



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I  
ONE CONGRESS STREET, SUITE 1100  
BOSTON, MA 02114-2023

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BY HAND

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 1 (RAA)  
One Congress Street, Suite 1100  
Boston, MA 02114-2023

EPA GRC  
OFFICE OF  
REGIONAL HEARING CLERK

Re: TLT Construction Corporation  
EPA Docket No. CWA-01-2008-0070

Dear Regional Hearing Clerk:

Enclosed for filing are the following original documents, and one copy of each, relating to the above-referenced matter:

1. Amended Administrative Complaint and
2. Certificate of Service.

Kindly file the documents in the usual manner.

Please note that the Amended Complaint is being filed before an Answer was filed and is therefore filed as a matter of right in accordance with 40 C.F.R. §22.14(c). In accordance with 40 C.F.R. §22.14(c), Respondent must file an Answer within 20 days of being served with the Amended Complaint.

Thanks very much for your help.

Very truly yours,

Amelia Welt Katzen  
Senior Enforcement Counsel

Enclosures

cc: Robert Fitzgerald, Esquire  
Jill T. Metcalf, Regional Hearing Clerk  
Joseph Canzano, EPA



proposal to seek a civil penalty from Respondent 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.  
Section 402(p)(6) of the Act, 33 U.S.C. § 1342(p)(6), requires the regulation of storm water discharges, other than those associated with industrial activity, necessary to protect water quality.
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. Section 122.26(c) requires dischargers of storm water

associated with “industrial activity” and with “small construction activity” to apply for an individual permit or to seek coverage under a promulgated general permit. Sections 122.26(b)(14)(x) and (15) of 40 C.F.R. define industrial and small construction activities to include the clearing, grading, and excavation of land resulting in the disturbance of equal to or greater than one acre of land or the disturbance of less than once acre of land that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre of land. Section 122.26(b)(13) defines storm water 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 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). The re-issued CGP was effective July 1, 2003 and expires July 1, 2008.<sup>1</sup> The CGP authorizes, 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 CGP, Part 2 of the CGP requires “operators” to submit a notice of intent (“NOI”). The CGP at Appendix A defines “operator” as “any party associated with a construction project” that has either “operational control over construction plans and specifications, including the ability to make modifications to those

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<sup>1</sup> The reissued CGP did not become effective in Massachusetts until August 4, 2003. *See* 68 Fed. Reg. 45817 (Aug. 4, 2003). Additionally, the 2003 CGP was modified on December 22, 2004, effective on January 21, 2005. *See* 69 Fed. Reg. 76743 (Dec. 22, 2004).

plans and specifications” or “has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions).”

10. Part 2.3.C of the CGP requires operators of unpermitted projects ongoing as of July 1, 2003 to submit an NOI within 90 days of that date.
11. Part 3.1 of the CGP requires operators to prepare a storm water pollution prevention plan (“SWPPP”) addressing each construction project covered by the permit. Part 3.1 of the CGP requires that the SWPPP be prepared prior to submission of an NOI.
12. Part 3.12.D of the CGP requires the SWPPP to be signed and certified.
13. Part 3.1.D of the CGP requires that operators implement the SWPPP as written from commencement of construction activity until final stabilization is complete.
14. Part 3.1 of the CGP requires operators to implement the SWPPP as a condition of the permit.

### ALLEGATIONS

15. The Reading Memorial High School construction site is located at 82 Oakland Road in Reading, Massachusetts (the “Construction Site”) and is being developed for use as a secondary public school.
16. The Construction Site consists of approximately 52 acres of land, of which approximately 35 acres have been disturbed.

