



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

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

BY HAND

December 10, 2012

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region I
5 Post Office Square
Suite 100 (ORA18-1)
Boston, MA 02109-3912

Re: In the Matter of: J.H. Lynch & Sons, Inc. and Massachusetts Department of
Transportation.
CWA-01-2013-0007

Dear Ms. Santiago:

For the above-referenced matter, please file the enclosed Complaint and the Certificate of Service. I have included the original and one copy of these documents

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, reading "Kathleen E. Woodward", is written over a light blue rectangular background.

Kathleen E. Woodward
Senior Enforcement Counsel

Enclosure

UNITED STATES ENVIRONMENTAL
REGION I

Original

In the Matter of)

J.H. LYNCH & SONS, INC.)
50 Lynch Place)
Cumberland, Rhode Island 02864)

and)

MASSACHUSETTS DEPARTMENT)
OF TRANSPORTATION)
10 Park Plaza, Suite 4160)
Boston, Massachusetts 02116)

Respondents)

Docket No. CWA-01-2013-0007

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, EPA hereby provides notice of a proposal to assess a civil penalty against J.H. Lynch & Sons, Inc. ("Lynch") and the Massachusetts Department of Transportation ("MassDOT") (collectively,

“Respondents”) for failing to comply with the terms and conditions of the National Pollutant Discharge Elimination System (“NPDES”) General Permit for Discharges from Construction Activities (“CGP”).

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into the navigable 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.
4. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines “discharge of pollutants” to include “any addition of any pollutant to navigable waters from any point source.” Section 502(14) of the Act, 33 U.S.C. § 1362(14), defines a “point source” as “any discernible, confined and discrete conveyance ... from which pollutants are or may be discharged.”
5. Section 402(p)(2)(B) of the Act, 33 U.S.C. § 1342(p)(2)(B), requires any storm water discharge associated with “industrial activity” to be authorized by a NPDES permit.
6. Forty C.F.R. § 122.26(b)(13) defines stormwater to include storm water runoff, snow melt runoff, and surface runoff and drainage.
7. In February 1998, EPA issued the NPDES General Permit for Storm Water Discharges from Construction Activities (“CGP”), 63 Fed. Reg. 7858 (Feb. 17, 1998). EPA re-issued the CGP in July 2003, 68 Fed. Reg. 45817 (July 1, 2003) (“2003 CGP”) which was modified effective January 1, 2005. EPA re-issued the CGP in July of 2008, 73 Fed. Reg. 40338 (July 14, 2008) (“2008 CGP”). The 2008 CGP was effective June 30, 2008 and was to expire on June 30, 2010. The

expiration date of the 2008 CGP was extended to February 15, 2012 (75 Fed. Reg. 4554 (January 28, 2010) and 76 Fed. Reg. 40355 (July 8, 2011)). EPA re-issued the CGP in February of 2012, 77 Fed. Reg. 12286 (February 29, 2012) (“2012 CGP”). The 2012 CGP was effective February 16, 2012 and is to expire on February 16, 2017. The 2008, and the 2012 CGPs authorize, subject to conditions contained therein, the discharge of pollutants in storm water runoff associated with construction activities, including construction activities within the Commonwealth of Massachusetts.

8. Part 3.1 of the 2008 CGP requires that the permittee implement control measures to “minimize pollutants in stormwater discharges.” Part 3 provides that “minimize” as used in Part 3 of the 2008 CGP means “reduce and/or eliminate to the extent achievable using control measures that are technologically available and economically practicable and achievable in light of the best industry practice.”
9. Part 3 of the 2008 CGP sets forth technology-based and water quality based effluent limits. These limits include sediment controls, off-site sediment tracking and dust control, run-off management and erosion control and stabilization. Sediment controls include the use of sediment basins, silt fences, vegetative buffer strips or equivalent sediment controls. The off-site sediment tracking and dust control provision requires that the permittee minimize off-site vehicle tracking of sediments on to paved surfaces and removal of sediment that escapes off-site. The run-off management requirement provides that the permittee must divert flows from exposed soils, retain/detain flows or otherwise minimize runoff

and discharge of pollutants from exposed areas on-site. Erosion control and stabilization means that the permittee must minimize pollutant discharges from the site by preserving existing vegetation and stabilization of disturbed areas.

