



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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| <p>In the Matter of:</p> <p>City of Huntington, West Virginia 800 5th Avenue Huntington, WV 25701-2002</p> <p style="text-align: center;">Respondent</p> | <p>: Proceeding to Assess Class II : Administrative Penalty Under : Section 309(g) of the Clean Water Act</p> <p>: Docket No. CWA-03-2011-0235</p> <p>: ADMINISTRATIVE PENALTY COMPLAINT : AND NOTICE OF OPPORTUNITY TO : REQUEST HEARING</p> |
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I. STATUTORY AUTHORITY

1. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "the Act"), 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency ("EPA") is authorized to assess administrative penalties against persons who violate Section 301(a) of the Act, 33 U.S.C. § 1311(a). The Administrator of EPA has delegated this authority to the Regional Administrator of EPA, Region III, who in turn has delegated this authority to the Water Protection Division Director who hereby issues this complaint ("Complainant").
2. This action is governed by the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 C.F.R. Part 22 (hereinafter, "Part 22 Procedural Rules"). A copy of the rules is attached pursuant to 40 C.F.R. § 22.14(b).

II. FACTUAL AND LEGAL ALLEGATIONS

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from any point source by a person into a water of the United States except in compliance with a permit issued under the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.
4. The City of Huntington (hereinafter "Respondent") is a political subdivision of the state of West Virginia and is therefore a "person" under Section 502(5) of the Act, 33 U.S.C. § 1362(5).

5. Section 402 of the Act, 33 U.S.C. § 1342, establishes the NPDES program. Under Section 402 of the Act, 33 U.S.C. § 1342, EPA and states with EPA-approved NPDES programs are authorized to issue permits governing the discharge of pollutants from regulated sources.
6. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), the State of West Virginia has an EPA-approved NPDES program administered by the West Virginia Department of Environmental Protection (“WVDEP”). WVDEP issues permits through its Division of Water and Waste Management.
7. “Discharge of a pollutant” includes additions of pollutants to the waters of the United States through “pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works . . .” 40 C.F.R. § 122.2. At all times relevant to this complaint, Respondent, a municipality, owned and operated a Small Municipal Separate Storm Sewer System (“MS4”) as that term is defined in 40 C.F.R. § 122.26(b)(16), which is such a conveyance.
8. Respondent’s MS4 is located within the geographic boundaries of Huntington, West Virginia.
9. Stormwater from Respondent’s MS4 drains into the adjacent Ohio River, which is a “water of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.
10. Section 402(p) of the Act, 33 U.S.C. § 1342(p), requires Phase II stormwater NPDES permits for certain classes of MS4s. Pursuant to 40 C.F.R. § 122.32(a)(1), “small” MS4s require NPDES permits if located in an “urbanized area” as determined by the latest Decennial Census. At all times relevant to this complaint, Huntington, West Virginia has been an urbanized area.
11. The WV/NPDES General Water Pollution Control Permit No WV0116025 was issued on March 7, 2003 (“2003 Permit”). Respondent was obligated to develop and submit a Storm Water Management Program (“SWMP”) within 12 months of receiving permit coverage, and to fully implement the SWMP within five years of the issuance of the 2003 Permit.
12. Respondent submitted a SWMP to WVDEP on January 13, 2005 (“2005 SWMP”). This version of the SWMP was subsequently approved by WVDEP.
13. On June 22, 2009, WVDEP issued the General NPDES Water Pollution Control Permit No. WV0116025 (“2009 Permit”), the current statewide NPDES permit covering stormwater discharges from small MS4s which included Respondent’s MS4.
14. The 2009 Permit requires the Respondent to continue implementing BMPs specific to the 2005 SWMP until such time as a revised SWMP is approved.

15. Pursuant to 40 C.F.R § 122.34(b), both the General Permit and the 2009 Permit require the SWMP to contain minimum control measures across six separate categories which include: 1) Public education and outreach on stormwater impacts; 2) Public involvement/participation; 3) Illicit discharge detection and elimination; 4) Construction site stormwater runoff control; 5) Post-construction storm water management in new development and redevelopment; and 6) Pollution prevention/good housekeeping for municipal operations.
16. On October 13-14, 2010, the EPA Region III and its duly-authorized representatives conducted an inspection of the Respondent's MS4 to evaluate compliance with the General Permit and the 2005 SWMP (the "October 2010 Inspection").

