



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

SEP 16 2013

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.11  
2013 SEP 17 A 10:48  
REGIONAL HEARING  
CLERK

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**Article Number: 7005 3110 0000 5940 4782**

Mr. Robert Iovinella, Owner  
BTL Properties, LLC  
90 West Campbell Road  
Schenectady, New York 12306

Re: Notice of Proposed Assessment of a Civil Penalty Class I  
Mr. Robert Iovinella and BTL Properties, LLC  
Docket No. CWA-02-2013-3313

Dear Mr. Iovinella:

Enclosed is a Complaint which the U.S. Environmental Protection Agency ("EPA" or "Agency") is issuing to you as a result of our determination that you and BTL Properties, LLC ("Respondents"), located at 90 West Campbell Road in Schenectady, New York, have violated Sections 301 and 402 of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §§1311 and 1342, in your operation of the Beckers Crossing Phases IV and V construction site located on Duff Bambury Court in Rotterdam, New York. This Complaint is filed pursuant to Section 309(g) of the Act, 33 U.S.C. §1319(g). Upon consideration of the factors in Section 309(g), the Complaint proposes that a penalty of **\$37,500** be assessed to Respondents for these violations.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or they are found to be true after you have had an opportunity for a hearing on them, you have the right to contest the penalty proposed in the Complaint. I have enclosed a copy of Consolidated Rules of Practice ("CROP"), found at 40 Code of Federal Regulations Part 22, which the EPA follows in cases of this kind. Please note the requirements for an Answer at Section 22.15 of the CROP. **If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file an Answer within thirty (30) days of your receipt of the enclosed Complaint to the EPA Regional Hearing Clerk at the following address:**

Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
290 Broadway, 16th Floor  
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint, you may be judged to have defaulted (See, §22.17 of the CROP). If a default order is entered, the entire proposed penalty may be assessed without further proceedings.

Regardless of whether or not you request a formal hearing, EPA encourages you to pursue the possibility of settlement by requesting an informal conference with the Agency concerning the alleged

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violations and the amount of the proposed penalty. Please note that a request for an informal conference does not substitute for a written Answer, or affect what you may choose to say in an Answer, nor does it extend the thirty (30) day deadline by which you must file an Answer.

The Agency also encourages Respondents to propose and perform Supplemental Environmental Projects ("SEPs"), where appropriate, as part of any settlement. Enclosed is a copy of the Final EPA Supplemental Environmental Projects Policy (May 1, 1998) for your consideration.

You may represent yourself or be represented by an attorney at any stage of the proceedings, including any informal discussions and/or a formal hearing, whether in person or by telephone. Any hearing held in this matter will be conducted in accordance with the CROP.

If you have any questions or wish to discuss a settlement of this matter with the EPA by an informal conference, please immediately contact:

Tim Murphy, Esq.  
Office of Regional Counsel  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency  
290 Broadway - 16th Floor  
New York, New York 10007-1866  
(212) 637-3236

For your information, I am enclosing an Information Sheet which may be helpful if you are a small business as defined at 13 C.F.R. §121.201, in obtaining compliance assistance or if you wish to comment on this action to the Small Business and Agriculture Regulatory Enforcement Ombudsman and Regional Fairness Board.

Should you have any questions concerning this matter, please feel free to contact Mr. Tim Murphy at the phone number above or Ms. Justine Modigliani, Compliance Section Chief, at (212) 637-4268.

Sincerely,



Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosures

1. Complaint
2. CROP
3. EPA Supplemental Environmental Projects Policy and SEP Brochure
4. Information for Small Business

cc: Joe DiMura, NYSDEC

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

**IN THE MATTER OF:**

Mr. Robert Iovinella and BTL Properties, LLC  
90 West Campbell Road  
Schenectady, New York 12306

Beckers Crossing Phases IV and V  
Duff Bambury Court  
Rotterdam, NY 12306

SPDES Permit No. NYR10G140

Proceeding pursuant to Sections 308 and 309(a)  
of the Clean Water Act, 33 U.S.C. §§1318 and  
1319(a)

**PROCEEDING TO ASSESS A CLASS I  
CIVIL PENALTY**

**DOCKET No. CWA-02-2013-3313**

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2013 SEP 17 A 10:49  
REGIONAL HEARING  
CLERK

