



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

AUG 20 2014

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5946 8012

Mr. Patrick R. Vecchio, Town Supervisor
Town of Smithtown
99 West Main Street
P.O. Box 9090
Smithtown, New York 11787

U.S. Environmental
Protection Agency-Reg 2
2014 AUG 25 AM 7:31
REGIONAL HEARING
CLERK

Re: Notice of Proposed Assessment of a Civil Penalty Class I
Town of Smithtown Municipal Separate Storm Sewer System (MS4)
Docket No. CWA-02-2014-3306

Dear Mr. Vecchio:

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 Town of Smithtown ("Respondent"), located at 99 West Main Street, P.O. Box 9090, in Smithtown, New York has violated Section 301 of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §1311. This Complaint is filed pursuant to Section 309(g) of the Act, 33 U.S.C. §1319(g). Upon consideration of the factors in Section 309(g), the Complaint proposes that a civil penalty of **\$37,500** 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. I have enclosed a copy of Consolidated Rules of Practice ("CROP"), found at 40 Code of Federal Regulations Part 22, which the EPA follows in cases of this kind. Please note the requirements for an Answer at Section 22.15 of the CROP. **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:**

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 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, §22.17 of the CROP). If a default order is entered, the entire proposed penalty may be assessed without further proceedings.

Regardless of whether or not you request a formal hearing, EPA encourages you to pursue the possibility of settlement by requesting an informal conference with the Agency concerning the alleged violations and the amount of the proposed penalty. Please note that a request for an informal conference

does not substitute for a written Answer, or affect what you may choose to say in an Answer, nor does it extend the thirty (30) day deadline by which you must file an Answer.

The Agency also encourages the use of Supplemental Environmental Projects ("SEPs"), where appropriate, as part of any settlement. Enclosed is a copy of the Final EPA Supplemental Environmental Projects Policy (May 1, 1998) for your consideration.

You may represent yourself or be represented by an attorney at any stage of the proceedings, including any informal discussions and/or a formal hearing, whether in person or by telephone. Any hearing held in this matter will be conducted in accordance with the CROP.

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

Kim Kramer, Esq.
Water & General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway - 16th Floor
New York, New York 10007-1866
(212) 637-3238

Should you have any questions concerning this matter, please feel free to contact Ms. Kim Kramer at the phone number above or Ms. Justine Modigliani, Compliance Section Chief at (212) 637-4268.

Sincerely,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

1. Complaint
2. CROP
3. EPA Supplemental Environmental Projects Policy and SEP Brochure

cc: Joseph DiMura, P.E., Director, Bureau of Water Compliance Programs, NYSDEC



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

AUG 20 2014

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5946 8029

Mr. Joe DiMura, P.E., Director
Bureau of Water Compliance Programs
Division of Water
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-3506

RE: Notice of Proposed Assessment of a Civil Penalty Class I
Town of Smithtown Municipal Separate Storm Sewer System (MS4)
Docket No. CWA-02-2014-3306

Dear Mr. DiMura:

Enclosed is a copy of the Complaint and Proposed Assessment of a Civil Penalty, which the United States Environmental Protection Agency (EPA) has issued the Town of Smithtown pursuant to §309(g) of the Clean Water Act (Act), 33 U.S.C. §1319(g). EPA has issued the Complaint to begin the process to administratively assess a civil penalty of **\$37,500** against Respondent for violations of the Act.

Since the violations have occurred in the State of New York, EPA is offering you an opportunity to confer with us regarding the proposed assessment. You may confer with me at (212) 637-4000.

A copy of 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 (40 C.F.R. Part 22), is enclosed for your reference.

Sincerely,

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

1. Complaint
2. CROP

U.S. Environmental
Protection Agency-Reg 2
2014 AUG 25 AM 7:31
REGIONAL HEARING
CLERK

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Town of Smithtown
99 West Main Street
Smithtown, New York 11787

SPDES Permit No. NYR20A277

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-02-2014-3306

U.S. Environmental
Protection Agency-Reg 2
2014 AUG 25 AM 7:31
REGIONAL HEARING
CLERK

**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 U.S. 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 delegated it to the Director, Division of Enforcement and Compliance Assistance (“DECA”) 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 York State Department of Environmental Conservation’s (“NYSDEC’s”) State Pollutant Discharge Elimination System (“SPDES”) General Permit for Storm Water Discharges from Municipal Separate Storm Sewer Systems (“MS4s”) for the MS4 that the Respondent owns and operates.

