



March 18, 2024 @ 12:17 pm
USEPA – Region II
Regional Hearing Clerk

REGION 2

NEW YORK, N.Y. 10007

March 15, 2024

VIA EMAIL: jsmith@cityofnewbrunswick.org

James Cahill, Mayor
City of New Brunswick
78 Bayard Street
New Brunswick, NJ 08901

**Re: Notice of Proposed Assessment of a Civil Penalty Class I
City of New Brunswick Municipal Separate Storm Sewer System (“MS4”)
NJPDES Permit No. NJG0150550
Docket No. CWA-02-2024-3307**

Dear Mayor Cahill:

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 the City of New Brunswick (“Respondent”) failed to comply the terms and conditions of the New Jersey Department of Environmental Protection (“NJDEP”) New Jersey Pollutant Discharge Elimination System (“NJPDES”) R9 – Tier A Municipal Stormwater General Permit (“Permit”) for Municipal Separate Storm Sewer Systems (“MS4s”), in violation of Sections 301 and 402 of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1311 and 1342. This Complaint is filed pursuant to the authority of § 309(g) of the Act, 33 U.S.C. § 1319(g). This Complaint proposes that a penalty of **\$30,000** be assessed against Respondent 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. Enclosed a copy of “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination of Suspension of Permits” (“CROP”) (40 Code of Federal Regulations (C.F.R.) Part 22) which the Agency follows in cases of this kind. Please note the requirements for an Answer at 40 C.F.R. § 22.15. **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:**

**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor (Room 1631)
New York, NY 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 40 C.F.R. § 22.17. If a default order is entered, the entire proposed penalty may be assessed without further proceedings.

Whether or not you request a formal hearing, you may informally confer with EPA concerning the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement through such informal conference with the Agency. A request for an informal conference does not substitute for a written Answer or affect what you may choose or say in an Answer, nor does it extend the thirty (30) days by which you must file an Answer requesting a hearing. Any hearing held in this matter will be conducted in accordance with the CROP, including Subpart I thereof. You may represent yourself or be represented by an attorney at any stage of the proceedings, including any informal discussions, whether in person or by telephone.

Please note that, in determining the appropriate penalty amount, EPA may consider the public health and/or environmental benefits of a Supplemental Environmental Project (“SEP”) voluntarily performed by a violator. A SEP is a new project that is not otherwise legally required, and that is designed to: (1) reduce the likelihood that similar violations will occur in the future, (2) reduce any adverse public health and/or environmental impacts created by the violations, and/or (3) reduce the risk that the affected public and/or environment will experience similar adverse impacts. Enclosed is a copy of the 2015 Update to the 1998 U.S Environmental Protection Agency Supplemental Environmental Projects Policy (March 10, 2015) for your consideration.

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

**Brendan Killian
Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
(212) 637-3380
killian.brendan@epa.gov**

Or you may contact Justine Modigliani, P.E., Supervisor, CWA Compliance Section, at (212) 637-4268.
We urge your prompt attention to this matter.

Sincerely,

Kate Anderson, Acting Director
Enforcement and Compliance Assurance Division

Attachments

1. Complaint
2. Consolidated Rules of Practice
3. EPA Supplemental Environmental Projects Policy and SEP Brochure

cc (via email): Karen Maples, Regional Hearing Clerk

Michael Drulis, Administrator, City of New Brunswick

Thomas Valenti, Director, Department of Public Works, City of New Brunswick

Carlton Dudley, Director, Division of Water Compliance and Enforcement, NJDEP

Bryan Barrett, Chief, Southern Bureau of Water Compliance and Enforcement, NJDEP

Douglas McKenna, Manager, Water Compliance Branch, EPA R2

Justine Modigliani, Supervisor, CWA Compliance Section, EPA R2

Christy Arvizu, MS4 Coordinator, EPA R2

Katherine Green, CWA Compliance Section, EPA R2

Phyllis Feinmark, Manager, Water and General Law Branch, EPA R2

Brendan Killian, Water and General Law Branch, EPA R2

March 18, 2024 @ 12:17 pm

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

USEPA – Region II
Regional Hearing Clerk

IN THE MATTER OF:

City of New Brunswick
78 Bayard Street
New Brunswick, NJ 08901

NJPDES Permit No. NJG0150550

Respondent

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. §1319(g)

PROCEEDING TO ASSESS A CLASS I CIVIL PENALTY

DOCKET No. CWA-02-2024-3307

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

I. STATUTORY AND REGULATORY AUTHORITIES

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 United States 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 redelegated it to the Director, Enforcement and Compliance Assurance Division (“ECAD”) 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 (2001), a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against Respondent, as a result of Complainant’s determination that the Respondent is in violation of Section 301 of the Act, 33 U.S.C. § 1311, by failing to comply with the terms of the New Jersey Department of Environmental Protection (“NJDEP”) New Jersey Pollutant Discharge Elimination System (“NJPDES”) R9 – Tier A Municipal Stormwater General Permit, NJ0141852, for stormwater discharges from Municipal Separate Storm Sewer Systems (“MS4s”) for the MS4 that the Respondent owns.

II. DEFINITIONS AND STATUTORY PROVISIONS

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, among other things, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of the 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 NJDEP is the agency with the authority to administer the federal NPDES program in New Jersey pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b). A NPDES permit is required to be issued by the NJDEP to facilities for the discharge of pollutants from point sources to navigable waters of the United States. The EPA maintains concurrent enforcement authority with authorized States for violations of the CWA and permits issued by authorized States thereunder.
3. “Person” is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include an individual, corporation, partnership, association or municipality.
4. “Municipality” is defined by Section 502(4) of the CWA, 33 U.S.C. § 1362(4), to include among other things, a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes.
5. “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.
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 to water.
7. “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.
8. “Navigable waters” are defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), as “waters of the United States, including the territorial seas.”
9. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth the permit requirements for the discharge of stormwater, including discharges of stormwater from MS4s.
10. 40 C.F.R. § 122.26(b)(8) defines an MS4 as a “conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-

made channels, or storm drains): (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law).....that discharges into waters of the United States; (ii) designed or used for collecting or conveying stormwater; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works...”

11. 40 C.F.R. § 122.26(b)(3) defines “incorporated place,” in part, as a city, town, township, or village that is incorporated under the laws of the State in which it is located.
12. 40 C.F.R. § 122.26(b)(16)(ii) defines “small municipal separate storm sewer system,” in part, as not defined as “large” or “medium” MS4s.
13. Pursuant to 40 C.F.R. § 122.32(a)(1), all small MS4s located in an “urbanized area” (as determined by the latest Decennial Census by the Bureau of Census) are regulated small MS4s.
14. 40 C.F.R. §§ 122.33(a) and (b)(1) require operators of regulated small MS4s to seek authorization to discharge under the applicable NPDES general permit issued by the permitting authority, by submitting a Request for Authorization (“RFA”) for coverage under such permit.
15. The terms “MS4 General Permit” or “Permit” mean the NJDEP NJPDES R9 – Tier A Municipal Stormwater General Permit, NJ0141852. The current MS4 General Permit became effective on January 1, 2023, had a minor modification issued on November 1, 2023, and will expire on December 31, 2027. The current MS4 General Permit was preceded by a previous version of the MS4 General Permit which became effective January 1, 2018, and expired on December 31, 2022.
16. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a civil penalty for violations of Section 301 of the CWA, 33 U.S.C. § 1311, or any permit condition or limitation implementing, inter alia, Section 301, and contained in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

III. FINDINGS OF VIOLATION

1. The City of New Brunswick (“Respondent” or the “City”) is a municipal corporation chartered under the laws of the State of New Jersey, and as such, Respondent is a “person,” as that term is defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2, and is an “incorporated place,” as that term is defined in 40 C.F.R. § 122.26(b)(3).
2. Respondent owns the MS4 located in the City of New Brunswick, New Jersey, and is an owner or operator within the meaning of 40 C.F.R. § 122.2.
3. Respondent’s MS4 is a small MS4 located in an urbanized area within the meaning of 40 C.F.R. § 122.26(b)(16)(ii) and 40 C.F.R. § 122.32(a)(1).