III. FINDINGS OF VIOLATION

Count I: Failure to Adequately Address Illicit Discharges

17. Part II.B.3 of the General Permit requires that Respondent develop, implement, and enforce a program to detect and eliminate illicit discharges into its MS4.
18. The October 2010 Inspection revealed that Respondent did not implement adequate procedures for detecting and eliminating illicit discharges through the failure to:
 - a. Develop a storm sewer system map showing the location of all outfalls and the names and locations of all waters of the State which receive discharges;
 - b. Develop an ordinance or other regulatory mechanism to effectively prohibit non-stormwater discharges into Respondent's MS4;
 - c. Implement appropriate enforcement procedures and actions accompanying the ordinance or other regulatory mechanism; and
 - d. Inform public employees, businesses, and the general public of the hazards associated with illegal discharges.
19. Respondent's failure to implement and enforce adequate procedures for detecting and eliminating illicit discharges are violations of the MS4 2003 Permit, the 2005 SWMP and Section 301 of the Act, 33 U.S.C. § 1311.

Count 2: Failure to Adequately Address Runoff from Construction Sites

20. Part II.B.4 of the General Permit requires Respondent to develop, implement, and enforce a program to reduce pollutants in any stormwater runoff to its small MS4 from construction activities that result in a land disturbance of greater than or equal to one acre.

21. The October 2010 Inspection revealed that Respondent did not implement adequate procedures for reducing pollutants from stormwater runoff at construction sites through failure to:
 - a. Develop and implement an ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance;
 - b. Develop and implement requirements for construction site operators to implement erosion and sediment control best management practices;
 - c. Develop and implement procedures for site plan review which incorporate consideration and review of individual pre-construction site plans to ensure consistency with local sediment and erosion control requirements;
 - d. Develop and implement procedures and adequate funding for site inspection and enforcement of control measures; and
 - e. Provide educational and training measures for construction site operators.
22. Respondent's failure to implement a program which adequately addresses stormwater runoff from construction sites are violations of the MS4 2003 Permit, the 2005 SWMP and Section 301 of the Act, 33 U.S.C. § 1311.

Count 3: Failure to Adequately Address Post-Construction Stormwater Runoff from New Development and Redevelopment Sites

23. Part II.B.5 of the General Permit requires Respondent to develop, implement, and enforce a program to address post-construction stormwater runoff from new development or redevelopment projects that disturb greater than or equal to one acre which may enter Respondent's MS4.
24. The October 2010 Inspection revealed that Respondent did not implement an adequate program to address post-construction stormwater runoff resulting from new development or redevelopment activities through failure to:
 - a. Use an ordinance or other regulatory mechanism designed to address post-construction runoff from new development and redevelopment sites;
 - b. Maintain a list of structural best management practices;
 - c. Ensure adequate long-term operation and maintenance of BMPs, including monitoring to determine whether the BMPs are reducing the discharge of pollutants; and
 - d. Provide adequate resources for an inspection program to monitor compliance and penalize violators.

25. Respondent's failure to implement adequate procedures addressing polluted stormwater from new development and redevelopment sites are violations of the MS4 2003 Permit, the 2005 SWMP and Section 301 of the Act, 33 U.S.C. § 1311.

Count 4: Failure to Adequately Address Pollution Reduction for Municipal Operations

26. Part II.B.6 of the General Permit requires Respondent to implement and maintain pollution prevention and good housekeeping techniques and procedures to prevent pollutants from municipal operations from entering Respondent's MS4.
27. The October 2010 Inspection revealed that Respondent did not adequately implement and maintain its pollution prevention and good housekeeping techniques and procedures through failure to develop a program, which includes employee training to prevent and reduce stormwater pollution, from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and stormwater system maintenance.
28. Respondent's failure implement and maintain pollution prevention and good housekeeping techniques and procedures are violations of the MS4 2003 Permit, the 2005 SWMP and Section 301 of the Act, 33 U.S.C. § 1311.