II. DEFINITIONS AND STATUTORY PROVISIONS

1. Section 301(a) of the CWA, 33 U.S.C. §1311(a), prohibits the discharge of pollutants from a point source into waters of the United States, except in compliance with, *inter alia*, 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 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 New York State Department of Environmental Conservation (“NYSDEC”) is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402 of the CWA, 33 U.S.C. §1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA. Additionally, under the authority granted to the NYSDEC by the EPA under Section 402(b) of the CWA, 33 U.S.C. §1342(b), a State Pollutant Discharge Elimination System (“SPDES”) permit is required to be issued to facilities by the NYSDEC for the discharge of pollutants from said facilities from a point source to a navigable water of the United States.
3. “Person” is defined by Section 502(5) of the CWA, 33 U.S.C. §1362(5), to include an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State.
4. “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, biological materials and agricultural waste discharged into water.
5. “Navigable waters” is defined by Section 502(7) of the CWA, 33 U.S.C. §1362(7), to include the waters of the United States.
6. “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.
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. 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 Municipal Separate Storm Sewer Systems (“MS4s”).
9. 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...”

10. 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.
11. 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.
12. 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.
13. 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 Notice of Intent (“NOI”) for coverage under such permit.
14. NYSDEC issued SPDES General Permit for Storm Water Discharges from MS4s (GP-0-10-002) (“Permit”) on May 1, 2010 and it expires on April 30, 2015. The Permit supersedes the previous SPDES permit (GP-0-08-002), which became effective on May 1, 2008 and expired on April 30, 2010, and SPDES permit (GP-02-02), which became effective on January 8, 2003 and expired on January 8, 2008. SPDES permit (GP-02-02) was administratively extended until May 1, 2008, when SPDES permit (GP-0-08-002) became effective.
15. 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 Town of Smithtown (“Respondent”) is a municipal corporation chartered under the laws of the State of New York, and as such, Smithtown is a person, as 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 defined in 40 C.F.R. §122.26(b)(3).
2. Respondent owns and operates the MS4, located in the Town of Smithtown, Suffolk County, New York and is an “owner or operator” within the meaning of 40 C.F.R. §122.2.
3. The MS4 in the Town of Smithtown is a small MS4 located in a 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. The MS4 in the Town of Smithtown is a point source within the meaning of Section 502(14) of the CWA, 33 U.S.C. §1362(14).
5. The Town of Smithtown’s MS4 discharges stormwater, a pollutant within the meaning of Section 502(6) of the CWA, 33 U.S.C. §1362(6), to Long Island Sound, Fresh Pond, Sunken Meadow Creek, Nissequogue River, Phillips Mill Pond, Webster Pond, New Mill Pond, Northeast Branch, Millers Pond, Hunts Pond and Lake Ronkonkoma, waters of the United States within the meaning of 502(7) of the CWA, 33 U.S.C. §1362(7), and 40 C.F.R. §122.2, and as such, discharges pollutants within the meaning of Section 502(12) of the CWA, 33 U.S.C. §1362(12).

