

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

In the Matter of

Docket No. CWA-01-2012-0003

**ALBEE REALTY TRUST,
LAWRENCE HILL, TRUSTEE
and
BRIAN MCCANN, TRUSTEE
117 Water Street
Milford, Massachusetts 01757**

**ADMINISTRATIVE COMPLAINT
Proposing to Assess a Civil Penalty
Under Section 309(g) of the
Clean Water Act**

Respondents

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 Albee Realty Trust ("Trust"), Lawrence Hill, Trustee, and Brian McCann, former Trustee of the Albee Realty Trust,

- (collectively, “Respondents”) for failing to comply with the NPDES General Permit for Storm Water Discharges from Construction Activities (“CGP”).
3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into the navigable waters of the United States except in compliance with, among other things, a NPDES permit issued under Section 402 of the Act, 33 U.S.C. § 1342.
 4. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines “discharge of pollutants” to include “any addition of any pollutant to navigable waters from any point source.” Section 502(14) of the Act, 33 U.S.C. § 1362(14), defines a “point source” as “any discernible, confined and discrete conveyance ... from which pollutants are or may be discharged.”
 5. Section 402(p)(2)(B) of the Act, 33 U.S.C. § 1342(p)(2)(B), requires any storm water discharge associated with “industrial activity” to be authorized by a NPDES permit.
 6. Section 308(a) of the Act, 33 U.S.C. § 1318(a), authorizes EPA to require the owner or operator of any point source to provide such information as EPA may reasonably require to carry out the objectives of the Act, including the issuance of NPDES permits pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
 7. Pursuant to Sections 308 and 402 of the Act, EPA promulgated storm water discharge regulations at 40 C.F.R. § 122.26. Forty C.F.R. § 122.26(c) requires dischargers of storm water associated with “industrial activity” to apply for an individual permit or seek coverage under a promulgated stormwater general permit. Forty C.F.R. § 122.26(b)(14)(x) defines industrial activity to include the

clearing, grading, and excavation of land. Forty C.F.R. § 122.26(b)(13) defines stormwater to include storm water runoff, snow melt runoff, and surface runoff and drainage.

8. In February 1998, EPA issued the NPDES General Permit for Storm Water Discharges from Construction Activities, 63 Fed. Reg. 7858 (Feb. 17, 1998). The 1998 Construction General Permit (“CGP”) was effective February 17, 1998 and expired February 17, 2003. EPA re-issued the CGP in July 2003, 68 Fed. Reg. 45817 (July 1, 2003) (“2003 CGP”). The 2003 CGP was effective July 1, 2003. The 2003 CGP was modified effective January 1, 2005. The 2003 CGP, as modified, expired July 1, 2008. EPA re-issued the CGP in July of 2008, 73 Fed. Reg. 40338 (July 14, 2008) (“2008 CGP”). The 2008 CGP was effective June 30, 2008 and was to expire on June 30, 2010. The expiration date of the 2008 CGP was extended to February 15, 2012 (75 Fed. Reg. 4554 (January 28, 2010) and 76 Fed. Reg. 40355 (July 8, 2011)). Owners and operators of construction projects that were previously authorized to discharge under the 2003 CGP were automatically authorized to discharge under the 2008 CGP. The 2003 and the 2008 CGPs authorize, subject to conditions contained therein, the discharge of pollutants in storm water runoff associated with construction activities, including construction activities within the Commonwealth of Massachusetts.
9. To obtain coverage under the 2003 and 2008 CGPs, Part 2 of both the 2003 and 2008 CGPs requires “operators” to submit a notice of intent (“NOI”). Part 2.4.C of the 2008 CGP requires operators of unpermitted on-going projects to submit an NOI within 90 days of the issuance date of the 2008 CGP. Part 2.1.B of the 2003

CGP and Part 2.3 of the 2008 CGP provide that coverage under the CGP begins seven calendar days after acknowledgment of receipt of the complete NOI is posted on EPA's NPDES website. Part 2.4.D. of the 2008 CGP allows operators to submit late NOIs after the commencement of construction activities, but reserves to EPA the right to take enforcement action for any unpermitted discharges that occur between the commencement of construction and discharge authorization.

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

- means that the permittee must minimize pollutant discharges from the site by preserving existing vegetation and stabilization of disturbed areas.
12. Section 3.6 of the 2008 CGP requires that permittees must “maintain all control measures and other protective measures in effective operating condition.”
 13. Section 3.1.B of the 2008 CGP requires “Off-Site Sediment and Dust Control” and Section 3.1.C of the 2008 CGP requires “Runoff Management”.
 14. Section 3.1.F. of the 2008 CGP requires management of “Construction and Waste Materials” to minimize exposure of construction and waste materials to stormwater.

