Director
Water Protection Division
U.S. Environmental Protection
Agency, Region III

CERTIFICATE OF SERVICE

I hereby certify that on the date listed below, I filed the original attached Administrative Penalty Complaint and Notice of Opportunity to Request Hearing with the Regional Hearing Clerk, and sent a copy thereof to the following person via certified mail, return receipt requested:

John R. Leopold, County Executive
Anne Arundel County, Maryland
The Arundel Center
44 Calvert Street
Annapolis, Maryland 21404

Date: 9/30/2010

for [Signature], EPA attorney
Lori G. Kier