6. The Town of Smithtown submitted a Notice of Intent (“NOI”) and a Storm Water Management Program (“SWMP”) to NYSDEC on February 25, 2003, seeking coverage under the SPDES permit (GP-02-02). The Town subsequently received permit coverage under the SPDES General Permit (GP-02-02) on April 2, 2003, and permit coverage was maintained under subsequent SPDES permits (GP-0-08-002) and (GP-0-10-002).
7. EPA, accompanied by NYSDEC, conducted a compliance Audit of Smithtown’s MS4 on May 22, 2012 through May 24, 2012.
8. SPDES General Permit (GP-0-10-002), effective on May 1, 2010, was the effective permit at the time of the Audit.
9. At the time of the Audit, the EPA inspector identified the following violations of the Permit:
 - a. Part IV.A of the Permit requires the permittee to develop, implement and enforce a Storm Water Management Program (“SWMP”) designed to reduce the discharge of pollutants to the maximum extent practicable (“MEP”). Part X.B of the Permit defines SWMP as a plan to be used by the permittee to document developed, planned and implemented SWMP elements. Part X.B of the Permit states that documents to include in the SWMP Plan are: applicable local laws, program budget, policy, procedures, and materials for each minimum control measure, outfall and small MS4 system maps, stormwater management practice selection and measurable goals, documentation of public outreach effort and public comments and submitted construction site SWPPPs and review letters. Part X.B of the Permit states that the SWMP Plan shall be revised to incorporate any new or modified Best Management Practices (“BMPs”) or measurable goals. At the time of the Audit, the Town’s March 2003 SWMP Plan did not include the following required SWMP Plan elements, in violation of Part IV.A of the Permit:
 - i. Updates to incorporate 2008 and 2010 additional permit requirements;
 - ii. Identified Pollutants of Concern (“POCs”), as required by Part VII.A.1.a of the Permit;
 - iii. Developed measurable goals;
 - iv. SWMP Plan review and update procedure required by Part VII.A.4.a.vii;
 - v. Applicable local laws including but not limited to the Town’s ordinance: Chapter 315, Water Pollution;
 - vi. Enforcement procedures necessary to implement SWMP, as required by Part VII.A.4.a.ix;
 - vii. Program budget;
 - viii. Written procedures for responding to public complaints, as required by VII.A.4.a.viii;
 - ix. Available Illicit Discharge Detection Elimination (“IDDE”) equipment, written procedures for identifying and locating illicit discharges (trackdown), procedures for eliminating illicit discharges, procedures for conducting dry weather monitoring of outfalls, and procedures for documenting actions, as required by Part VIII.A.3.g of the Permit;
 - x. Outfall and MS4 system maps;
 - xi. Construction site SWPPP review procedures, SWPPP review letters, SWPPP acceptance procedures; submitted SWPPPs; SWPPP conditional release procedures and approvals; construction site inspection procedures, construction site inspection reports; construction site Notice of Termination (“NOT”)

- procedures, construction site operator training documentation and procedures for documenting actions;
- xii. Written procedures for routine inspections of post-construction stormwater management practices and written plans for adequate operation and maintenance;
 - xiii. Municipal facilities and operations self-assessment procedure, documentation and results, as required by Part VII.A.6.a.ii of the Permit; and
 - xiv. Employee pollution prevention and good housekeeping training program, as required by Part VII.A.6.a.vi.
- b. Parts VII.A.1.c, VII.A.2.e, VII.A.3.j, VII.A.4.a.xiii, VII.A.5.c, and VII.A.6.c of the Permit requires all permittees to develop, record, periodically assess and modify as needed measurable goals for each of the six (6) minimum control measures. At the time of the Audit, Smithtown failed to develop and include in the March 2003 SWMP Plan measurable goals for each of the MCMs, in violation of Parts VII.A.1.c, VII.A.2.e, VII.A.3.j, VII.A.4.a.xiii, VII.A.5.c, and VII.A.6.c of the Permit.
- c. Part IV.G of the Permit requires that all permittees must, through a signed certification statement, contract or agreement, provide adequate assurance that the third parties will comply with permit requirements applicable to the work performed by the third party. Town-hired contractors (garbage haulers) have not signed the certification statement listed in the Permit, and the statement is not included in contracts with the Town. Therefore, Smithtown failed to provide adequate assurance that third parties will comply with permit requirements applicable to the work performed by the third party, in violation of Part IV.G of the Permit.
- d. Part V.C.1 of the Permit requires that the Annual Report be received by NYSDEC no later than June 1 of each reporting year. Four of the past five Annual Reports submitted by the Town of Smithtown were not received by NYSDEC by June 1 of the reporting year (2008, 2010, 2011 and 2012 Annual Reports), in violation of Part V.C.1 of the Permit.
- e. Part V.C.3 of the Permit requires all permittees to include any change in identified BMPs or measurable goals and justification for those changes in the Annual Report. The construction site stormwater runoff control program measurable goal listed in the 2009 and 2010 Annual Reports included "number of SWPPPs reviewed" while the space was left blank on the 2011 Annual Report with no justification. Therefore, Smithtown failed to include justification in the 2011 Annual Report for omitting the construction site stormwater runoff control program measurable goal in the 2011 Annual Report, in violation of Part V.C.3 of the Permit.
- f. Part VII.A.1.a of the Permit requires permittees to identify Pollutants of Concern ("POCs") and Part X of the Permit defines POCs as nitrogen, phosphorus, silt and sediment, pathogens, flow, and floatables impacting impaired waterbodies listed on the Priority Waterbody List known to come in contact with stormwater that could be discharged to that water body. Additional POC requirements in the Permit include Parts III.B.1, VII.A.1.b.ii, VII.A.1.d, VII.A.3.f, VII.A.3.k, VII.A.4.a.xiv, VII.A.5.d and VII.A.6.d of the Permit. The Town discharges stormwater to Millers Pond (specifically, Outfall F8.1) which is listed as impaired for phosphorus on the Priority Waterbody List