ALLEGATIONS

10. Respondent Lynch was incorporated in the State of Rhode Island and has its principal office at 50 Lynch Place, Cumberland, Rhode Island, 02864.
11. Respondent MassDOT is an agency of the Commonwealth of Massachusetts and has its principal office at 10 Park Plaza, Suite 4160, Boston, Massachusetts, 02116.
12. Each Respondent is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
13. Respondent MassDOT contracted with Respondent Lynch to undertake a road reconstruction and widening project covering approximately 2.3 miles in Bellingham, Massachusetts (“Construction Site”). The work involved primarily Pulaski Boulevard but also encompassed small portions of intersecting roadways. The project also encompassed construction of a bridge over the Peters River.
14. Respondent Lynch submitted a Notice of Intent (“NOI”) to be covered under the 2008 CGP on February 25, 2010. The NOI states that Respondent J.H. Lynch & Sons, Inc. is an “operator”; that the estimated area to be disturbed is 42 acres; and that stormwater from the construction site will discharge to the Peters River and Arnolds Brook.

15. On March 4, 2010, Respondent Lynch received authorization to discharge subject to the terms and conditions of the 2008 CGP (Permit tracking number MAR10DF67).
16. Respondent Lynch had day-to-day operational control of activities necessary to ensure compliance with permit conditions from April of 2010 when construction commenced through at least April of 2012.
17. Construction commenced at the Construction Site on April 1, 2010. On-site construction included clearing, grading and excavation activities.
18. For the period of construction Respondent Lynch was an “operator” within the meaning of 40 C.F.R. § 122.2 and Appendix A of the 2008 CGP.
19. Respondent MassDOT submitted a NOI to be covered under the 2008 CGP on April 6, 2010. The NOI states that MassDOT is an “operator”; that the estimated area to be disturbed is 42 acres; and that stormwater from the construction site will discharge to the Peters River and Arnolds Brook.
20. On April 13, 2010, Respondent MassDOT received authorization to discharge subject to the terms and conditions of the 2008 CGP (Permit tracking number MAR10DH12).
21. Respondent MassDOT had operational control over construction plans and specifications for the Construction Site from April of 2010 when construction commenced until at least April of 2012.
22. For the period of construction, Respondent MassDOT was an “operator” within the meaning of 40 C.F.R. § 122.2 and Appendix A of the 2008 CGP.

23. When Respondents commenced clearing, grading, and excavating at the Construction Site, Respondents engaged in the “commencement of construction activities” as defined in Appendix A of the 2008 CGP.
24. The on-site construction is “industrial activity” within the meaning of 40 C.F.R. § 122.26(b)(14)(x).
25. As operators of the Construction Site, once Respondents obtained NPDES permit coverage for the construction activities at the Construction Site, Respondents were required to comply with all requirements and conditions for operation under the Act, its regulations and the applicable permit.
26. The 2008 CGP contains a variety of terms and conditions designed to ensure the implementation of practices to reduce the pollutants in storm water discharges associated with construction activities.
27. Part 3 of the 2008 CGP provides:

You must select, install, and maintain control measures (e.g., Best Management Practices “BMPs”, controls, practices, etc.) for each major construction activity, identified in your Part 5 project description, to meet [the 2008 CGP’s] effluent limits. All control measures must be properly selected, installed, and maintained in accordance with any relevant manufacturer specifications and good engineering practices. You must implement the control measures from commencement of construction activity until final stabilization is complete.
28. Section 3.6 of the 2008 CGP requires that permittees must “maintain all control measures and other protective measures in effective operating condition.”
29. Part 3.1.A. of the 2008 CGP requires that sediment basins and/or sediment traps should be used and, at a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries and for

those side slope boundaries deemed appropriate as dictated by individual site conditions of the construction area.