4. Respondent's MS4 discharges stormwater, which is a "pollutant" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6), via outfall pipes, which are "point sources" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to the Raritan River, the Delaware and Raritan Canal, Mile Run, and Lawrence Brook. The Raritan River and the Delaware and Raritan Canal are traditional navigable waters, and Mile Run and Lawrence Brook are relatively permanent tributaries of the Raritan River. Therefore, the Raritan River, the Delaware and Raritan Canal, Mile Run, and Lawrence Brook are "navigable waters" within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2. As such, Respondent discharges pollutants within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).
5. Respondent submitted a RFA to the NJDEP and subsequently received authorization under the MS4 General Permit pursuant to permit identification number NJG0150550 and has been covered under the conditions and limitations in the Permit at all relevant times addressed by this Order.
6. The MS4 General Permit authorizes Respondent to discharge pollutants from MS4 outfalls to waters of the United States, under the conditions and limitations prescribed in the Permit.
7. On January 31 – February 2, 2023, EPA Region 2 and an EPA contractor conducted an offsite compliance evaluation of Respondent's MS4 program, and on February 8, 2023, conducted associated field activities (together, the "Audit").
8. The MS4 General Permit was the effective permit at the time of the Audit.
9. Based on the Audit findings, the EPA finds that the Respondent failed to comply with the CWA and the conditions and limitations of the MS4 General Permit, including but not limited to the following:

- a. Part IV.C.1.a.ii of the Permit states, "The permittee shall implement a Public Education and Outreach Program that focuses on educational and pollution prevention activities about the impacts of stormwater discharges on surface water and ground water and involves the public in reducing pollutants in stormwater and mitigating flow. ... At a minimum, at least one of the activities shall involve educating businesses and the general public of hazards associated with illicit connections and improper disposal of waste."

At the time of the Audit, Respondent did not have a program that specifically provides education to businesses and the general public about illicit discharges and connections. Therefore, Respondent violated Part IV.C.1.a.ii of the Permit.

- b. Part IV.F.3.a.v of the Permit states, "The permittee shall develop, update, and implement a MS4 conveyance inspection, cleaning, and maintenance program. The program shall establish when the MS4 conveyance must be cleaned and maintained to ensure proper function and operation."

At the time of the Audit, Respondent did not have a formal MS4 conveyance inspection, cleaning, and maintenance program (e.g., pipes and ditches). Specifically, Respondent did not actively inspect or document cleaning and maintenance activities of MS4 conveyance infrastructure outside of their catch basin cleaning program. Therefore, Respondent violated Part IV.F.3.a.v of the Permit.

c. Part IV.F.4 of the Permit states:

- “a. The permittee shall develop, update, implement and enforce a program to ensure adequate long-term cleaning, operation and maintenance of stormwater facilities not owned or operated by the permittee, not subject to the conditions of another NJPDES stormwater permit and which were constructed after February 7, 1984.
- b. The permittee shall ensure that stormwater facilities not owned or operated by the permittee are inspected and maintained pursuant to approved maintenance plans, or more frequently as needed to ensure the proper function and operation of the stormwater facility, but at a frequency of not less than once per year.
- c. The permittee shall ensure that proper maintenance includes cleaning and removal of solid and floatable materials, including trash/litter, excess leaves or grass clippings, branches, logs, any other debris, or excess growth. ...
- d. The permittee shall maintain a log sufficient to demonstrate compliance with this section, including but not limited to the actions taken by the permittee to enforce compliance with the long-term cleaning, operation, and maintenance program; the stormwater facility that was the subject of the action; location information of the facility with geographic coordinates; the name and title of person responsible for enforcement; the date of the action; and the findings.”