and in Appendix 2 of the Permit and to Lake Ronkonkoma (specifically, Outfalls J9.1 and J9.2) which is listed as impaired for pathogens on the Priority Waterbody List and in Appendix 2 of the Permit. At the time of the Audit, Smithtown failed to identify POCs including phosphorus and pathogens, in violation of Part VII.A.1.a of the Permit and Part X of the Permit. Additional Permit requirements not met by the Town of Smithtown due to the lack of identified POCs include Parts III.B.1, VII.A.1.b.ii, VII.A.1.d, VII.A.3.f, VII.A.3.k, VII.A.4.a.xiv, VII.A.5.d and VII.A.6.d of the Permit.

- g. Part VII.A.3.b.i of the Permit states that all permittees must develop and maintain a map, at a minimum, showing the location of all outfalls within the permittee's jurisdiction in the urbanized area and additionally designated area. EPA identified at least seven (7) unmapped outfalls at the time of the Audit, as documented in Attachment F of the Audit Report. Therefore, Smithtown failed to develop and maintain a map showing the location of all outfalls within the Town's jurisdiction in the urbanized area, in violation of Part VII.A.3.b.i of the Permit.
- h. Part VII.A.3.b.ii of the Permit states that at a minimum, all permittees must by March 9, 2010, develop and maintain a map showing the preliminary boundaries of the permittees' storm sewersheds using GIS or other tools, even if they extend outside of the urbanized area (to facilitate track down), and additionally designated area within the permittee's jurisdiction. According to Town representatives and the 2009 through 2011 submitted Annual Reports, the Town has not developed a map showing the preliminary boundaries of the storm sewershed. Therefore, Smithtown failed to develop and maintain a map showing the preliminary boundaries of the storm sewershed by the March 9, 2010 deadline, in violation of Part VII.A.3.b.ii of the Permit.
- i. Part VII.A.3.d of the Permit requires all permittees to conduct, document and maintain outfall reconnaissance inventory, as described in the EPA publication entitled Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessment, addressing every outfall within the urbanized area and additionally designated area within the permittee's jurisdiction at least once every five years, with reasonable progress each year. Annual Reports submitted by the Town for 2009, 2010 and 2011 lists zero outfalls having been screened for dry weather discharges. Therefore, Smithtown failed to conduct, document and maintain outfall reconnaissance inventory, as described in the EPA publication, including but not limited to, dry weather outfall screening addressing every outfall within the urbanized area and additionally designated area within the permittee's jurisdiction at least once every five years, with reasonable progress each year, in violation of Part VII.A.3.d of the Permit.
- j. Part VII.A.3.f of the Permit requires all permittees to prohibit, through a law, ordinance or other regulatory mechanism, illicit discharges into the small MS4 and implement appropriate enforcement procedures and actions. This mechanism must be equivalent to the State's model IDDE local law "NYSDEC Model Local Law to Prohibit Illicit Discharges, Activities and Connections to Separate Storm Sewer Systems". The mechanism must be certified by the attorney representing the small MS4 as being equivalent to the State's model illicit discharge local law. According to Smithtown's 2011 submitted Annual Report and Town representatives, an attorney representing the Town has not certified the Town's IDDE ordinance as being equivalent to the State's model illicit discharge local law. Therefore, Smithtown failed to have its attorney