30. Part 3.1.C of the 2008 CGP requires that the permittee divert flows from exposed soils, retain/detain flows, or otherwise minimize runoff and the discharge of pollutants from exposed areas of the site.
31. Part 3.1.D of the 2008 CGP requires that the permittee place velocity dissipation devices at discharge locations and along the length of any outfall channel to provide a non-erosive flow velocity from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected (e.g., no significant changes in the hydrological regime of the receiving water).

Peters River Bridge Construction

32. The construction work in the vicinity of the Peter's River bridge commenced on August 5, 2010.
33. EPA conducted an inspection at the Construction Site on October 6, 2010.
34. Four catch basins were located east of the Peters River Bridge near the intersection of Pulaski Blvd. and Lake St., three to the north of Pulaski Blvd. and one to the south. The area that was drained by the catch basins was disturbed and unstabilized.
35. At the time of EPA's inspection, there were metal plates partially covering two of the catch basins to allow stormwater to enter the catch basins.

36. At the time of EPA's inspection on October 6, 2010, muddy water was flowing into the four catch basins, bypassing the metal plates that partly covered two of the catch basins, and entering the other two basins through the sides of the basins.
37. The three catch basins to the north of Pulaski Blvd. were connected to an outfall on the north side of the eastern foundation of the bridge. This outfall discharged into the Peters River.
38. At the time of EPA's inspection of the Construction Site on October 6, 2010, a large volume of very muddy water was discharging into the Peters River from the outfall on the north side of the eastern foundation of the bridge causing a visually distinct plume of silt in the eastern half of the river.
39. The catch basin to the south of Pulaski Blvd. was connected to an outfall on the south side of the eastern foundation of the bridge. This outfall also discharged into the Peters River.
40. At the time of EPA's inspection of the Construction Site on October 6, 2010, very muddy water was discharging into the Peters River from the outfall on the south side of the eastern foundation of the bridge contributing to the visually distinct plume of silt in the eastern half of the river.
41. At the time of EPA's inspection on October 6, 2010, crushed stone and haybales placed around the catch basins were inadequate to filter sediment from the stormwater.
42. With respect to the remaining two catch basins east of the bridge, from on or about August 17, 2010 through on or about March 18, 2011, when the detention basin designed to receive the flow from the bridge area was completed, there were

no effective control measures in place to minimize pollutants in stormwater discharges.

43. As of EPA's inspection on October 6, 2010, there was a steep, un-stabilized slope on the bank of the Peters River adjacent to the northeast corner of the bridge. The un-stabilized slope was within the construction zone of the new Peters River bridge.
44. As of EPA's inspection of the Construction Site on October 6, 2010, muddy water was flowing through an eroded channel and down the slope, bypassing several haybales and a silt fence, and discharging to the Peters River, thereby contributing to the silty plume in the eastern half of the river.
45. As of EPA's inspection of the Construction Site on October 6, 2010, there was a section of unstabilized exposed soil west of the river along the north side of the new Peters River Bridge. The unstabilized soil extended to the Peters River. A silt fence between the exposed soil and the Peters River had fallen and was filled with sediment.

Construction near Arnolds Brook

46. The construction work in the vicinity Arnold's Brook and Deer Run Road commenced on April 26, 2010. A detention basin south of Deer Run Road was constructed in June of 2010.
47. As of EPA's inspection of the Construction Site on October 6, 2010, there was a detention basin situated immediately west of Deer Run Road and south of Pulaski Boulevard. Approximately 20 yards west of the detention basin Arnolds Brook flows south from a culvert under Pulaski Boulevard.