**ADMINISTRATIVE COMPLAINT  
FINDINGS OF VIOLATION, NOTICE OF PROPOSED  
ASSESSMENT OF AN ADMINISTRATIVE PENALTY, AND  
NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

**I. PRELIMINARY STATEMENT**

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing (“Complaint”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g)(2)(A) of the Clean Water Act (“Act” or “CWA”), 33 U.S.C. §1319(g)(2)(A). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Division of Enforcement and Compliance Assistance (“DECA”) of EPA, Region 2 (“Complainant”).
2. Pursuant to Section 309(g)(2)(A) of the Act, and in accordance with 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 (“CROP”), 40 C.F.R. Part 22 (2011), a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against Mr. Robert Iovinella and BTL Properties, LLC (“Respondents”), as a result of Complainant’s determination that the Respondents are in violation of Sections 301 and 402 of the Act, 33 U.S.C. §1311 and §1342, respectively, by failing to comply with the terms of the New York State Department of Environmental Conservation (“NYSDEC” or “Department”) State Pollutant Discharge Elimination System (“SPDES”) General Permit for Stormwater Discharges from Construction Activity, GP-0-10-001, at a site they own and operate.

## **II. STATUTORY AND REGULATORY PROVISIONS AND PERMIT REQUIREMENTS**

1. Section 301(a) of the CWA, 33 U.S.C. §1311(a), prohibits the discharge of any pollutant by any person from a point source into navigable waters of the United States, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. §1342.
2. Section 402(a)(1) of the CWA, 33 U.S.C. §1342(a)(1), provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.
3. Section 402 of the CWA, 33 U.S.C. §1342, authorizes the Administrator of EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The NYSDEC is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402 of the CWA, 33 U.S.C. §1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA. Additionally, under the authority granted to the NYSDEC by the EPA under Section 402(b) of the CWA, 33 U.S.C. §1342(b), a SPDES permit is required to be issued to facilities by the NYSDEC for the discharge of pollutants from said facilities from a point source to a navigable water of the United States.
4. Section 308(a)(A) of the Act, 33 U.S.C. §1318(a)(A), provides, in relevant part, that the Administrator of EPA may require the owner or operator of any point source to, among other things: maintain such records; make such reports; install, use and monitor such equipment; sample such effluents; and provide such other information as may reasonably be required in order to carry out Section 402 of the Act, 33 U.S.C. §1342.
5. "Person" is defined by Section 502(5) of the CWA, 33 U.S.C. §1362(5), to include, among other things, an individual, corporation, partnership, association or municipality.
6. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. §1362(6), to include among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water.
7. "Discharge of a pollutant" is defined by Section 502(12) of the CWA, 33 U.S.C. §1362(12), to include any addition of any pollutant to navigable waters from any point source.
8. "Navigable waters" is defined by Section 502(7) of the CWA, 33 U.S.C. §1362(7), to include the waters of the United States.
9. "Point source" is defined by Section 502(14) of the CWA, 33 U.S.C. §1362(14), to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
10. Section 402(p) of the CWA, 33 U.S.C. §1342(p), sets forth the requirements for municipal and industrial stormwater discharges.

11. The Administrator of EPA has promulgated regulations, 40 CFR §122.26(a)(1)(ii), §122.26(b)(14), and §122.26(b)(15), which require operators to obtain a NPDES permit for stormwater discharges associated with industrial activity. The regulations at 40 C.F.R. §122.26(b)(14)(x) and 40 C.F.R. §122.26(b)(15)(i) establish requirements for stormwater discharges associated with industrial activity from construction sites which include clearing, grading and excavation activities that result in the disturbance of one (1) or more acres of total land area.
12. "Owner or operator" is defined by 40 C.F.R. §122.2 as owner or operator of any "facility or activity" subject to regulation under the NPDES program.
13. "Stormwater" is defined by 40 C.F.R. §122.26(b)(13) as stormwater runoff, snow melt runoff, and surface runoff and drainage.
14. NYSDEC's SPDES General Permit for Stormwater Discharges from Construction Activity, GP-0-10-001, became effective on January 29, 2010 and expires on January 28, 2015 ("Permit" or "CGP").
15. The term "Construction Activity(ies)" means any clearing, grading, excavation, filling, demolition or stockpiling activities that result in soil disturbance. Clearing activities can include, but are not limited to, logging equipment operation, the cutting and skidding of trees, stump removal and/or brush root removal. Construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility as defined in Appendix A of the CGP.
16. Under the CGP, the term "Final Stabilization" means that all soil disturbance activities have ceased and a uniform, perennial vegetative cover with a density of eighty (80) percent over the entire pervious surface has been established, or other equivalent stabilization measures, such as permanent landscape mulches, rock rip-rap or washed/crushed stone have been applied on all disturbed areas that are not covered by permanent structures, concrete or pavement.
17. The term "SWPPP" means the Stormwater Pollution Prevention Plan as defined in Part III of the CGP.
18. Under the CGP, the term "Owner or Operator" means the person, persons or legal entity which owns or leases the property on which the construction activity is occurring and/or an entity that has operational control over the construction plans and specifications, including the ability to make modifications to the plans and specifications.
19. A corporate officer can be held personally liable for violations of the Clean Water Act if he or she had "authority with respect to the conditions that formed the basis of the alleged violations" (*United States v. Iverson*, 162 F.3d 1015, 1024 (9th Cir. 1998) (quoting *United States v. Park*, 421 U.S. 658 (1975))).
20. Pursuant to 40 C.F.R. §122.41(a), permittees must comply with all conditions of their permit, and any permit noncompliance constitutes a violation of the CWA and is grounds for enforcement action.