certify that the Town's IDDE ordinance, Chapter 315 Water Pollution, is equivalent to the State's model illicit discharge local law, in violation of Part VII.A.3.f of the Permit.

- k. Part VII.A.3.g of the Permit requires all permittees to develop and implement a program to detect and address non-stormwater discharges to the small MS4. The program must include: available equipment; procedures for identifying and locating illicit discharges (track down); procedures for eliminating illicit discharges; and procedures for documenting actions. At the time of the Audit, Smithtown failed to develop a written program that includes available equipment; procedures for identifying and locating illicit discharges (track down); procedures for eliminating illicit discharges; and procedures for documenting actions, in violation of Part VII.A.3.g of the Permit.
- l. Part VII.A.4.a.vii of the Permit requires all permittees to develop, implement and enforce a construction site stormwater runoff control program that describes procedures for Stormwater Pollution Prevention Plan ("SWPPP") review. At the time of the Audit, Smithtown failed to develop written procedures for SWPPP review, in violation of Part VII.A.4.a.vii of the Permit.
- m. Part VII.A.4.a.viii of the Permit requires all permittees to develop, implement and enforce a construction site stormwater runoff control program that describes procedures for receipt and follow up on complaints or other information submitted by the public regarding construction site stormwater runoff. At the time of the Audit, Smithtown failed to develop written procedures for receipt and follow up on complaints by the public regarding construction site stormwater runoff, in violation of Part VII.A.4.a.viii of the Permit.
- n. Part VII.A.4.a.ix of the Permit requires all permittees to develop, implement and enforce a construction site stormwater runoff control program that describes procedures for site inspections and enforcement of erosion and sediment control measures, including steps to identify priority sites for inspection and enforcement based on the nature of the construction activity, topography, and the characteristics of soils and receiving water and permittees shall sign the MS4 Acceptance statement on the Notice of Termination to document that it is acceptable for the owner or operator of a construction project to submit a NOT. At the time of the Audit, Smithtown failed to develop, implement and enforce a program that describes procedures for construction site inspections, enforcement, identifying priority sites for inspection and NOT procedures that include signing the MS4 acceptance statement on the NOT, in violation of Part VII.A.4.a.ix of the Permit.
- o. Part VII.A.4.a.x of the Permit requires all permittees to develop, implement and enforce a construction site stormwater runoff control program that educates construction site owner and/or operators about the municipality's construction stormwater requirements, when construction stormwater requirements apply, to whom they apply, the procedures for submission of SWPPPs, construction site inspections, and other procedures associated with control of construction stormwater. At the time of the Audit, Smithtown did not develop and implement a program that educates construction site owners and/or operators about the municipality's construction stormwater requirements, when construction stormwater requirements apply, to whom they apply, the procedures for

submission of SWPPPs, construction site inspections, and other procedures associated with control of construction stormwater, in violation of Part VII.A.4.a.x of the Permit.