48. As of EPA's inspection of the Site on October 6, 2010, a concrete structure in the detention basin opened to a pipe to the west where a channel ran down to Arnolds Brook. The bank leading down from Pulaski Boulevard to the channel was unstabilized, a failed silt fence was falling into the channel and the channel was eroded at its end.
49. At the time of EPA's inspection of the Construction Site on October 6, 2010, a deposit of gravel approximately four feet by three feet in size was in Arnolds Brook just below the point at which the channel drains into Brook.

Detention Basins

50. A detention basin at Orchard Street was constructed in April of 2010.
51. Prior to EPA's inspection of the Construction Site on October 6, 2010, the dirt walls of the detention basin at Orchard Street had not been stabilized. The slopes of the detention basin had been loamed sometime between October 1 and October 5, 2010 and were hydro-seeded in November of 2010.
52. A detention basin near Deer Run Road was constructed in June of 2010.
53. Prior to EPA's inspection of the Construction Site on October 6, 2010, the dirt walls of the detention basin near Deer Run Road had not been stabilized. The slopes of the detention basin were stabilized on or about November 20, 2010.

Off-Site Tracking of Sediments

54. Part 3.1.B of the 2008 CGP requires that operators minimize off-site vehicle tracking of sediments onto paved surfaces and generation of dust.
55. From on or about April 26, 2010, when construction commenced in this portion of the Construction Site, until at least October 6, 2010, there was no gravel or other

measure to reduce off-site tracking of sediments at the entrance to the construction area in the vicinity of the detention basin off of Orchard Street.

56. At the time of EPA's inspection of the Construction Site on October 6, 2010, the gravel entrance to Moody Street from the construction area around the detention basin off of Orchard Street was partially buried under accumulated mud. Dirt from the Construction Site was tracked onto Moody Street.

General Allegations

57. Stormwater runoff from construction sites is contaminated with sand, dirt, sediment, suspended solids, and residues of construction material. The sand, dirt, sediment, suspended solids, residues of construction material, and turbidity constitute "pollutant[s]" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).
58. Beginning on August 17, 2010 and continuing through at least March 18, 2011, "industrial activities" conducted at the Construction Site resulted in the "discharge of pollutants" into the Peters River within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5), and the "discharge of storm water associated with industrial activities" as defined in 40 C.F.R. § 122.26(b)(14).
59. Beginning on or about June 30, 2010, and continuing through at least September 15, 2010, "industrial activities" conducted at the Construction Site resulted in the "discharge of pollutants" into Arnolds Brook within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5), and the "discharge of storm water associated with industrial activities" as defined in 40 C.F.R. § 122.26(b)(14).

60. Arnolds Brook flows into the Peters River. The Peters River flows into the Blackstone River. The Blackstone River flows south and into the Seekonk River. The Seekonk River flows into Naragansett Bay which converges with the Atlantic Ocean.
61. Arnolds Brook, the Peters River, the Blackstone River, the Seekonk River, Naragansett Bay and the Atlantic Ocean are “waters of the United States,” as defined in 40 C.F.R. § 122.2, and, thereby, “navigable waters,” as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7).
62. The following are “point sources” as defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14):
- a. The outfall pipe on the north side of the eastern foundation of the Peters River bridge;
 - b. The outfall pipe on the south side of the eastern foundation of the Peters River Bridge;
 - c. The erosion channel in the unstabilized slope adjacent to the northeast corner of the Peters River Bridge; and
 - d. The drainage swale that drains the outlet of the detention basin adjacent to Deer Run Road and that flows into Arnolds Brook.
63. The discharges of storm water associated with industrial activity from these point sources constitute “discharges of pollutants” within the meaning of Section 502(12) of the Act, 33 U.S.C. § 1362(12).