At the time of the Audit, Respondent did not have an inventory of stormwater facilities not owned or operated by the City, and did not have a program in place to ensure long-term cleaning, operation and maintenance of these facilities. Respondent has not ensured that stormwater facilities not owned or operated by the City are inspected and maintained in accordance with their approved maintenance plans, and has not maintained a log sufficient to demonstrate compliance with these requirements. Therefore, Respondent violated Part IV.F.4 of the Permit.

- d. Part IV.F.5.e of the Permit states that the permittee shall “[s]tore clean-up materials, spill kits and drip pans near all liquid transfer areas, protected from rainfall.”

During the Audit, EPA observed gasoline ASTs without spill kits at the police fueling station and at the Parks Department, in violation of Part IV.F.5.e of the Permit.

- e. Part IV.F.5.f of the Permit states, “The permittee shall have secondary containment (e.g., spill containment dikes, double walled tanks, etc.) for all aboveground storage tanks containing bulk liquid (including but not limited to gasoline, diesel fuel, heating oil, hydraulic oil, used oil and liquid de-icing materials).”

During the Audit, EPA observed a liquid calcium de-icing solution in a poly tank and a brine de-icing solution in a poly tank at the Department of Public Works (“DPW”). The poly tanks were both without secondary containment, in violation of Part IV.F.5.f of the Permit.

- f. Part IV.F.5.g of the Permit states that the permittee must “Clearly post, in a prominent area of the facility, instructions for safe operation of fueling equipment that include all the following: ‘Topping off of vehicles, mobile fuel tanks, and storage tanks is strictly prohibited’; ‘Stay in view of fueling nozzle during dispensing’; and the contact information for the person(s) responsible for spill response.”

During the Audit, EPA did not observe signage within the fueling area, or elsewhere at City facilities, with instructions for safe operation of fueling equipment at the DPW or at the Parks Department, in violation of Part IV.F.5.f of the Permit.

- g. Part IV.F.5.r of the Permit states, “The permittee shall ensure that dumpsters and refuse containers that are outdoors or exposed to stormwater, are covered at all times. Roll-offs and open-top waste containers used to collect and temporarily store municipal trash, garbage and non-recyclables must be kept tarped, or otherwise covered unless actively being filled or emptied. Clean roll-offs or other open top containers used to collect clean household recyclables (such as cans, bottles, or paper, but not including materials such as electronics) must be covered when not in use, at the end of each workday, and before any anticipated storm event.”

During the Audit, EPA observed three roll-offs in the recycling area of the DPW yard without coverings, in violation of Part IV.F.5.r of the Permit.

- h. Part IV.F.7.a.x of the Permit states, “The permittee shall provide training on how to inspect, identify, eliminate, and document the impacts associated with illicit connections and details of the program including investigation techniques, physical observations and field sampling.”

At the time of the Audit, City representatives stated that municipal employees had not received training on how to inspect, identify, eliminate, and document the impacts associated with illicit connections and details of the program including investigation techniques, physical observations and field sampling. Therefore, Respondent violated Part IV.F.7.a.x of the Permit.

- i. Part IV.F.10.a of the Permit states, “The permittee shall ensure that municipal board and governing body members complete the ‘Asking the Right Questions in Stormwater Review Training Tool’. ... This training is required for planning board members, zoning board members, and governing body members who review and approve applications for development and redevelopment projects on behalf of the permittee.”

Based on the documentation provided to EPA and conversations with City representatives, municipal board and governing body members who review and approve applications for development and redevelopment projects had not completed

the “Asking the Right Questions in Stormwater Review Training Tool.” Therefore, Respondent violated Part IV.F.10.a of the Permit.

- j. Part IV.G.1.a of the Permit states, “The permittee shall develop, update, and maintain an MS4 Infrastructure Map that delineates the location of stormwater features that are owned or operated by the permittee including... i. MS4 outfalls.”