- p. Part VII.A.4.a.xi of the Permit requires all permittees to develop, implement, and enforce a construction site stormwater runoff control program that ensures that construction site operators have received erosion and sediment control training before they do work within the covered entity's jurisdiction and maintain records of that training. At the time of the Audit, Smithtown failed to develop, implement and enforce a program that ensures that construction site operators have received erosion and sediment control training before they do work within the MS4's jurisdiction and maintain records of that training, in violation of Part VII.A.4.a.xi of the Permit.
- q. Part VII.A.5.a.vi of the Permit requires all permittees to develop, implement, and enforce a post-construction stormwater management program that maintains an inventory of post-construction stormwater management practices within the MS4's jurisdiction. At the time of the Audit, Smithtown failed to develop, implement and enforce a program that maintains an inventory of post-construction stormwater management practices discharging to the small MS4 that have been installed since March 10, 2003, all practices owned by the small MS4, and those practices found to cause or contribute to water quality standard violations, in violation of Part VII.A.5.a.vi of the Permit.
- r. Part VII.A.5.a.vii of the Permit requires all permittees to develop, implement and enforce a post-construction stormwater management program that ensures adequate long-term operation and maintenance of management practices identified in Part VII.5.a.vi by trained staff, including inspection to ensure that practices are performing properly. Smithtown does not routinely inspect and does not have a long-term operation and maintenance plan for post-construction stormwater management practices within the MS4's jurisdiction. Therefore, Smithtown failed to develop, implement and enforce a program that ensures adequate long-term operation and maintenance of management practices identified in Part VII.5.a.vi by trained staff, including inspection to ensure practices are performing properly, in violation of Part VII.A.5.a.vii of the Permit.
- s. Part VII.A.6.a.i of the Permit requires all permittees to develop and implement a pollution prevention/good housekeeping program for municipal operations and facilities that addresses municipal operations and facilities that contribute or potentially contribute Pollutants of Concern ("POCs") to the small MS4 system. The operations and facilities may include, but are not limited to: street and bridge maintenance; winter road maintenance; stormwater system maintenance; vehicle and fleet maintenance; park and open space maintenance; municipal building maintenance; solid waste management; new construction and land disturbances; right-of-way maintenance; marine operations; hydrologic habitat modification; or other. At the time of the Audit, EPA inspectors observed inadequate pollution prevention/good housekeeping program development and implementation at the following locations that contribute or potentially contribute POCs to the small MS4 system, in violation of Part VII.A.6.a.i of the Permit:
 - i. At the Highway Department – Smithtown Yard:

1. At least four (4) floor drains located in the vehicle maintenance garage, where vehicle maintenance, oil changes and parts cleaning occurs, discharge into the MS4 system located on-site and oil sheens were observed on liquids in catch basins;
 2. Vehicle washwater containing detergent enters the MS4 system on-site;
 3. Car battery exposed to stormwater located at the metal recycling stock pile immediately uphill from a stormwater catch basin; and
 4. Stormwater runoff from the unroofed fueling station enters the MS4 system on-site.
- ii. At the Highway Department – Kings Park Yard:
1. Vehicles are washed using detergent and wax on-site east of the garage in an unroofed area. Vehicle washwater drains east and ponds in an area containing phragmites vegetation on-site and then flows south down the paved driveway and east into a stormwater catch basin on Old Northport Road;
 2. At the time of the Audit, oil sheen was observed on liquids flowing from the ponding area, down the paved driveway and into the catch basin on Old Northport Road;
 3. Additional stock piles of metal, asphalt, stone and sediment are stored on the east side of the facility exposed to stormwater uphill from the driveway. At the time of the Audit, oil sheen was observed on liquids flowing from the stockpile area toward the paved driveway; and
 4. Stormwater runoff from the unroofed fueling station enters the catch basins on Old Northport Road and at the time of the Audit, oil sheens were observed on pooling liquids located in the fueling area.
- t. Part VII.A.6.a.ii of the Permit requires that the permittee must, at a minimum frequency of once every three years, perform a self assessment of all municipal operations addressed by the SWMP to: determine the sources of pollutants potentially generated by the permittee's operations and facilities; and identify the municipal operations and facilities that will be addressed by the pollution prevention and good housekeeping program, if it is not done already. At the time of the Audit, Smithtown failed to perform a self-assessment of all municipal operations addressed by the SWMP, at a minimum frequency of once every three years, in violation of Part VII.A.6.a.ii of the Permit.
- u. Part VII.A.6.a.vi of the Permit requires the permittee to develop and implement a pollution prevention/good housekeeping program for municipal operations and facilities that includes an employee pollution prevention and good housekeeping training program and ensures that staff receive and utilize training. Annual Reports submitted by the Town in 2009, 2010 and 2011 list zero stormwater management trainings provided to employees. Therefore, Smithtown failed to include employee pollution prevention and good housekeeping training as part of its pollution prevention and good housekeeping program, in violation of Part VII.A.6.a.vi of the Permit.
- v. Part VII.A.6.d of the Permit requires that all permittees must adopt techniques to reduce the use of fertilizers, pesticides, and herbicides, as well as potential impact to surface water. According to Town representatives, fertilizers are applied once in the spring and once in the fall to all Town buildings and ball fields. At the time of the Audit, the Town did not track and report to the NYSDEC the use of fertilizers and the Town's SWMP