17. The Town of Reading (“the Town”) owns the Construction Site.
18. TLT Construction Corporation is a corporation organized under the laws of the Commonwealth of Massachusetts, with a principal office located at One Pope Street in Wakefield, Massachusetts.
19. TLT is the general contractor for the Construction Site and is responsible for developing the Construction Site, including clearing, grading and excavating the site as well as installing drainage systems, utilities and sub-grade pads.
20. TLT is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
21. TLT has 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. TLT is therefore the “operator” of the Construction Site, as defined at 40 C.F.R. § 122.2 and Appendix A of the CGP.
22. On or about May 1, 2004, TLT commenced construction activities by clearing and grubbing of land at the Construction Site.
23. On separate occasions in August, September, November and December 2004, the Town’s Conservation Officer inspected the Construction Site and observed turbid water being discharged from the Construction Site into the Aberjona River.
24. Respondent prepared an NOI dated February 28, 2005 for storm water permit coverage under the CGP for the Construction Site. TLT submitted the NOI for the Construction Site to EPA on August 10, 2007. EPA has no record that TLT submitted the NOI or any other permit application for the Construction Site prior to August 10, 2007.
25. On March 7, 2005, TLT completed a SWPPP and signed a terms and conditions

certification statement for the construction activities. The SWPPP was updated and submitted to EPA on August 20, 2007.

26. On April 18, 2007, a representative from EPA inspected the Construction Site and observed hay bales, silt fence, and miscellaneous construction debris and materials deposited in the Aberjona River. According to a TLT representative, the material deposited in the Aberjona River had been in the River since at least March 18, 2007.
27. During EPA's April 18, 2007 inspection, TLT was not able to provide inspection records for the Construction Site.
28. On May 9, 2007, the Town's Conservation Officer inspected the Construction Site and observed sediment in storm water discharges from the Construction Site flowing into the Aberjona River from failed erosion and sedimentation controls.
29. On May 11, 2007, the Town's Conservation Commission issued TLT an Enforcement Order 9WPA (Form 9A), under the authority of the State's Wetland Protection Act, M.G.L. c. 131, §40, to address TLT's release of sediment into the Aberjona River as a result of failed erosion and sedimentation controls. The Order required TLT to install erosion and sedimentation controls in the construction area and in the adjacent drainage system, sweep paved areas, clean catch basin sumps, clean drain pipes to the Aberjona River, and remove deposited sediment from the Aberjona River by May 18, 2007.
30. On May 21, 2007 and June 5, 2007, the Town's Conservation Officer inspected the Construction Site and observed failed erosion and sedimentation controls, discharge of dewatering activities to a catch basin without proper sedimentation controls and filters, and the failure of TLT to meet the Conservation Commission's May 18, 2007 deadline.

31. On February 18, 2008, a resident of Reading, MA observed sediment in storm water discharges from the Construction Site flowing into the Aberjona River from failed erosion and sedimentation controls. The resident documented his observations with photographs and sent them in an e-mail to the Town's Conservation Officer.
32. On February 19, 2008, the Conservation Officer, Frank Fink, spoke with TLT at the Construction Site and observed deposits of sediments on the roads leading to the catch basins, as well as sediments left in the stream when the water level went down after the storm. The Conservation Officer documented his February 19, 2008 observations and those of the Town resident on February 18, 2008 in an e-mail to EPA dated February 22, 2008.
33. When Respondent commenced clearing and grubbing activities at the Construction Site, Respondent engaged in the "commencement of construction activities" as defined in Appendix A of the CGP.
34. The on-site construction is "industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14)(x) because, at the completion of the project, approximately 35 acres will have been disturbed as a result of clearing, grading, and excavation activities.
35. Storm water from the Construction Site discharges through three concrete pipes, which are "point sources," as defined at Section 502(14) of the CWA, 33 U.S.C. §1362(14).
36. The three pipes discharge to the Aberjona River, which flows into the Upper and Lower Mystic Lakes, which in turn flow to the Mystic River, to Boston Harbor. The Aberjona River, Upper and Lower Mystic Lakes, Mystic River and Boston Harbor are all "waters of the United States," as defined at 40 C.F.R. §122.2, and are therefore "navigable waters,"

as defined at Section 502(7) of the CWA, 33 U.S.C. §1362(7).