During the Audit, EPA observed the following unmapped City-owned MS4 outfalls:

- DPW Yard catch basin outfall to the Mile Run tributary (40.483411°, -74.463711°)
- DPW Yard eastern corner outfall to the Mile Run (40.483313°, -74.462029°)
- Jules Street outfall to the Mile Run tributary (40.471824°, -74.478439°)

In addition, the Stormwater Facilities map provided to EPA includes points labeled as outfalls that are not Respondent’s outfalls. During the Audit, City representatives stated that of the 76 outfalls on the Stormwater Facilities map provided, many do not belong to Respondent but rather belong to NJ DOT, Middlesex County, Rutgers University, and NJ Transit. City representatives were not sure which of the mapped outfalls were owned and operated by Respondent versus other entities. Therefore, Respondent failed to update and maintain an MS4 Infrastructure Map that delineates the location of stormwater features that it owns and operates, including MS4 outfalls, in violation of Part IV.G.1.a.i of the Permit.

- k. Part IV.G.2 of the Permit states that:

- “a. The permittee shall develop, update, and implement a program to detect, investigate and control any localized stream scouring from stormwater outfalls owned or operated by the permittee. ...
- b. The permittee shall, at a minimum: i. Inspect each MS4 outfall that discharges to a stream, and the surrounding area in the vicinity of the MS4 outfall, for localized scouring of the stream banks or bottom caused by the outfall. Each outfall shall be inspected at least once every five years, with a minimum of 20% of the total number of outfalls per year.”

At the time of the Audit, Respondent had not developed, updated, or implemented a program to detect, investigate and control any localized stream scouring from stormwater outfalls owned or operated by the City. Respondent had not inspected MS4 outfalls for stream scouring. Therefore, Respondent violated Part IV.G.2 of the Permit.

- l. Part IV.G.3.b of the Permit states that the permittee shall:

- “i. Conduct visual dry weather inspection of all outfalls owned or operated by the permittee at least once every five years, with a minimum of 20% of the total number of outfalls per year, to determine if dry weather flow (flow occurring 72 hours after a rain event) or other evidence of illicit discharge is present; ...

- iii. Investigate, within 30 days of identification, dry weather flows discovered during routine inspection and maintenance of other elements of the MS4;
- iv. Investigate, within 30 days of receipt, complaints and reports of illicit connections, including those from operating entities of interconnected MS4s;
- v. Investigate, within 30 days, to determine the source if evidence of illicit discharge is found;
- vi. Eliminate as soon as possible, but no later than within one year of discovery, non-stormwater discharges that are traced to their source and found to be illicit connections. If unable to eliminate a non-stormwater discharge within one year, the permittee must request an extension from the Department no later than thirty days before the end of the one-year timeframe.”

At the time of the Audit, City representatives stated that dry weather flow inspections have not been completed since 2015. In addition, City representatives discussed residential illicit connection investigations within the City that had been ongoing for approximately a year. At the time of the Audit, the investigations to confirm the illicit connections had not been completed, nor any actions taken by Respondent to eliminate the illicit connections. During the field portion of the Audit, EPA observed dry weather flow and detected a sewage odor in two (2) stormwater manholes on Delafield Street located downstream of the suspected illicit connections. Therefore, Respondent violated Part IV.G.3.b of the Permit.