IV. PROPOSED CIVIL PENALTY

29. Section 309 of the CWA, 33 U.S.C. § 1319, provides that any person who has violated any NPDES permit condition or limitation is liable for an administrative penalty not to exceed \$10,000 per day for each such violation, up to a total penalty amount of \$125,000.
30. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective March 16, 2004 through January 12, 2009), any person who has violated any NPDES permit condition or limitation after March 15, 2004, is liable for an administrative penalty not to exceed \$11,000 per day for each such violation occurring after March 15, 2004 through January 11, 2009, up to a total penalty amount of \$157,500.
31. Pursuant to the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective after January 12, 2009), any person who has violated any NPDES permit condition or limitation after January 12, 2009 is liable for an administrative penalty not to exceed \$16,000 per day for each such violation occurring after January 12, 2009, up to a total penalty amount of \$177,500.
32. Based upon the foregoing allegations, and pursuant to the authority of Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and in accordance with the Part 22 Procedural Rules, Complainant hereby proposes the assessment of Administrative Penalties against the Respondent in the amount of one-hundred and fifty-six thousand dollars (\$156,000) for the violations alleged herein. This does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

33. The proposed penalty was determined after taking into account the nature, circumstances, extent and gravity of the violation, Respondent's prior compliance history, ability to pay the penalty, the degree of culpability for the cited violations, and any economic benefit or savings to Respondent because of the violations. 33 U.S.C. § 1319(g)(3). In addition, to the extent that facts or circumstances unknown to Complainant at the time of issuance of this Complaint become known after issuance of this Complaint, such facts or circumstances may also be considered as a basis for adjusting the proposed administrative penalty.
34. EPA may issue the Final Order Assessing Administrative Penalties after a thirty (30) day public comment period unless Respondent either responds to the allegations in the Complaint and requests a hearing according to the terms of Section V, below, or pays the civil penalty in accordance with Section VI herein (Quick Resolution).
35. If warranted, EPA may adjust the proposed civil penalty assessed in this Complaint. In so doing, the Agency will consider any number of factors in making this adjustment, including Respondent's ability to pay. However, the burden of raising the issue of an inability to pay and demonstrating this fact rests with the Respondent.
36. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, shall affect Respondent's continuing obligation to comply with the Clean Water Act, any other Federal or State laws, and/or with any separate Compliance Order issued under Section 309 of the Act, 33 U.S.C. § 1319, for the violations alleged herein.

**V. ANSWER TO COMPLAINT AND
OPPORTUNITY TO REQUEST HEARING**

37. Respondent must file an Answer to this Complaint. Failure to file an Answer may result in entry of a Default Order against Respondent. Respondent's default constitutes a binding admission of all allegations made in the Complaint and waiver of Respondent's right to contest such factual allegations.
38. The civil penalty proposed herein shall then become due and payable without further proceedings 30 days after the Default Order becomes final under 40 C.F.R. § 22.17(c).
39. Respondent's failure to pay the entire penalty assessed by the Default Order by its due date will result in a civil action to collect the assessed penalty, plus interest, attorney's fees, costs, and an additional quarterly nonpayment penalty pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9). In addition, a Default Penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.

40. Any Answer must clearly and directly admit, deny, and/or explain each of the factual allegations contained in the Complaint with respect to which the Respondent has any knowledge, or clearly and directly state that the Respondent has no knowledge as to particular factual allegations in the Complaint.
41. The Answer shall also indicate the following:
 - a. the specific factual and legal circumstances or arguments which are alleged to constitute any grounds of defense;
 - b. the specific facts that Respondent disputes;
 - c. Respondent's basis for opposing the proposed penalty; and
 - d. whether Respondent requests a hearing.

Failure to admit, deny or explain any of the factual allegations in the Complaint constitutes admission of such allegations.

42. Pursuant to Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), Respondent may request a hearing on the proposed civil penalty within thirty (30) days of receiving this Complaint.
43. EPA is obligated, pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), to give members of the public notice of and an opportunity to comment on this proposed penalty assessment.
44. If Respondent requests a hearing on this proposed penalty assessment, members of the public who submitted timely comments on this proposed penalty assessment will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to not only be notified of the hearing but also to be heard and to present evidence at the hearing on the appropriateness of this proposed penalty assessment.
45. If Respondent does not request a hearing, EPA will issue a Final Order Assessing Administrative Penalties, and only members of the public who submit timely comments on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon. 33 U.S.C. § 1319(g)(4)(C). EPA will grant the petition and will hold a hearing if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.
46. Any hearing that Respondent requests will be held and conducted in accordance with the Part 22 Procedural Rules.