Plan did not include techniques adopted to reduce the use of fertilizers as well as potential impact to surface water, in violation of Part VII.A.6.d of the Permit.

10. EPA issued a Request for Information (“RFI”), pursuant to Section 308 of the CWA, 33 U.S.C. §§1318(a), to the Town of Smithtown on June 15, 2012 (Docket No. CWA-IR-12-015) requesting the Town to submit to EPA a storm sewer system evaluation of the Smithtown Highway Yard within thirty (30) calendar days of receipt of the RFI.
11. Respondent requested an extension to respond to the RFI in a letter to EPA dated June 26, 2012 and on July 4, 2012, EPA granted a thirty day extension.
12. On September 18, 2012, EPA received a complete response to the RFI from the Town of Smithtown.
13. On January 24, 2013, pursuant to Section 309(a) of the CWA, EPA issued an Administrative Order (“AO” or “Order”) (CWA-02-2013-3012), which directed the Town of Smithtown to comply with the requirements of the Permit.
14. The Town of Smithtown submitted responses to EPA dated March 18, 2013, March 19, 2013, March 27, 2013, April 8, 2013, April 9, 2013, April 10, 2013, April 11, 2013, April 23, 2013, April 24, 2013, April 25, 2013, April 26, 2013, May 27, 2013, May 28, 2013, May 29, 2013, May 30, 2013, May 31, 2013, June 4, 2013, June 24, 2013, June 25, 2013, June 26, 2013, June 27, 2013, August 13, 2013, August 28, 2013, March 10, 2014 and June 10, 2014 in response to Ordered Provisions in the AO.
15. Based on the Findings cited in paragraphs 1-9 above, Respondent violated Sections 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) of the Act, 33 U.S.C. §1319(g), 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 **\$37,500**. 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 above, the **Respondent is liable for violations of the Act, one of which has continued for at least seven hundred and sixty-four (764) days**. 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:

**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007-1866**

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:

Kim Kramer, Esq.
Water and General Law Branch
Office of Regional Counsel
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone (212) 637-3238
Fax: (212) 637-3202

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 waive 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 **\$37,500** 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 addressee:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Docket No. CWA-02-2014-3306

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:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

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

Kim Kramer, Esq.
Water and General Law Branch
Office of Regional Counsel
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone (212) 637-3238

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) 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 20th DAY OF August, 2014.

Dore LaPosta

Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U. S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Town of Smithtown
99 West Main Street
Smithtown, New York 11787

SPDES Permit No. NYR20A277

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-02-2014-3306

CERTIFICATE OF SERVICE

I certify that on AUG 22 2014, I served the foregoing fully executed Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing, bearing the above referenced docket number, on the persons listed below, in the following manner:

Original and One Copy
By Hand:

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Certified Mail
Return Receipt Requested:

Mr. Patrick R. Vecchio, Town Supervisor
Town of Smithtown
99 West Main Street
P.O. Box 9090
Smithtown, New York 11787

Copy by Certified Mail
Return Receipt Requested:

Mr. Joseph DiMura, P.E., Director
Bureau of Water Compliance Programs
NYSDEC
625 Broadway
Albany, New York 12233-4500

Dated: 8/22/2014

Carolyn Drayton

_____, Secretary
New York, NY