### **III. FINDINGS OF FACT**

1. Parts I and II are re-alleged and incorporated herein by reference.
2. According to the Notice of Intent (“NOI”) received by the NYSDEC on October 3, 2003, Respondent BTL Properties, LLC owns and operates the Beckers Crossing Phases IV and V construction site (“Site” or “Facility”), which is located on Duff Bambury Court in the Town of Rotterdam, Schenectady County, New York. Therefore, Respondent BTL Properties, LLC is an owner and an operator within the meaning of 40 C.F.R. §122.2.
3. According to the above-mentioned NOI, Respondent Robert Iovinella is the contact person for BTL Properties, LLC regarding activities at the Site. Based on communications between EPA and Mr. Iovinella, Mr. Iovinella has authority with respect to construction activities at the Site. Therefore, Respondent Robert Iovinella is an operator within the meaning of 40 C.F.R. §122.2.
4. Stormwater at the Site discharges to Beckers Brook, a water of the United States, via a sediment basin outfall pipe. The Site also receives stormwater runoff from the New York State (“NYS”) Thruway via three (3) 24-inch corrugated metal pipes. Two of the pipes discharge to a drainage swale on the Site that conveys stormwater to Beckers Brook via an outfall pipe located in the southwest corner of the Site. Stormwater from the third corrugated metal pipe is conveyed to an outfall pipe located at the south center of the Site, which also drains south to Beckers Brook.
5. Respondents gained coverage under the CGP (GP-02-01) on October 8, 2003 (SPDES ID No. NYR10G140). The Site has maintained coverage under the CGP since 2003 and is currently covered under the current CGP (GP-0-10-001).
6. Respondents have conducted construction activities on approximately six (6) acres in Phases IV and V at the Site.
7. EPA conducted a Compliance Evaluation Inspection (“CEI”) at the Site on April 3, 2013 and identified the violations of the Site’s NYSDEC SPDES CGP (NYR10G140), detailed in paragraphs III.8 – III.10, below.
8. Part II.C.1 of the CGP requires the owner or operator to ensure that the provisions of the SWPPP are implemented from the commencement of construction activity until all areas of disturbance have achieved final stabilization and a Notice of Termination has been submitted to the NYSDEC in accordance with Part V of the Permit. In addition, Part IV.A.1 of the Permit states that the owner or operator must ensure that all erosion and sediment control practices identified in the SWPPP are maintained in effective operating conditions at all times. The following SWPPP elements had not been implemented and/or maintained in effective operating condition at the time of the April 3, 2013 CEI, in violation of Parts II.C.1 and IV.A.1 of the CGP:
  - a) Part 2.1 of the SWPPP states that disturbed areas outside of the paving limits will be stabilized by planting and seeding. Furthermore, Part 2.2 of the SWPPP states that following initial soil disturbance of any kind, stabilization should be completed within 14 days or as soon as possible. At the time of the CEI, disturbed areas outside of the paving limits that were inactive had not been temporarily or permanently stabilized.

