

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

In The Matter of:	:	Proceeding to Assess Class I
	:	Administrative Penalty Under
	:	Section 309(g) of the
Altoona City Authority	:	Clean Water Act
Westerly WWTP	:	
20 Greenwood Road	:	EPA Docket No. CWA-03-2010-0293
Altoona, PA 16602,	:	
	:	
Respondent.	:	ADMINISTRATIVE PENALTY COMPLAINT and NOTICE OF OPPORTUNITY TO REQUEST HEARING

RECEIVED
EPA REGION III
PHILADELPHIA, PA
MAY 11 2010

**RESPONDENT'S ANSWER TO ADMINISTRATIVE PENALTY COMPLAINT
AND NOTICE OF OPPORTUNITY TO REQUEST HEARING**

I. STATUTORY AUTHORITY

1.-8. These allegations are conclusions of law to which no response is required. By way of further response, the Altoona City Authority is now the Altoona Water Authority as a result of an amendment of its charter dated April 8, 2009, changing the name of the Authority to Altoona Water Authority. Also, due to 911 remapping, the address for the Authority is now 122 Greenwood Road, Altoona, PA 16602-7125.

II. FINDINGS OF FACT

9. This allegation is a conclusion of law to which no response is required.

10. It is admitted that Respondent discharges effluent into the Beaverdam Branch. Respondent endeavors to ensure that the effluent does not contain impermissible pollutants.

11. Admitted.

12. Admitted in part and denied in part. An NPDES permit was issued on January 29, 2008; that permit, however, was withdrawn, superseded and revised and a new permit was issued on December 10, 2009, rendering the January 29, 2008 permit moot.

13. Admitted.

III. FINDINGS OF VIOLATION

Count I - Failure to Submit Reevaluation of Local Limits

14. Admitted.

15. Denied. On the contrary, by reason of the withdrawal of the January 29, 2008 permit and the issuance of a new permit on December 10, 2009, Respondent's headworks analysis and reevaluation is not due until December 10, 2010 and Respondent expects to meet the deadline.

16. Denied, for reasons set forth in paragraph 15.

17. Denied, for reasons set forth in paragraph 15.

18. Denied, for reasons set forth in paragraph 15. By way of further response, even if a failure to move forward with the headworks analysis in 2008 were to have occurred, it was not due to a deliberate or intentional noncompliance. As a result of the Chesapeake Compliance Strategy, Respondent was mandated to complete nutrient removal upgrades to both the Westerly and Easterly Wastewater Treatment Plants. These two major projects have consumed the time, energy and focus of relevant Authority personnel. The Westerly Plant upgrades are now under construction and are expected to be completed by September 2011. The Easterly Plant upgrades are in the design permit approval phase and are expected to go to bid in Fall 2010. The estimated costs of these two projects is \$60-\$70 million. These unfunded mandates have focused the energies of Respondent's personnel, resulting in delayed commencement of the headworks analysis. Respondent just recently submitted its sampling plan and expects to have its reevaluation and analysis submitted by December 2010.

19. Admitted that a violation of 33 U.S.C. 1319(g)(2)(A) may subject Respondent to penalties, denied, however, as to date.

Count II - Failure to Submit Sampling Plan

20. Admitted.

21. Denied. Under the present permit, Respondent believes the sampling plan was due March 10, 2010.

22. Denied. Although the sampling plan was not submitted by April 29, 2008, under the new permit, Respondent believes it was not due until March 10, 2010.

23. Admitted that failure to submit a sampling plan by March 10, 2010 is a violation of the Westerly Permit and Section 301 of the Act.

24. Admitted, however, a sampling plan was submitted on July 16, 2010.

25. Admitted that failure to submit a sampling plan within three months of permit issuance is a violation that may subject Respondent to penalties. Denied as to the date of violation.

IV. PROPOSED CIVIL PENALTY

26. Respondent believes the \$27,000.00 penalty is excessive and unwarranted and should not be imposed upon a Permittee already burdened with substantial unfunded mandates for expensive upgrades to its system.

27.-29. No response is required.

V. ANSWER TO COMPLAINT AND OPPORTUNITY TO REQUEST HEARING

30.-40. These paragraphs are informational and no response is required. Respondent requests a hearing.

VI. SETTLEMENT CONFERENCE

41.-47. These paragraphs are informational and no response is required. Respondent requests a settlement conference.

VII. QUICK RESOLUTION

48.-58. These paragraphs are informational and no response is required.

VIII. PUBLIC PARTICIPATION

59.-61. These paragraphs are informational and no response is required.

Respectfully submitted,

JUBELIRER, CAROTHERS, KRIER & HALPERN

Date: July 20, 2010

By: 

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Solicitor for Respondent, Altoona Water Authority

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CERTIFICATE OF SERVICE

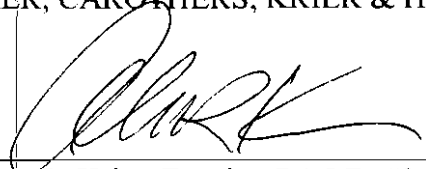
I HEREBY CERTIFY that I served a true and correct copy of the foregoing **Respondent's Answer to Administrative Penalty Complaint with Notice of Opportunity to Request Hearing** on all counsel of record and/or parties of interest by depositing same in the United States Mail, postage prepaid at Altoona, Pennsylvania on this 20 day of July, 2010 and addressed as follows:

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

Douglas Frankenthaler, Esquire (one copy)
Assistant Regional Counsel (3RC20)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

JUBELIRER, CAROTHERS, KRIER & HALPERN

By: _____


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