**FAILURE TO COMPLY WITH THE
CONSTRUCTION GENERAL PERMIT**

64. The Complaint incorporates Paragraphs 1 through 63 by reference.
65. Respondents' failure to properly install and maintain measures to ensure erosion control and stabilization and to minimize pollutant discharges, in accordance with Parts 3; 3.1.A.; 3.1.B; 3.1.C.; 3.1.D; 3.1.H; and 3.6 of the 2008 CGP violates a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
66. Respondents did not select, design, install, and implement control measures sufficient to minimize pollutant discharges from April 26, 2010 through at least March 18, 2011.
67. From April 26, 2010 through at least March 18, 2011, Respondents violated the terms and conditions of the 2008 CGP, a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342. Having discharged storm water in violation of the terms and conditions of its permit, Respondents have violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).
68. Pursuant to 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.*, and the rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.1-19.4, and the 2008 Civil Monetary Penalty Inflation Adjustment Rule effective January 12, 2009 (73 Fed. Reg. 75,340 (Dec. 8, 2008)), Respondents are subject to civil penalties for each violation of up to sixteen thousand dollars (\$16,000) per violation per day

for each day during which each violation continued, up to a maximum of one hundred seventy-seven thousand five hundred dollars (\$177,500).

PROPOSED ASSESSMENT OF CIVIL PENALTY

69. EPA is seeking a penalty from Respondents of up to \$16,000 for each day of violation for at least 326 days up to a maximum of \$177,500.
70. 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 will take 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, Respondents' prior compliance history, the degree of culpability for the cited violations, any economic benefit or savings accruing to Respondents resulting from the violations, Respondents' ability to pay the proposed penalty, and such other matters as justice may require.
71. The violations alleged against Respondents are significant because failure to implement and maintain the BMPs necessary to prevent the discharge of pollutants resulted in silt-laden discharges to waters of the United States.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

72. 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 Respondents have 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.

73. Respondents' 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
5 Post Office Square, Suite 100
Mail Code ORA18-1
Boston, Massachusetts 02109-3912

74. To be entitled to a hearing, Respondents must include their request for a hearing in their Answer to the Complaint.
75. 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
U.S. Environmental Protection Agency
Region I
5 Post Office Square, Suite 100
Mail Code OES04-2
Boston, Massachusetts 02109-3912

76. If Respondents do not file a timely Answer to this Complaint, Respondents 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 Respondents' right to a hearing on factual allegations contained therein.

CONTINUED COMPLIANCE OBLIGATION

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

Date: 12/10/12

Susan Studlien
Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region I
5 Post Office Square, Suite 100
Boston, Massachusetts 02109-3912

**In the Matter of: J.H. Lynch & Sons, Inc. and
Massachusetts Department of Transportation
Docket No. CWA 01-2013-0007**

CERTIFICATE OF SERVICE

I certify that the foregoing Administrative 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
5 Post Office Square, Suite 100
Mail Code ORA17-1
Boston, Massachusetts 02109-3912

Copy by certified mail, return
receipt requested

Stephen P. Lynch, Jr., President
J.H. Lynch & Sons, Inc.
50 Lynch Place
Cumberland, Rhode Island 02864

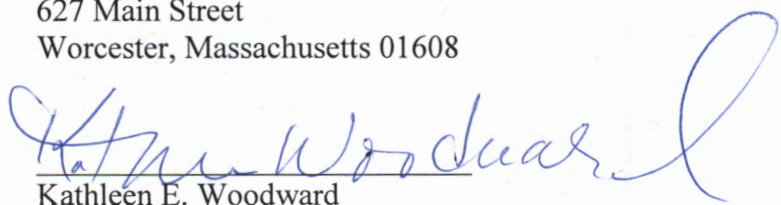
Frank DePaola, Administrator, Highway Division
Massachusetts Department of Transportation
10 Park Plaza, Suite 4160
Boston, MA 02116

Copy by first-class mail to:

Rachel Rollins, General Counsel
Massachusetts Department of Transportation
10 Park Plaza, Suite 4160
Boston, MA 02116

Martin Suuberg, Regional Director Central Region
Massachusetts Department of Environmental
Protection
627 Main Street
Worcester, Massachusetts 01608

Dated: December 10, 2012



Kathleen E. Woodward
Senior Enforcement Counsel
U.S. EPA, Region I
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(617) 918-1780