- b) Part 2.2 of the SWPPP states that maintenance of silt fencing shall be performed as needed, and sediment material removed when “bulges” develop in the silt fence. In addition, Part 5.1 of the SWPPP states that built up sediment will be removed from silt fence and strawbales if it ever reaches one-third the height of the structural control. EPA identified the following areas at the Site where silt fencing was in need of maintenance:
- i. Sediment build-up was identified near the top of the silt fencing on the slopes between Duff Bambury Court and Beckers Brook;
  - ii. Sediment build-up was identified near the top of the silt fencing at the outfall near the southwest corner of the Site;
  - iii. Silt fencing on the downhill slopes near the sediment basin outfall was torn, required removal of sediment, and was in need of general maintenance;
  - iv. The silt fencing behind the active lot required removal of sediment and proper repair; and
  - v. Tears were identified in the silt fencing downstream of the outfall pipe in the center of the site, which is designed to convey stormwater runoff from the NYS Thruway to Beckers Brook.
- c) Part 2.2 of the SWPPP states the following: “Check dams should be inspected after each runoff event. Correct all damages immediately. If significant erosion has occurred between structures, a liner of stone or other suitable material should be installed in that portion of the channel. Remove sediment accumulated behind the dam as needed to allow channel to drain through the stone check dam and prevent large flows from carrying sediment over the dam.” EPA observed a significant amount of sediment in the drainage swale and check dams receiving stormwater runoff from the NYS Thruway. An eroded channel was identified around the rip rap near the one of the NYS Thruway culvert pipes, resulting in substantial sediment loading to the swale and to the check dams. At the time of the CEI, sediment had been carried over the check dams and conveyed to the outfall in the southwest corner of the Site.
- d) Part 2.2 of the SWPPP states that all catch basins will be protected by the “fabric barrier drop inlet protection” practice until the drainage areas served by these catch basins are stabilized. At the time of the CEI, none of the catch basins on-site were protected with fabric barriers or any other forms of inlet protection.
- e) Part 2.2 of the SWPPP states that any slopes or embankments which have damaged vegetation will be reseeded as necessary. At the time of the CEI, the exterior and interior slopes of the sediment basin had not been reseeded or properly stabilized. In addition, the slopes along Duff Bambury Court where it traverses Beckers Brook also had not been reseeded or properly stabilized. In accordance with Part 2.2 of the SWPPP, following initial soil disturbance of any kind, stabilization should be completed within 14 days or as soon as possible.
- f) Part 2.2 of the SWPPP states that all silt or sediment accumulations will be cleaned from stormwater quality management basins. At the time of the CEI, accumulated sediment was identified in the sediment basin and in the rip rap at the sediment basin outfall.

- g) In accordance with the Erosion and Sediment Control Plan in the SWPPP, as well as Part 1.5 of the SWPPP, two temporary sediment basins were to have been constructed at the Site, including a 25,200 cubic foot temporary sediment detention basin (105' long, 40' wide and 6' deep) located on the east side of the Site, and a 3,060 cubic foot temporary sediment detention basin (35' long, 35' wide and 2.5' deep) located near the southwest corner of the Site. The Site was to have been temporarily graded towards these temporary sediment detention basins during construction, and was to be regraded towards the permanent wet pond system after the Site was stabilized. During the CEI, EPA did not observe the temporary sediment detention basins identified in the Erosion and Sediment Control Plan at the Site.
  - h) Part 2.32 of the SWPPP states that the construction entrance shall be maintained in a condition which will prevent tracking, or flowing of sediment onto public rights-of-way. This may require periodic top dressing with additional stone as conditions demand. At the time of the CEI, EPA identified two construction entranceways between unstabilized areas of the Site and Duff Bambury Court. Sediment tracking was observed from the entranceways onto Duff Bambury Court, and the stone in the entranceways was in need of refreshing.
  - i) Part 6.24 of the SWPPP states that concrete trucks will not be allowed to wash out or discharge surplus concrete or drum wash water on the Site except in a designated upland area. In addition, the Erosion and Sediment Control Plan in the SWPPP identifies a concrete washout depression area on the east side of the Site. Concrete washout was identified by EPA on the ground at the Site, in an undesignated area that slopes downhill towards Beckers Brook. The concrete washout depression area identified in the Erosion and Sediment Control Plan was not observed by EPA at the time of the CEI.
9. Part II.C.3 of the CGP states that the owner or operator of a construction activity shall not disturb greater than five (5) acres of soil at any one time without prior written authorization from the NYSDEC or, in acres under the jurisdiction of a regulated, traditional land use control MS4, the MS4. At a minimum, the owner or operator must comply with the following requirements in order to be authorized to disturb greater than five (5) acres of soil at any one time:
- a) The owner or operator shall have a qualified inspector conduct at least two (2) site inspections in accordance with Part IV.C every seven (7) calendar days, for as long as greater than five (5) acres of soil remain disturbed.
  - b) In areas where soil disturbance activity has been temporarily or permanently ceased, temporary and/or permanent soil stabilization measure shall be installed and/or implemented within seven (7) days from the date the soil disturbance activity ceased.