37. The discharges of storm water from the Construction Site are “discharges of pollutants,” as defined at Section 502(6) and (12) of the Act, 33 U.S.C. § 1362(6) and (12).
38. At no time before August 10, 2007 did the Respondent or any other person apply for an individual permit or submit an NOI to have industrial storm water discharges from the Construction Site authorized by the CGP.
39. During storm events, the Construction Site’s “industrial activities” 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).
40. In addition to the Construction Site, TLT has conducted construction activities that resulted in the disturbance of more than one acre of land at the following sites: Pembroke High School in Pembroke, MA, Needham High School in Needham, MA, Jacobs Elementary School in Hull, MA, and North Shore Bank, in Peabody, MA (the “Four Additional Construction Sites”).
41. Storm water from the Four Additional Construction Sites discharges through “point sources,” as defined at Section 502(14) of the CWA, 33 U.S.C. §1362(14), into “waters of the United States,” as defined at 40 C.F.R. §122.2, and therefore “navigable waters,” as defined at Section 502(7) of the CWA, 33 U.S.C. §1362(7).
42. TLT had operational control over construction plans and specifications for the Four Additional Construction Sites and day-to-day operational control of activities necessary to ensure compliance with permit conditions. TLT was therefore the “operator” of the Four

Additional Construction Sites, as defined at 40 C.F.R. § 122.2 and Appendix A of the CGP.

43. During the time it was an operator of the Four Additional Construction Sites, Respondent did not apply for an individual permit or submit an NOI to have industrial storm water discharges from the Four Additional Construction Sites authorized by the CGP.
44. During storm events, the Four Additional Construction Sites' "industrial activities" 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).

**COUNT 1: FAILURE TO APPLY FOR A NPDES PERMIT**

45. The Complaint incorporates Paragraphs 1 through 39 by reference.
46. By failing to timely apply for an individual permit or submit an NOI for coverage under a general storm water permit with respect to the Construction Site, Respondent was in violation of Section 308(a) of the Act, 33 U.S.C. § 1318(a), from at least May 1, 2004 through February 2005.
47. By failing to timely apply for an individual permit or submit an NOI for coverage under a general storm water permit with respect to the Four Additional Construction Sites, Respondent was in violation of Section 308(a) of the Act, 33 U.S.C. § 1318(a).

**COUNT 2: UNAUTHORIZED DISCHARGE OF STORM WATER  
ASSOCIATED WITH INDUSTRIAL ACTIVITY**

48. The Complaint incorporates Paragraphs 1 through 46 by reference.
49. During storm events from at least May 1, 2004 through February 2005, Respondent

discharged without authorization under any NPDES permit "storm water associated with industrial activities," as defined by 40 C.F.R. § 122.26, from "point source[s]" at the Construction Site to "waters of the United States," as defined in 40 C.F.R. § 122.2.

50. With respect to the Four Additional Construction Site, Respondent discharged without authorization under any NPDES permit "storm water associated with industrial activities," as defined by 40 C.F.R. § 122.26, from "point source[s]" to "waters of the United States," as defined in 40 C.F.R. § 122.2.
51. The discharge of storm water associated with industrial activity from these point sources to "waters of the United States" without authorization under any NPDES permit violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).

**COUNT 3: FAILURE TO PREPARE AN ADEQUATE  
STORM WATER POLLUTION PREVENTION PLAN**

52. The Complaint incorporates Paragraphs 1 through 51 by reference.
53. Section 3.1.A of the CGP requires the operator to prepare a SWPPP prior to submission of an NOI.
54. Section 3.11 of the CGP requires that the SWPPP be amended whenever there is a change in design, construction, operation, or maintenance at the construction site that has or could have a significant effect on the discharge of pollutants to the waters of the United States, or it is determined that the SWPPP is ineffective in eliminating pollutants in storm water discharges from the construction site.
55. In April 2005 and April, May and June 2007, pollutants in storm water were discharged from the Construction Site.

