

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

DATE: JAN 08 2009

SUBJECT: Administrative Penalty Assessment – Class II
151-45 Sixth Road Whitestone Partners LLC
(CWA-02-2009-3401)

FROM: Philip Greco, CHMM, CHME *PG*
Enforcement Specialist, DECA-SET

TO: File

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 JAN 14 PM 3:39
REGIONAL HEARING
CLERK

We have determined an appropriate proposed penalty for assessment against 151-45 Sixth Road Whitestone Partners LLC ("Respondent") whose facility is located at 151-45 Sixth Road, Whitestone, New York, through the following application of the statutory factors in §309(g) of the Act.

(A) Nature, Circumstances, Extent and Gravity of the Violation

Respondent discharges storm water into the East River, a navigable water of the United States pursuant to Section 502(7) of the Act, 33 U.S.C. §1362(7). Respondent violated federal National Pollutant Discharge Elimination System (NPDES) requirements in violation of the Act and its implementing regulations pursuant to §301, §308, and §402 of the Clean Water Act (CWA). Respondent failed to obtain and implement a State Pollutant Discharge Elimination System (SPDES) permit for the discharge of storm water associated with industrial activity to the East River.

The Respondent is in violation of Sections 307 and 308 of the Clean Water Act (CWA). Presently, there is no data to assess the violation's effect on human health.

(B) Prior History of Such Violations

Respondent has been operating at the Whitestone, New York facility since, at least, 2005. An EPA inspection conducted on July 3, 2008 and July 8, 2008, verified that Respondent did not obtain a Multi-Sector General Storm Water SPDES permit for the discharge as noted above.

(C) Degree of Culpability

The Respondent should be aware of its obligation to monitor and report in accordance with the applicable Standards, as the applicable Storm Water Standards had been promulgated and subsequently revised and/or effective for a number of years.

(D) Recalcitrance

Presently, there is no evidence of recalcitrance.

(E) Economic Benefit

The Economic Benefit of non-compliance was incurred as a result of Respondent's failure to obtain a Multi-Sector General Storm Water SPDES permit, submit a Notice of Intent and a Storm Water Pollution Prevention Plan and sample and analyze the discharge as required for reporting. Cost data which was inputted into the "BEN" computer program for non-submittal and associated costs was obtained from Respondent. The economic benefit was, therefore, computed to be \$28,422.00.

(F) Ability to Pay

Presently, EPA possesses no information to include an inability to pay consideration.

In conclusion, the application of the statutory factors in §309(g) fully supports the proposed penalty of \$125,000.00.

bcc: Karen Maples, Regional Hearing Clerk
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