In addition, Part 1.62 of the SWPPP states that there shall not be more than five (5) acres of disturbed soil at any one time without prior written approval from the NYSDEC. At the time of the CEI, approximately six (6) acres of disturbance were observed by EPA, and prior written authorization from the NYSDEC or MS4 had not been obtained for the Site, in violation of Parts II.C.1 and II.C.3 of the CGP. In addition, based on inspection records, a qualified inspector was not conducting inspections twice per week, in violation of Part II.C.3.a, and temporary stabilization measures had not been installed within seven (7) days in areas of the Site where soil disturbance activity had temporarily ceased, in violation of Part II.C.3.b of the CGP.



10. Part IV.C.5 of the CGP states that within one (1) business day of the completion of the inspection, the qualified inspector shall notify the owner or operator and appropriate contractor or subcontractor of any corrective actions that need to be taken. The contractor or subcontractor shall begin implementing the corrective actions within one (1) business day of this notification and shall complete the corrective actions in a reasonable time frame. In addition, Part 5.1 of the SWPPP states that all erosion and sediment control measures will be maintained in good working order and be fully operational. If repair is necessary, it will be initiated within 24 hours of discovery. Based on review of the inspection reports available at the Site, required corrective actions noted on March 26, 2013 had not been implemented at the Site at the time of the April 3, 2013 CEI, including (1) seeding and mulching all inactive disturbed areas, (2) cleaning out the sediment basin and rip rap outlet protection, (3) removing sediment from silt fencing, and (4) providing inlet protection or stabilizing areas adjacent to catch basins, in violation of Parts II.C.1 and IV.C.5 of the Permit. In addition, the Site failed to stabilize the sediment basin and the slopes of the basin, a requirement noted in the inspection reports dating back to March 12, 2013, in violation of Parts II.C.1 and IV.C.5 of the CGP.
11. On May 1, 2013, EPA issued an Administrative Order ("AO" or "Order") (CWA-02-2013-3034), which directed Respondents to address all CGP violations identified by EPA at the time of the April 3, 2013 CEI within thirty (30) days of receipt of the AO. Respondents were also required to submit to EPA and NYSDEC written documentation with accompanying photographs describing what measures were taken to address each item in the Ordered Provisions within forty-five (45) calendar days of receipt of the AO.
12. Respondents received the AO on May 7, 2013.
13. Respondents submitted a response to the AO on July 16, 2013. The July 16, 2013 letter included a written response as well as photographic documentation of the actions taken to address the Ordered Provisions in the AO.
14. Respondents submitted a revised version of the July 16, 2013 response letter to EPA via e-mail on July 29, 2013, which included the dates that the photographs in the July 16, 2013 response were taken.
15. Respondents submitted subsequent, supplemental information to the July 16, 2013 response, including photographs and updated versions of the drawings of the sediment basin at the Site, via e-mail on the following dates: July 30, 2013, and August 13 – 17, 2013.

#### **IV. CONCLUSIONS OF LAW AND FINDINGS OF VIOLATION**

From the Findings of Fact set forth above:

1. Respondents are persons within the meaning of Section 502(5) of the CWA, 33 U.S.C. §1362(5).
2. Respondents discharge stormwater associated with industrial activity, a pollutant within the meaning of Section 502(6) of the CWA, 33 U.S.C. §1362(6), via the above-mentioned outfall pipes, point sources within the meaning of Section 502(14) of the CWA, 33 U.S.C. §1362(14), to Beckers Brook, a navigable water pursuant to Section 502(7) of the CWA, 33 U.S.C. §1362(7), and as such, discharge pollutants pursuant to Section 502(12) of the CWA, 33 U.S.C. §1362(12).