47. At such a hearing, Respondent may contest any material fact contained in the Factual and Legal Allegations listed in Section II above, the Findings of Violation listed in Section III above, and the appropriateness of the amount of the proposed civil penalty in Section IV above.

48. Any Answer to this Complaint, and any Request for Hearing, must be filed within thirty (30) days of receiving this Complaint with the following:

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

49. Copies of the any Answer and any Request for Hearing, along with any and all other documents filed in this action, shall also be sent to the following:

Zachary Moor (3RC43)
Assisant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

50. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. Pursuant to 40 C.F.R. § 22.15, failure to admit, deny, or explain any of the factual allegations in this Complaint constitutes admission of the allegations. The Answer and any subsequent documents filed in this action should be sent to:

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

VI. QUICK RESOLUTION

51. In accordance with 40 C.F.R. § 22.18(a), and subject to the limitations in 40 C.F.R. § 22.45, Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint.

52. If Respondent pays the specific penalty proposed in this Complaint within forty (40) days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1), no Answer need be filed.

53. If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2), Respondent may file a written statement with the Regional Hearing Clerk within 40 days after receiving this Complaint stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the following:

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and a copy shall be provided to:

Zachary Moor (3RC43)
Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

54. If Respondent files such a written statement with the Regional Hearing Clerk within 40 days after receiving this Complaint, Respondent shall pay the full amount of the proposed penalty within 60 days of receiving the Complaint. Failure to make such payment within 60 days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17(c).

55. Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3), the Regional Judicial Officer or Regional Administrator shall issue a Final Order. Payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the Final Order.

56. Payment of the penalty shall be made by one of the following methods:

a. Via certified or cashier's check made payable to the Treasurer of the United States of America.

i. If sent via first-class mail, to:

US EPA Region III
Fines and Penalties
Cincinnati Finance Center
P. O. Box 979077
St. Louis, MO 63197-9000

ii. If sent via UPS, Federal Express, or Overnight Mail, to:

U.S. Bank
Government Lockbox 979077
US EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

b. Via wire transfer, sent to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Attn: "D 68010727 Environmental Protection Agency"

c. Via ACH (Automated Clearing House) for receiving U.S. currency, sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

Finance Center Contacts:

- 1) Jesse White: 301-887-6548
- 2) John Schmid: 202-874-7026
- 3) REX (Remittance Express) 866-234-5681

57. At the same time payments is made, copies of the check and/or proof of payments via wire transfer or ACH shall be mailed to:

and to:
Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

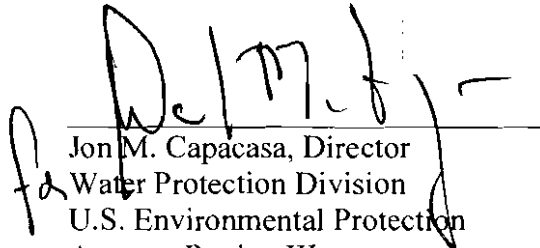
Mark Bolender (3RC43)
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U.S. Environmental Protection Agency, Region III
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VII. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

58. The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region III Office of Regional Counsel, the Region III Water Protection Division, the Office of the EPA Assistant Administrator for the Office of Water, and the EPA Assistant Administrator for Enforcement and Compliance Assurance. From the date of this Complaint until the final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Part 22 Procedural Rules prohibit any unilateral discussion or *ex parte* communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer after issuance of a Complaint.

Date: _____

9/30/11

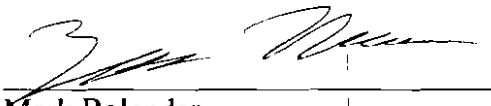

Jon M. Capacasa, Director
Water Protection Division
U.S. Environmental Protection
Agency, Region III

CERTIFICATE OF SERVICE

I certify that on the date provided below, I hand-delivered the original and one copy of the Administrative Complaint and Opportunity to Request a Hearing in the case captioned CWA-03-2011-0235 ("Complaint") to Lydia Guy, Regional Hearing Clerk, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029. Additionally, I sent one copy of the signed original of the Complaint with the Order by certified mail, return receipt requested, together with a copy of 40 CFR Part 22, the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits," to:

Mayor Kim Wolfe
City of Huntington
PO Box 1659 Huntington
WV 25717

Dated: 9/30/2011



For Mark Bolender
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029



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 - d. Provide adequate resources for an inspection program to monitor compliance and penalize violators.

