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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
Suite 1100, 1 Congress Street
Boston, MA 02114-2203

BY HAND

June 10, 2010

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region I
5 Post Office Square, Suite 100
Mail Code ORA17-1
Boston, MA 02109-3912

Re: In the Matter of the Town of Winthrop, Massachusetts
Docket No.: CWA 01-2009-0077: Amended Administrative Complaint

Dear Ms. Santiago:

For the above-referenced matter, please file the enclosed Amended Administrative Complaint and Notice of Opportunity for a Hearing and the Certificate of Service. I have included the original and one copy of these documents. I have also included a copy of the letter notifying the Commonwealth of Massachusetts of the filing of this Amended Complaint.

Pursuant to the Consolidated Rules of Practice, 40 C.F.R. Part 22.14(c), EPA may amend the complaint once as matter of right at any time before the answer is filed. This is the first amendment to this complaint and the Town has not yet filed an answer. Accordingly, EPA is authorized to make this amendment as a matter of right.

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 that reads "Kathleen E. Woodward".

Kathleen E. Woodward
Senior Enforcement Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

In the Matter of)	Docket No. CWA-01-2009-0077
)	
)	AMENDED
TOWN OF WINTHROP)	ADMINISTRATIVE
1 Metcalf Square)	COMPLAINT
Winthrop, Massachusetts 02152)	Proposing to Assess a Civil Penalty
)	Under Section 309(g) of the
)	Clean Water Act
)	
Respondent)	
)	
)	
)	

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, Complainant hereby provides notice of a proposal to assess a civil penalty against the Town of Winthrop (“Respondent”) for failing to comply with the National Pollutant Discharge Elimination System (“NPDES”) General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (“Permit”).

given to the Administrator of EPA by Section 402 of the Act, 33 U.S.C. § 1342.

The Permit authorizes Regulated Small MS4s to discharge storm water to the waters of the United States when certain conditions are met.

10. The Permit became effective on May 1, 2003 and expired at midnight on April 30, 2008. Part VI.B. of the Permit provides that if the Permit is not reissued prior to the expiration date, it will be administratively continued and will remain in force. As of the date of the Complaint, the Permit has not been reissued. Accordingly, pursuant to 40 C.F.R. Part 122.6 and Part VI.B. of the Permit, the conditions of the Permit continue in force and the Permit remains fully effective and enforceable.
11. Part II.A. of the Permit requires, among other things, that permittees “must develop, implement and enforce a [storm water management] program to reduce the discharge of pollutants from the MS4 to the maximum extent practicable; protect water quality; and satisfy the water quality requirements of the Clean Water Act and Massachusetts Water Quality Standards.”
12. Part II.A.1. of the Permit requires that permittees “must develop a storm water management program implementing the minimum measures” described in the Permit.
13. Part II.A.2. of the Permit requires that “All elements of the storm water management program must be implemented by the expiration date of this permit.”
14. Part II.B.3. of the Permit, entitled “Illicit Discharge Detection and Elimination,” requires that permittees “develop, implement and enforce a program to detect and

**COUNT 1: FAILURE TO COMPLY WITH THE PERMIT
REQUIREMENT TO PROHIBIT NON-STORMWATER DISCHARGES INTO
THE MS4 THROUGH AN ORDINANCE OR OTHER
REGULATORY MECHANISM**

17. The Complaint incorporates Paragraphs 1 through 16 by reference.
18. During the Permit term through the present, Respondent has failed to comply with Part II.B.3.(b) of the Permit by failing to prohibit, through an ordinance or other regulatory mechanism, non-storm water discharges into its storm sewer system and to implement appropriate enforcement procedures and actions.
19. Respondent's failure to prohibit, through an ordinance or other regulatory mechanism, non-storm water discharges into its storm sewer system and its failure to implement appropriate enforcement procedures and actions in compliance with Part II.B.3.(b) of the Permit is a violation of a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

**COUNT 2: FAILURE TO COMPLY WITH THE PERMIT
REQUIREMENT TO DEVELOP AND IMPLEMENT AN IDDE PLAN**

20. The Complaint incorporates Paragraphs 1 through 19 by reference.
21. During the Permit term through the present, Respondent has failed to comply with Part II.B.3.(c) of the Permit by failing to develop and implement a plan to detect and address non-storm water discharges into the storm sewer system.
22. Respondent's failure to develop a plan to detect and address non-storm water discharges into the storm sewer system in compliance with Part II.B.3.(c) of the Permit is a violation of a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

28. 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 took 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, the Respondent's prior compliance history, the degree of culpability for the cited violations, any economic benefit or savings accruing to the Respondent resulting from the violations, the Respondent's ability to pay the proposed penalty, and such other matters as justice may require.
29. The violations alleged are significant because failure to develop, implement and enforce a program to detect and eliminate illicit discharges may result in storm water runoff that contributes to the impairment of water quality.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

30. 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 Respondent has 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.

CONTINUED COMPLIANCE OBLIGATION

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

Date: 06/10/10

Susan Studlien
Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region I
1 Congress Street, Suite 1100 SAA
Boston, Massachusetts 02114-2023

In the Matter of: Town of Winthrop, Massachusetts
Docket No. CWA 01-2009-0077

CERTIFICATE OF SERVICE

I certify that the foregoing 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, MA 02109-3912

Copy by certified mail, return receipt requested:

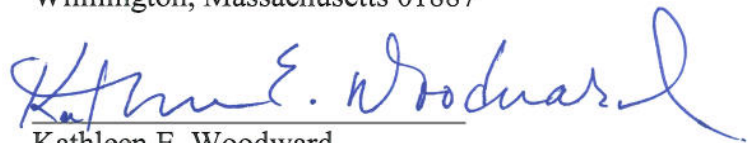
James M. McKenna
Town Manager
Town of Winthrop
Town Hall
1 Metcalf Square
Winthrop, Massachusetts 02152

Copy by first-class mail to:

Marc J. Goldstein
Beveridge & Diamond PC
15 Walnut Street, Suite 400
Wellesley, Massachusetts 02481-2133

Richard Chalpin, Regional Director
Massachusetts Department of Environmental
Protection
Northeast Regional Office
205B Lowell Street
Wilmington, Massachusetts 01887

Dated: June 10, 2010



Kathleen E. Woodward
Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. EPA, Region I
5 Post Office Square, Suite 100
Mail Code OES4-2
Boston, MA 02109-3912
(617) 918-1780