3. Respondents' failure to implement and maintain in effective operating conditions erosion and sediment control practices identified in the SWPPP, as detailed above in paragraphs III.8.(a)-(i), is a violation of Parts II.C.1 and IV.A.1 of the CGP.
4. Respondents' failure to obtain written authorization from the NYSDEC or MS4 prior to disturbing greater than five (5) acres at the Site, as detailed above in paragraph III.9, is a violation of Parts II.C.1 and II.C.3 of the CGP.
5. Respondents' failure to begin implementing corrective actions within 24 hours of notification by the qualified inspector, as detailed above in paragraph III.10, is a violation of Parts II.C.1 and II.C.5 of the CGP.
6. Based on the Findings above, Respondents violated Sections 301 and 402 of the Act, 33 U.S.C. §§1311 and 1342.

#### **V. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY**

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. §1319(g), and the Debt Collection Improvement Act of 1996, EPA, Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties ("Final Order") to Respondents assessing a penalty of **\$37,500**. EPA determined the proposed penalty after taking into account the applicable factors identified at Section 309(g)(3) of the Act, 33 U.S.C. §1319(g)(3). EPA has taken account of the nature, circumstances, extent and gravity of the violation (or violations), and Respondents' prior compliance history, degree of culpability, economic benefit or savings accruing to Respondents by virtue of the violations, and Respondents' ability to pay the proposed penalty. Based on the Findings set forth above, the Respondents are liable for violations of the Act, one of which has continued for at least one-hundred and fifty-five (155) days. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after Respondents' receipt of this Notice, unless Respondents file an Answer to the Complaint within that time and requests a Hearing on this Notice pursuant to the following section.

#### **VI. PROCEDURES GOVERNING THIS ADMINISTRATIVE ACTION**

The rules of procedure governing this civil administrative litigation have been set forth in the CROP, 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

##### **A. Answering The Complaint**

Where Respondents intend to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondents are entitled to judgment as a matter of law, Respondents must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. §22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th floor  
New York, NY 10007-1866**

Respondents shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. §22.15(a). Respondents' Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which the Respondents have any knowledge. 40 C.F.R. §22.15(b). Where Respondents lack knowledge of a particular factual allegation and so states in the Answer, the allegation is deemed denied. 40 C.F.R. §22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts those Respondents dispute (and thus intend to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether Respondents request a Hearing. 40 C.F.R. §22.15(b).

Respondents' failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of a defense may preclude Respondents, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a Hearing.

### **B. Opportunity To Request A Hearing**

If requested by Respondents in their Answer, a Hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. §22.15(c). If however, Respondents do not request a Hearing, the Presiding Officer (as defined in 40 C.F.R. §22.3) may hold a Hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. §22.15(c).

Any Hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. §22.21(d). A Hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§551-59, and the procedures set forth in Subpart D of the CROP, at 40 C.F.R. §§22.21-22.26.

Should Respondents request a Hearing on this proposed penalty assessment, members of the public to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. §1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondents not request a Hearing, EPA will issue a Final Order, and only members of the public who submit timely comment on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a Hearing thereon. EPA will grant the petition and will hold a Hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

### **C. Failure To Answer**

If Respondents fail in any Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. §22.15(d). If Respondents fail to file a timely Answer to the Complaint [i.e. not in accordance with the 30-day period set forth in 40 C.F.R. §22.15(a)], Respondents may be found in default upon motion. 40 C.F.R. §22.17(a). Default by Respondents constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondents' right to contest such factual allegations. 40 C.F.R. §22.17(a). Following a default by Respondents for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. §22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondents without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. §22.27(c). 40 C.F.R. §22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondents, and to collect the assessed penalty amount, in federal court.

## **VII. INFORMAL SETTLEMENT CONFERENCE**

Regardless of whether Respondents request a formal Hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. §22.18(b). At an informal conference with a representative(s) of Complainant, Respondents may comment on the charges made in this Complaint, and Respondents may also provide whatever additional information they believe to be relevant to the disposition of this matter, including: (1) actions Respondents have taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondents' ability to continue in business and/or (4) any other special facts or circumstances Respondents wish to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, in response to any relevant information previously not known to Complainant that demonstrates that any of the findings herein are without merit, or that the proposed penalty is not warranted. Respondents are referred to 40 C.F.R. §22.18.