- 10. On May 10, 2023, EPA issued an Information Request and Administrative Compliance Order, CWA-02-2023-3029 (the “2023 Order”), which required Respondent to address the MS4 General Permit violations identified in Part III, Paragraph 9, above, in accordance with a Compliance Schedule.
- 11. On May 17, 2023, Respondent submitted the signed Acknowledgement of Receipt page for the 2023 Order to EPA.
- 12. Respondent failed to comply with the Compliance Schedule deadlines in the 2023 Order.
- 13. EPA alerted Respondent to overdue items and upcoming deadlines in emails on June 20, 2023, July 18, 2023, and September 12, 2023.
- 14. Respondent has since satisfactorily addressed the following Compliance Schedule items, several months after the deadlines in the 2023 Order: C.2.a, C.2.b.i, C.2.b.iii and C.2.b.iv.
- 15. To date, items C.2.b.ii, C.2.c, C.2.d, C.2.e, C.2.f, C.2.g, C.2.h, C.2.i and C.2.j from the 2023 Order have not been fully addressed. These Compliance Schedule items have been incorporated into a new Administrative Compliance Order setting forth an amended schedule.
- 16. Based on the Findings cited in Paragraphs 1-15 above, Respondent has violated Section 301 of the Act, 33 U.S.C. § 1311.

IV. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and the Debt Collection Improvement Act of 1996, EPA, Region 2, hereby proposes to issue a Final Order Assessing Administrative Penalties (“Final Order”) to Respondent assessing a civil penalty of **\$30,000**. 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 Respondent’s prior compliance history, degree of culpability, economic benefit or savings accruing to Respondent by virtue of the violations, and Respondent’s ability to pay the proposed penalty. Based on the Findings set forth in Part III above, the **Respondent is liable for thirteen (13) distinct violations of the Act, which have continued for at least two hundred and sixty-six (266) days**. The on-going violations are described in Part III, Paragraph 9, Subparagraphs a, b, c, e, h, i, j, k and l, and in Paragraph 15. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after Respondent’s receipt of this Notice, unless Respondent files an Answer to the Complaint within that time and requests a Hearing on this Notice pursuant to the following section.

V. 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 Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent 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:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
maples.karen@epa.gov

Respondent 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). Respondent’s 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 Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks 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 that the Respondent disputes (and thus intends to place at issue in the proceeding), (3) the basis for

opposing the proposed relief and (4) whether Respondent requests a Hearing. 40 C.F.R. § 22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of a defense may preclude Respondent, 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 Respondent in its Answer, a Hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If however, Respondent does 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 40 C.F.R. Part 22.

Should Respondent 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 Respondent 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 Respondent fails 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 Respondent fails 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)], Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent 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 Respondent 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 Respondent, and to collect the assessed penalty amount, in Federal court.

VI. INFORMAL SETTLEMENT CONFERENCE

Regardless of whether Respondent requests 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, Respondent may comment on the charges made in this Complaint and Respondent may also provide whatever additional information is believed to be relevant to the disposition of this matter, including: (1) actions Respondent has 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 Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes 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. Respondent is referred to 40 C.F.R. § 22.18.

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

Brendan Killian
Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
Telephone: (212) 637-3380
killian.brendan@epa.gov

The parties may engage in settlement discussions regardless of whether Respondent has requested a Hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal Hearing does not prevent Respondent 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 Respondent's 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, Respondent waives any right to contest the allegations in the Complaint and waives 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 Respondent (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 Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty **(\$30,000)** within 30 days after receipt of the Complaint, provided that Respondent 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 addresses:

**U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000
Docket No. CWA-02-2022-3319**

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 Respondent elects 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 in accordance with 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 Respondent shall constitute a waiver of Respondent's 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 Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VIII. FILING OF DOCUMENTS

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

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
maples.karen@epa.gov

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

Phyllis Feinmark
Manager, Water and General Law Branch
Office of Regional Counsel
feinmark.phyllis@epa.gov

Brendan Killian
Water and General Law Branch
Office of Regional Counsel
killian.brendan@epa.gov

Douglas McKenna
Manager, Water Compliance Branch
Enforcement and Compliance Assurance Division
mckenna.douglas@epa.gov

and

Katherine Green
CWA Compliance Section
Enforcement and Compliance Assurance Division
green.katherine@epa.gov

IX. GENERAL PROVISIONS

1. Respondent has 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)(2)(A) of the Act will affect Respondent's 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 15th DAY OF March, 2024.

Kate Anderson, Acting Director
Enforcement and Compliance Assurance Division
U. S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007-1866