UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

IN THE MATTER OF Mt. Tom Generating Company, LLC Route 5, Smith's Ferry Holyoke, Massachusetts 01040 NPDES Permit No. MA0005339	COMPLAINT AND NOTICE OF NOTICE OF OPPORTUNITY FOR HEARING Proceeding to Assess a Class II Civil Penalty under Section 309(a) of the Clean Water Act, as amended, 33 U.S.C. § 1319(a) DOCKET No. CWA-01-2010-0059

I. STATUTORY 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 ("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 Mt. Tom Generating Co., LLC ("Respondent") for failing to comply with the terms and conditions of its National Pollutant Discharge Elimination System ("NPDES") permit and, therefore, violating Section 301(a) of the Act, 33 U.S.C. § 1311(a).

RESPONDENT

3. Respondent is a corporation organized under the laws of Delaware which owns and operates a power generation facility located at Route 5, Smith's Ferry in Holyoke, Massachusetts (the "Facility").

4. Respondent is a "person" as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).

ALLEGATIONS

5. Respondent is a coal-fired electric power generator.

6. Respondent's operations at the Facility generate a number of discharges containing "pollutants", as defined in Section 502(6) of the Act, 33 U.S.C. § 1362(6), from a point source, as defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14), to the Connecticut River.

7. The Connecticut River is a water of the United States as defined in 40 C.F.R. § 122.2, and, therefore, a navigable water under Section 502(7) of the Act, 33 U.S.C. § 1362(7).

8. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person from a point source into 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.

9. On September 18, 1992, the Director of the Water Management Division of EPA Region I issued to the Respondent NPDES Permit No. MA0005339 ("NPDES Permit") under the authority of Section 402 of the Act, 33 U.S.C. § 1342. The NPDES Permit became effective on September 18, 1992 with an expiration date of September 17, 1997.

10. Pursuant to 40 C.F.R. § 122.6, the conditions of an expired NPDES permit continue in force until the effective date of a new permit if the permittee has submitted a timely and complete re-application under 40 C.F.R. § 122.21.

11. On March 17, 1997 Respondent submitted a permit renewal application.

12. On June 10, 1997, EPA issued Respondent written notification that the permit renewal application appeared to be complete and that the conditions of the 1992 permit would continue in force until a new permit is issued and becomes effective.

13. The NPDES Permit authorizes Respondent to discharge pollutants to the Connecticut River from point sources including point sources identified as Outfalls 002 and 004 at the Facility, subject to the effluent limitations, monitoring requirements and other conditions specified in the NPDES Permit.

14. Part I.A.3.a. of the NPDES Permit includes, among other things, discharge limitations for total suspended solids ("TSS") from Outfall 004. The average monthly discharge limitation is 30 mg/l. The maximum daily limitation is 100 mg/l.

15. Respondent discharged storm water from Outfall 004 to the Connecticut River containing TSS in excess of the average monthly limit in the NPDES Permit during the months of November 2008, December 2008, March 2009, April 2009, and May 2009.

16. Respondent discharged storm water from Outfall 004 to the Connecticut River containing TSS in excess of the maximum daily limit in the NPDES Permit during the months of November 2008, December 2008, April 2009, and May 2009.

17. Part I.A.2.a. of the NPDES Permit includes, among other things, discharge limitations for total suspended solids ("TSS") for discharges from Outfall 002. The average monthly discharge limitation is 30 mg/l.

18. Respondent discharged storm water from Outfall 002 to the Connecticut River containing TSS in excess of the average monthly limit set forth in the NPDES Permit in April of 2008.

COUNT 1: FAILURE TO COMPLY WITH THE AVERAGE MONTHLY PERMIT LIMITATIONS FOR TSS (Outfall 004)

19. The Complaint incorporates Paragraphs 1 through 18 by reference.

20. Respondent's discharge of TSS from Outfall 004 in excess of the average monthly effluent limit for TSS set forth in Part I.A.3.a. of the NPDES Permit during the months of November 2008, December 2008, March 2009, April 2009, and May 2009 violates the NPDES Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342 and, therefore, violates Section 301(a) of the Act, 33 U.S.C. § 1311(a).

COUNT 2: FAILURE TO COMPLY WITH THE DAILY MAXIMUM PERMIT LIMITATIONS FOR TSS (Outfall 004)

21. The Complaint incorporates Paragraphs 1 through 20 by reference.

22. Respondent's discharge of TSS from Outfall 004 in excess of the daily maximum limit for TSS set forth in Part I.A.3.a. of the NPDES Permit during the months of November 2008, December 2008, April 2009, and May 2009 violates the NPDES Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342 and, therefore, violates Section 301(a) of the Act, 33 U.S.C. § 1311(a).

COUNT 3: FAILURE TO COMPLY WITH THE AVERAGE MONTHLY PERMIT LIMITATIONS FOR TSS (Outfall 002)

23. The Complaint incorporates Paragraphs 1 through 22 by reference.

24. Respondent's discharge of TSS from Outfall 002 in excess of the average monthly effluent limit for TSS set forth in Part I.A.2.a. of the NPDES Permit in April of 2008 violates the NPDES Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342 and, therefore, violates Section 301(a) of the Act, 33 U.S.C. § 1311(a).

PROPOSED ASSESSMENT OF CIVIL PENALTY

25. 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 January 12, 2009, Respondent is 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 on or after January 12, 2009, Respondent 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).

26. Based on the foregoing allegations, EPA is seeking a penalty from Respondent for at least 40 days of violation under Counts 1, 2 and 3 up to a maximum of $177,500.

27. In determining the amount of the penalty to be assessed under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), EPA took into account the statutory factors listed in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). These factors include the nature, circumstances, extent and gravity of the violations, the Respondent's prior compliance history, the degree of culpability for the cited violations, any economic benefit or savings accruing to the Respondent resulting from the violations, the Respondent's ability to pay the proposed penalty, and such other matters as justice may require.

28. The violations alleged are significant because Respondent's discharges substantially exceeded the applicable limits for TSS set forth in the NPDES Permit.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

29. 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.

30. 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
5 Post Office Square, Suite 100
Mail Code ORA17-1
Boston, MA 02109-3912

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

31. 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
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Mail Code OES4-2
Boston, MA 02109-3912

32. If Respondent does not file a timely Answer to this Complaint, 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

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

Date: 09/30/10

Susan Studlien

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