Any request for an informal conference or any questions that Respondents may have regarding this Complaint should be directed to:

Tim Murphy, Esq.  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th Floor  
New York, NY 10007-1866  
Telephone: (212) 637-3236

The parties may engage in settlement discussions regardless of whether Respondents have requested a Hearing. 40 C.F.R. §22.18(b)(1). Respondents' request for a formal Hearing does not prevent Respondents from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint.

A request for an informal settlement conference does not affect Respondents' obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. §22.15. Note that no penalty reduction will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. §22.18(b)(2). In accepting the Consent Agreement, Respondents waive any right to contest the allegations in the Complaint and waive any right to appeal the Final Order that is to accompany the Consent Agreement. 40 C.F.R. §22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. §22.18(b)(3).

Entering into a settlement through the signing of such Consent Agreement and complying with the terms and conditions set forth in such Consent Agreement and Final Order terminates this administrative litigation and these civil proceedings against Respondents (note that a new enforcement action may be initiated based on continued non-compliance). Entering into a settlement agreement does not extinguish, waive, satisfy or otherwise affect Respondents' obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

### **VIII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE**

Instead of filing an Answer, Respondents may choose to pay the total amount of the proposed penalty, **\$37,500**, within 30 days after receipt of the Complaint, provided that Respondents file with the Regional Hearing Clerk, Region 2 (at the address noted above), a copy of the check or other instrument of payment. 40 C.F.R. §22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Attorney identified in Section VI above. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America", in the full amount of the penalty assessed in this Complaint to the following addressee:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
Docket No. CWA-02-2012-3312

Wire transfers should be directed to the Federal Reserve Bank of New York

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 Fedwire message should read "D 68010727 Environmental Protection Agency".

Pursuant to 40 C.F.R. §22.18(a)(3), if Respondents elect to pay the full amount of the penalty proposed in the Complaint within thirty (30) days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order pursuant to 40 C.F.R. §22.18(a)(3). In accordance with 40 C.F.R. §22.45(c)(3), no Final Order shall be issued until at least ten (10) days after the close of the comment period on this Complaint. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint (note that a new enforcement action may be initiated based on continued non-compliance). Further, pursuant to 40 C.F.R. §22.18(a)(3), the making of such payment by Respondents shall constitute a waiver of Respondents' right both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondents' obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

## **IX. FILING OF DOCUMENTS**

The Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th Floor  
New York, NY 10007-1866

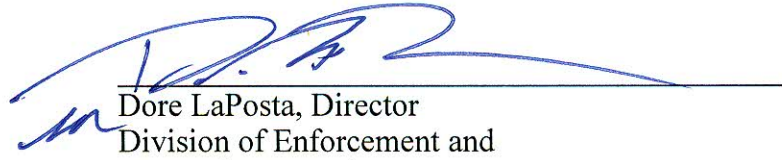
A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Tim Murphy, Esq.  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th Floor  
New York, NY 10007-1866

## **X. GENERAL PROVISIONS**

1. Respondents have a right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated there under, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act will affect Respondents' continuing obligation to comply with the Act, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. §1319(a), for the violations alleged herein.

ISSUED THIS 16<sup>th</sup> DAY OF September, 2013.

  
Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance  
U. S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, New York 10007

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

**IN THE MATTER OF:**

Mr. Robert Iovinella and BTL Properties, LLC  
90 West Campbell Road  
Schenectady, New York 12306

Beckers Crossing Phases IV and V  
Duff Bambury Court  
Rotterdam, NY 12306

SPDES Permit No. NYR10G140

Proceeding pursuant to Sections 308 and 309(a) of the  
Clean Water Act, 33 U.S.C. §§1318 and 1319(a)

**PROCEEDING TO ASSESS A CLASS I  
CIVIL PENALTY**

**DOCKET No. CWA-02-2013-3313**

I certify that on SEP 16 2013, I served the foregoing fully executed Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing, bearing the above referenced docket number, on the persons listed below, in the following manner:

Original and One Copy  
By Hand:

Office of Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 2  
290 Broadway, 16th floor  
New York, New York 10007-1866


Copy by Certified Mail  
Return Receipt Requested:

Robert Iovinella, Owner  
BTL Properties, LLC  
90 West Campbell Road  
Schenectady, New York 12306

Copy by Certified Mail  
Return Receipt Requested

Mr. Joseph DiMura, P.E., Director  
Bureau of Water Compliance Programs  
NYSDEC  
625 Broadway  
Albany, New York 12233-4500

Dated: 9/16/13

  
Secretary  
New York, NY