25. Respondent's failure to implement adequate procedures addressing polluted stormwater from new development and redevelopment sites are violations of the MS4 2003 Permit, the 2005 SWMP and Section 301 of the Act, 33 U.S.C. § 1311.

Count 4: Failure to Adequately Address Pollution Reduction for Municipal Operations

26. Part II.B.6 of the General Permit requires Respondent to implement and maintain pollution prevention and good housekeeping techniques and procedures to prevent pollutants from municipal operations from entering Respondent's MS4.
27. The October 2010 Inspection revealed that Respondent did not adequately implement and maintain its pollution prevention and good housekeeping techniques and procedures through failure to develop a program, which includes employee training to prevent and reduce stormwater pollution, from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and stormwater system maintenance.
28. Respondent's failure implement and maintain pollution prevention and good housekeeping techniques and procedures are violations of the MS4 2003 Permit, the 2005 SWMP and Section 301 of the Act, 33 U.S.C. § 1311.

IV. PROPOSED CIVIL PENALTY

29. Section 309 of the CWA, 33 U.S.C. § 1319, provides that any person who has violated any NPDES permit condition or limitation is liable for an administrative penalty not to exceed \$10,000 per day for each such violation, up to a total penalty amount of \$125,000.
30. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective March 16, 2004 through January 12, 2009), any person who has violated any NPDES permit condition or limitation after March 15, 2004, is liable for an administrative penalty not to exceed \$11,000 per day for each such violation occurring after March 15, 2004 through January 11, 2009, up to a total penalty amount of \$157,500.
31. Pursuant to the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective after January 12, 2009), any person who has violated any NPDES permit condition or limitation after January 12, 2009 is liable for an administrative penalty not to exceed \$16,000 per day for each such violation occurring after January 12, 2009, up to a total penalty amount of \$177,500.
32. Based upon the foregoing allegations, and pursuant to the authority of Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and in accordance with the Part 22 Procedural Rules, Complainant hereby proposes the assessment of Administrative Penalties against the Respondent in the amount of one-hundred and fifty-six thousand dollars (\$156,000) for the violations alleged herein. This does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

33. The proposed penalty was determined after taking into account the nature, circumstances, extent and gravity of the violation, Respondent's prior compliance history, ability to pay the penalty, the degree of culpability for the cited violations, and any economic benefit or savings to Respondent because of the violations. 33 U.S.C. § 1319(g)(3). In addition, to the extent that facts or circumstances unknown to Complainant at the time of issuance of this Complaint become known after issuance of this Complaint, such facts or circumstances may also be considered as a basis for adjusting the proposed administrative penalty.
34. EPA may issue the Final Order Assessing Administrative Penalties after a thirty (30) day public comment period unless Respondent either responds to the allegations in the Complaint and requests a hearing according to the terms of Section V, below, or pays the civil penalty in accordance with Section VI herein (Quick Resolution).
35. If warranted, EPA may adjust the proposed civil penalty assessed in this Complaint. In so doing, the Agency will consider any number of factors in making this adjustment, including Respondent's ability to pay. However, the burden of raising the issue of an inability to pay and demonstrating this fact rests with the Respondent.
36. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, shall affect Respondent's continuing obligation to comply with the Clean Water Act, any other Federal or State laws, and/or with any separate Compliance Order issued under Section 309 of the Act, 33 U.S.C. § 1319, for the violations alleged herein.

**V. ANSWER TO COMPLAINT AND
OPPORTUNITY TO REQUEST HEARING**

37. Respondent must file an Answer to this Complaint. Failure to file an Answer may result in entry of a Default Order against Respondent. Respondent's default constitutes a binding admission of all allegations made in the Complaint and waiver of Respondent's right to contest such factual allegations.
38. The civil penalty proposed herein shall then become due and payable without further proceedings 30 days after the Default Order becomes final under 40 C.F.R. § 22.17(c).
39. Respondent's failure to pay the entire penalty assessed by the Default Order by its due date will result in a civil action to collect the assessed penalty, plus interest, attorney's fees, costs, and an additional quarterly nonpayment penalty pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9). In addition, a Default Penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.