56. From March 2005 through July 2007 (28 months), TLT failed to review and update the SWPPP.
57. TLT's failure to review and update the SWPPP was in violation of the terms and conditions of a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and, therefore, in violation of Section 301(a) of the CWA, 33 U.S.C. §1311(a).

**COUNT 4: FAILURE TO IMPLEMENT STORM WATER  
POLLUTION PREVENTION PLAN**

58. Section 3.10 of the CGP requires that qualified personnel conduct routine inspections of all areas of the site disturbed by construction activity and that an inspection report be completed for each required inspection. A record of each inspection and of any actions taken in accordance with Section 3.10 must be retained as part of the SWPPP for at least three years from the date that permit coverage expires or is terminated.
59. The SWPPP requires that inspection of all erosion and sedimentation control measures be performed weekly and within 24 hours after any storm event greater than 0.5 inches of rain per 24-hour period. The SWPPP provides that a copy of the inspection report will be submitted to TLT's project Superintendent within 24 hours of the inspection.
60. From March 2005 through January 2007 (23 months), Respondent failed to complete inspection reports and maintain records of storm water erosion and sedimentation control inspections, in violation of the terms and conditions of a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and, therefore, in violation of Section 301(a) of the CWA, 33 U.S.C. §1311(a).

**PROPOSED ASSESSMENT OF CIVIL PENALTY**

61. Pursuant to Section 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 (61 Fed. Reg. 69360, 69 (Dec. 31, 1996); 69 Fed. Reg 7121, 7 (Feb. 13, 2004)), Respondent is subject to civil penalties of up to \$11,000 per day for each day during which the violation continued up to a maximum of \$157,500 for each violation occurring after March 15, 2004.
62. EPA is seeking a penalty under Counts 1, 2, 3 and 4 from Respondent of up to \$11,000 for each day of violation for at least 1,186 days, up to a maximum of \$157,500.
63. 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 violation, or violations, and 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.
64. The violations alleged are significant because failure to implement and maintain the BMPs necessary to prevent the discharge of pollutants may result in stormwater runoff that contributes to the impairment of water quality. These violations are also significant because of the extent and duration of the violations.

**NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

65. 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.
66. Respondent's 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  
1 Congress Street, Suite 1100 (RAA)  
Boston, Massachusetts 02114-2023

To be entitled to a hearing, Respondent must include its request for a hearing in its Answer to this Complaint.

67. 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:

Amelia Welt Katzen  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency  
Region I  
1 Congress Street, Suite 1100 (SEL)  
Boston, Massachusetts 02114-2023

68. If Respondent does not file a timely Answer to this Complaint, that Respondent 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 Respondent's right to a hearing on factual allegations contained therein.

**CONTINUED COMPLIANCE OBLIGATION**

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

Date: 11/10/08

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

\_\_\_\_\_)  
In the Matter of: )  
 ) EPA Docket No.  
 ) CWA-01-2008-0070  
**TLT CONSTRUCTION CORPORATION,** )  
 )  
 )  
RESPONDENT )  
\_\_\_\_\_)

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Amended Administrative Complaint has been sent to the following persons on the date noted below:

Original and one copy,  
hand-delivered:

Ms. Wanda Santiago  
Regional Hearing Clerk (RAA)  
U.S. EPA, Region I  
One Congress Street, Suite 1100  
Boston, MA 02114-2023

Copy, by Certified Mail,  
Return Receipt Requested:

Robert H. Fitzgerald, Esquire  
Goodwin Procter LLP  
Exchange Place  
Boston, MA 02109

Copy, hand delivered:

Jill T. Metcalf  
Regional Judicial Officer (RAA)  
U.S. EPA, Region I  
One Congress Street, Suite 1100  
Boston, MA 02114-2023

Dated: 11/10/08

  
Amelia Welt Katzen  
Senior Enforcement Counsel (SEL)  
U.S. Environmental Protection Agency, Region 1  
One Congress Street, Suite 1100  
Boston, MA 02114-2023  
Tel (617) 918-1869