ALLEGATIONS

15. Respondent Lawrence Hill is trustee of the Trust with a mailing address of Albee Realty Trust, c/o Hill Financial Services Co., 117 Water Street, Milford, Massachusetts, 01757.
16. Respondent Brian McCann was trustee of the Trust from May 5, 2005 through September 16, 2011, the date of his resignation as trustee, with a mailing address of 10 Highridge Road, Bellingham, Massachusetts, 02019.
17. The mailing address for Respondent Trust is 117 Water Street, Milford, Massachusetts, 01757.
18. Each Respondent is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
19. Respondents have developed a portion of a residential subdivision on a 19.8 acre parcel located on the northeasterly side of Albee Road in Uxbridge,

- Massachusetts. The project is commonly known as the Mountainview Estates (hereinafter, the "Subdivision" or the "Construction Site").
20. The Subdivision is comprised of seven lots for single-family homes. Construction of the Subdivision will result in a disturbed area of approximately 6.75 acres.
 21. Construction commenced at the Subdivision in July of 2008. On-site construction included clearing, grading and excavation activities.
 22. When Respondents commenced clearing, grading, and excavating at the Construction Site, Respondents engaged in the "commencement of construction activities" as defined in Appendix A of the 2003 and 2008 CGPs.
 23. The on-site construction is "industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14)(x).
 24. Respondents submitted a NOI to be covered under the 2003 CGP on September 10, 2007. Respondents did not submit the NOI to the address specified in the 2003 CGP but instead addressed it to an EPA regional address in Boston. The NOI was not processed and Respondents did not receive authorization to discharge.
 25. The NOI states that the estimated area to be disturbed is 6.75 acres; that the estimated project start date is October 1, 2007; and that the Construction Site will discharge to an "intermittent stream tributary to the Blackstone River."
 26. Respondents did not submit a NOI to be covered under the 2008 CGP until June 2, 2011. On June 9, 2011, EPA granted coverage under the CGP to Respondent. Respondent is currently authorized to discharge stormwater subject to the terms and conditions of the 2008 CGP (Permit #MAR10DU14).

27. Respondents Hill, McCann and the Trust have had operational control over construction plans and specifications for the Construction Site and day-to-day operational control of activities necessary to ensure compliance with permit conditions from July of 2008 when construction commenced. Respondents Hill's and the Trust's operational control continue to the present. Respondent McCann's operational control ceased on September 16, 2011, when he resigned as Trustee. "Albee Realty Trust" is listed as the "operator" on the NOI form. Each Respondent is an "operator" within the meaning of 40 C.F.R. § 122.2 and Appendix A of both the 2003 and 2008 CGPs.
28. As "operator[s]" of the Construction Site, once Respondents obtained NPDES permit coverage for the construction activities at the Construction Site, Respondents were required to comply with all requirements and conditions for operation under the Act, its regulations and the applicable permit.
29. As of March 14, 2011, an approximately 950 foot development roadway was under construction at the Subdivision. Three-hundred and fifty feet of the roadway had been paved. The roadway was to have been completed in July of 2011.
30. Most of the stormwater runoff from the Site flows to the south toward Albee Road. Runoff from the far northern portion of the Construction Site first flows to the northwest then travels south toward Albee Road.
31. The runoff that flows from most of the Construction Site is collected by a detention basin adjacent to Albee Road. The discharge from this basin enters a culvert under Albee Road. At times a portion of the stormwater does not enter the

- detention basin but instead flows down the development roadway and onto Albee Road, then flows into a catch basin on Albee Road. This catch basin discharges to the same culvert under Albee Road to which the detention basin discharges.
32. The culvert under Albee road passes under a residential property and discharges at an outfall located at the rear of the property into an unnamed stream. Water in the stream then flows through a wetland into a pond. The pond discharges to a stream flowing west. The stream then flows approximately 800 yards west then flows into the Blackstone River.
33. Storm water runoff has been contaminated with sand, dirt, sediment, suspended solids, residues of construction material, and turbidity. The sand, dirt, sediment, suspended solids, residues of construction material, and turbidity constitute “pollutant[s]” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).
34. During and shortly after certain storm events beginning in July 2008 and continuing through at least September 17, 2010, silt laden stormwater from the detention pond and the roadway at the Construction Site discharged from the Construction Site by way of the culvert that conveys the Construction runoff under Albee Road and the residential property into the unnamed stream transporting visible silt into the unnamed stream.
35. On September 17, 2010 silt deposits were observed in the streambed close in proximity to the culvert outlet.
36. During and shortly after storm events, “industrial activities” at the Construction Site have resulted in a “discharge of pollutants” within the meaning of Section