40. Any Answer must clearly and directly admit, deny, and/or explain each of the factual allegations contained in the Complaint with respect to which the Respondent has any knowledge, or clearly and directly state that the Respondent has no knowledge as to particular factual allegations in the Complaint.
41. The Answer shall also indicate the following:
 - a. the specific factual and legal circumstances or arguments which are alleged to constitute any grounds of defense;
 - b. the specific facts that Respondent disputes;
 - c. Respondent's basis for opposing the proposed penalty; and
 - d. whether Respondent requests a hearing.

Failure to admit, deny or explain any of the factual allegations in the Complaint constitutes admission of such allegations.

42. Pursuant to Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), Respondent may request a hearing on the proposed civil penalty within thirty (30) days of receiving this Complaint.
43. EPA is obligated, pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), to give members of the public notice of and an opportunity to comment on this proposed penalty assessment.
44. If Respondent requests a hearing on this proposed penalty assessment, members of the public who submitted timely comments on this proposed penalty assessment will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to not only be notified of the hearing but also to be heard and to present evidence at the hearing on the appropriateness of this proposed penalty assessment.
45. If Respondent does not request a hearing, EPA will issue a Final Order Assessing Administrative Penalties, and only members of the public who submit timely comments on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon. 33 U.S.C. § 1319(g)(4)(C). EPA will grant the petition and will hold a hearing if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.
46. Any hearing that Respondent requests will be held and conducted in accordance with the Part 22 Procedural Rules.

47. At such a hearing, Respondent may contest any material fact contained in the Factual and Legal Allegations listed in Section II above, the Findings of Violation listed in Section III above, and the appropriateness of the amount of the proposed civil penalty in Section IV above.

48. Any Answer to this Complaint, and any Request for Hearing, must be filed within thirty (30) days of receiving this Complaint with the following:

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

49. Copies of the any Answer and any Request for Hearing, along with any and all other documents filed in this action, shall also be sent to the following:

Zachary Moor (3RC43)
Assisant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

50. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. Pursuant to 40 C.F.R. § 22.15, failure to admit, deny, or explain any of the factual allegations in this Complaint constitutes admission of the allegations. The Answer and any subsequent documents filed in this action should be sent to:

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

VI. QUICK RESOLUTION

51. In accordance with 40 C.F.R. § 22.18(a), and subject to the limitations in 40 C.F.R. § 22.45, Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint.

52. If Respondent pays the specific penalty proposed in this Complaint within forty (40) days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1), no Answer need be filed.

53. If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2), Respondent may file a written statement with the Regional Hearing Clerk within 40 days after receiving this Complaint stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the following:

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and a copy shall be provided to:

Zachary Moor (3RC43)
Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

54. If Respondent files such a written statement with the Regional Hearing Clerk within 40 days after receiving this Complaint, Respondent shall pay the full amount of the proposed penalty within 60 days of receiving the Complaint. Failure to make such payment within 60 days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17(c).
55. Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3), the Regional Judicial Officer or Regional Administrator shall issue a Final Order. Payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the Final Order.
56. Payment of the penalty shall be made by one of the following methods:

- a. Via certified or cashier's check made payable to the Treasurer of the United States of America.

- i. If sent via first-class mail, to:

US EPA Region III
Fines and Penalties
Cincinnati Finance Center
P. O. Box 979077
St. Louis, MO 63197-9000

ii. If sent via UPS, Federal Express, or Overnight Mail, to:

U.S. Bank
Government Lockbox 979077
US EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

b. Via wire transfer, sent to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Attn: "D 68010727 Environmental Protection Agency"

c. Via ACH (Automated Clearing House) for receiving U.S. currency, sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking

Finance Center Contacts:

- 1) Jesse White: 301-887-6548
- 2) John Schmid: 202-874-7026
- 3) REX (Remittance Express) 866-234-5681

57. At the same time payments is made, copies of the check and/or proof of payments via wire transfer or ACH shall be mailed to:

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

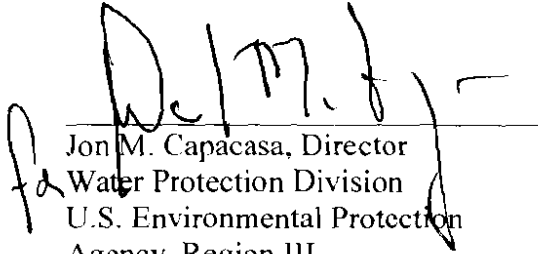
and to:

Mark Bolender (3RC43)
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

VII. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

58. The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region III Office of Regional Counsel, the Region III Water Protection Division, the Office of the EPA Assistant Administrator for the Office of Water, and the EPA Assistant Administrator for Enforcement and Compliance Assurance. From the date of this Complaint until the final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Part 22 Procedural Rules prohibit any unilateral discussion or *ex parte* communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer after issuance of a Complaint.

Date: 9/30/11



Jon M. Capacasa, Director
Water Protection Division
U.S. Environmental Protection
Agency, Region III

CERTIFICATE OF SERVICE

I certify that on the date provided below, I hand-delivered the original and one copy of the Administrative Complaint and Opportunity to Request a Hearing in the case captioned CWA-03-2011-0235 ("Complaint") to Lydia Guy, Regional Hearing Clerk, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029. Additionally, I sent one copy of the signed original of the Complaint with the Order by certified mail, return receipt requested, together with a copy of 40 CFR Part 22, the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits," to:

Mayor Kim Wolfe
City of Huntington
PO Box 1659 Huntington
WV 25717

Dated: 9/30/2011



For Mark Bolender
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

You should carefully read the contents of the enclosed Order, and communicate to each responsible official, agent, or employee the actions which each such person must take to ensure compliance with its terms. Failure to comply with the terms of the Order may result in additional enforcement actions being taken, including a civil suit for penalties and injunctive relief, or a criminal prosecution as appropriate.

Huntington has the right to request a hearing regarding the violations alleged in the Complaint and the proposed civil penalty. Such request should be included with the Answer to this Complaint and must also be made within thirty (30) days.

Whether or not a hearing is requested, we invite Huntington to confer informally with EPA concerning the alleged violations and proposed penalty. Huntington may represent itself, or be represented by an attorney at any conference, whether in person or by telephone. An attorney from the EPA Office of Regional Counsel will normally be present at any informal conference. EPA encourages all parties against whom it files a Complaint proposing a penalty to pursue settlement through informal conference. A request for a settlement conference may be included in your Answer or Huntington may contact the attorney assigned to this case:

Mark Bolender (3RC43)
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
215-814-2642

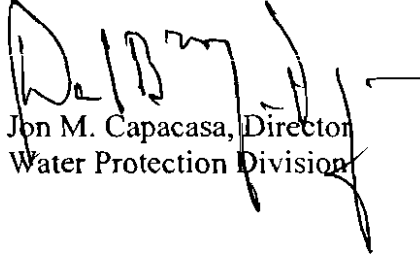
A request for an informal conference does not extend the thirty (30) day period by which Huntington must request or waive a hearing on the proposed penalty assessment, and the two procedures can be pursued simultaneously.

If Huntington may be a "small business" under the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), you should review the enclosed information sheet, which provides information on contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities and also information on compliance assistance. Any decision to participate in such program or to seek compliance assistance does not relieve Huntington of its obligation to respond in a timely manner to this enforcement action, does not create any new rights or defenses under law, and will not affect EPA's decision to pursue this enforcement action. To preserve its legal rights, Huntington must comply with all rules governing the administrative enforcement process. The Ombudsman does not participate in the resolution of EPA's enforcement actions.

In addition, Huntington may be required to disclose to the Securities and Exchange Commission ("SEC") the existence of certain administrative or judicial proceedings taken against Huntington under Federal, State or local environmental laws. Please see the attached "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings" for more information about this requirement and to aid Huntington in determining whether Huntington is subject to it.

We urge your prompt attention to this matter.

Sincerely,

for  Jon M. Capacasa, Director
Water Protection Division

Enclosures

cc: Mike Zeto, WVDEP