- 502(5) of the Act, 33 U.S.C. § 1362(5), and the “discharge of storm water associated with industrial activities” as defined in 40 C.F.R. § 122.26(b)(14).
37. The unnamed stream to which the detention basin and catch basin discharge by way of culvert under Albee Road and a residential property, the wetlands through which the unnamed stream flows, the pond into which the unnamed stream flows, the unnamed stream that flows from the pond to the Blackstone River, and the Blackstone River are “waters of the United States,” as defined in 40 C.F.R. § 122.2, and, thereby, “navigable waters,” as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7).
38. The outlet that drains the detention basin adjacent to Albee Road, the catch basin on Albee Road, and the outfall of the culvert that conveys stormwater from the Construction Site to the rear of the residential property are “point sources” as defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14).
39. The discharges of storm water associated with industrial activity from these point sources constitute “discharges of pollutants” within the meaning of Section 502(12) of the Act, 33 U.S.C. § 1362(12).
40. As of EPA’s inspection of the Construction Site on September 17, 2010, there was no gravel pad at the transition between the unpaved main site road and the entrance road, there was no sediment barrier for water running off of the Construction Site, and the entrance to the Construction Site road diverted stormwater onto Albee Road instead of into the detention basin. Extensive sediment deposits were observed along the entrance road to the Construction Site.

41. Had Respondents been authorized to discharge under the 2008 CGP, Respondents' failure to properly install and maintain measures to ensure off-site sediment control and runoff management as observed on September 17, 2010 in accordance with Parts 3.1.B and 3.1.C of the 2008 CGP would be in violation of a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
42. Section 3.1.E. of the 2008 CGP requires management of "Construction and Waste Materials" to minimize exposure of construction and waste materials to stormwater.
43. As of EPA's inspection of the Construction Site on September 17, 2010, there was a pile of concrete and asphalt scraps and debris, a pile of construction debris, and what appeared to be old vinyl flooring. The pile was uncovered and had no controls to prevent exposure to stormwater or to prevent stormwater from carrying pollutants off of the pile.
44. In May of 2010 Respondents' consultant represented to the Uxbridge Conservation Commission that Respondents had taken measures to remediate remaining runoff issues.
45. As of September 17, 2010, the date of EPA's inspection of the Construction Site, erosion control and stabilization measures were poorly maintained, not functioning properly or were non-existent. Had Respondents been authorized to discharge under the 2008 CGP, Respondents' failure to properly install and maintain measures to ensure minimization of exposure of construction and waste materials to stormwater as observed on September 17, 2010, in accordance with

- Part 3.1.E of the 2008 CGP would be in violation of a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
46. As of September 17, 2010, the silt fence at the road on the eastern side of the Construction Site had failed and the north and west portions of the Construction Site had not been stabilized.
47. Had Respondents been authorized to discharge under the 2008 CGP, Respondents' failure to properly install and maintain measures to ensure erosion control and stabilization as observed on September 17, 2010, in accordance with Part 3.1.H of the 2008 CGP would be in violation of a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
48. Section 4.A. of the 2008 CGP requires that permittees conduct inspections according to one of two schedules set forth in the permit.
49. From July of 2008 through September of 2010, Respondents did not conduct inspections at the Construction Site.
50. Had Respondents been authorized to discharge under the 2008 CGP, Respondents' failure to conduct inspections at the Construction Site in accordance with Part 4.A of the 2008 CGP would be in violation of a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

**COUNT 1: UNAUTHORIZED DISCHARGE OF STORMWATER
ASSOCIATED WITH INDUSTRIAL ACTIVITY**

51. The Complaint incorporates Paragraphs 1 through 50 by reference.
52. By discharging storm water associated with industrial activity at the Site during storm events from July of 2008 through June 9, 2011 without authorization under

- any NPDES permit, Respondents were in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). In the alternative, were the Respondents deemed to have permit coverage for any of the above period, the Respondents were in violation of that permit.
53. Pursuant to 309(g) of the Act, 33 U.S.C. § 1319(g), the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, *et seq.*, the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, *et seq.*, and the rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.1-19.4, and the 2008 Civil Monetary Penalty Inflation Adjustment Rule effective January 12, 2009 (73 Fed. Reg. 75,340 (Dec. 8, 2008)), for each violation occurring before or on January 12, 2009, Respondents are subject to civil penalties of up to eleven thousand dollars (\$11,000) per day for each day during which the violation continued; and, for each violation that occurred after January 12, 2009, Respondents are is subject to civil penalties of up to sixteen thousand dollars (\$16,000) per day for each day during which the violation continued, up to a maximum of one hundred seventy-seven thousand five hundred dollars (\$177,500).

PROPOSED ASSESSMENT OF CIVIL PENALTY

54. EPA is seeking a penalty from Respondents of up to \$16,000 for each day of violation for at least 84 days up to a maximum of \$177,500.
55. In determining the amount of the penalty to be assessed under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), EPA will take into account

the statutory factors listed in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3).

These factors include the nature, circumstances, extent and gravity of the violations, Respondents' prior compliance history, the degree of culpability for the cited violations, any economic benefit or savings accruing to Respondents resulting from the violations, Respondents' ability to pay the proposed penalty, and such other matters as justice may require.

56. The violations alleged against Respondents are significant because failure to implement and maintain the BMPs necessary to prevent the discharge of pollutants resulted in silt-laden discharges to waters of the United States.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

57. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.14, notice is hereby given that Respondents have the right to request a hearing on any material fact alleged in this Complaint and on the appropriateness of any proposed penalty. Any such hearing will be conducted in accordance with the Consolidated Rules of Practice, a copy of which is enclosed. Members of the public, to whom EPA is obliged to give notice of this proposed action, have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to comment on any proposed penalty and to be heard and to present evidence at the hearing.
58. Respondents' Answer must comply with 40 C.F.R. § 22.15 and must be filed with the Regional Hearing Clerk at the following address within thirty (30) days of receipt of the Complaint:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region I
5 Post Office Square, Suite 100
Mail Code ORA18-1
Boston, Massachusetts 02109-3912

59. To be entitled to a hearing, Respondents must include their request for a hearing in their Answer to the Complaint.
60. Pursuant to Section 22.5(c)(4) of the enclosed Consolidated Rules of Practice, the following individual is authorized to receive service on behalf of EPA:

Kathleen E. Woodward
U.S. Environmental Protection Agency
Region I
5 Post Office Square, Suite 100
Mail Code OES04-2
Boston, Massachusetts 02109-3912

61. If Respondents do not file a timely Answer to this Complaint, that Respondents may be found in default. Default constitutes, for purposes of this action only, an admission of all facts alleged in the Complaint and a waiver of the Respondents' right to a hearing on factual allegations contained therein.

CONTINUED COMPLIANCE OBLIGATION

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

Date: 06/06/12

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

**In the Matter of: Albee Realty Trust, Lawrence Hill, Trustee and
Brian McCann, Trustee
Docket No. CWA 01-2012-00036**

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, Massachusetts 02109-3912

Copy by certified mail, return
receipt requested

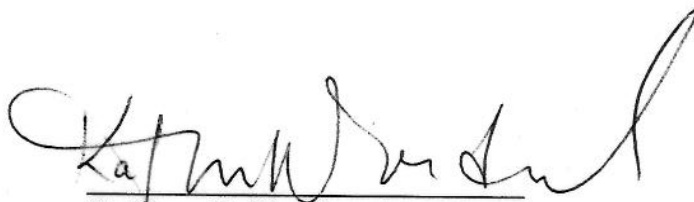
Lawrence Hill, Trustee
Albee Realty Trust
117 Water Street.
Milford, MA 01757

Brian McCann
10 High Ridge Road
Bellingham, MA 02019

Copy by first-class mail to:

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

Dated: June 12, 2012



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

**In the Matter of: Albee Realty Trust, Lawrence Hill, Trustee and
Brian McCann, Trustee
Docket No. CWA 01-2012-00036**

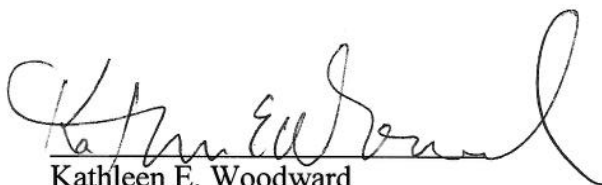
CERTIFICATE OF SERVICE - Addendum

I certify that the foregoing Complaint was sent to the following persons, in the manner specified on the date below:

Copy by certified mail, return
receipt requested

Brian McCann
c/o Hills Financial
117 Water Street
Milford, MA 01757

Dated: June 25, 2012

A handwritten signature in black ink, appearing to read 'Kathleen E. Woodward', is written over a horizontal line.

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