



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I  
5 POST OFFICE SQUARE, SUITE 100  
BOSTON, MA 02109-3912

September 12, 2013

**BY HAND**

Wanda Santiago, Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 1 (ORA 18-1)  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

Re: In the matter of Alvin J. Coleman & Son, Inc.  
Docket No. CWA-01-2013-0023

Dear Ms. Santiago:

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

1. Administrative Complaint and Notice of Opportunity for Hearing; and
2. Certificate of Service.

Kindly file the documents in the usual manner. I have also included a copy of the letter notifying the Massachusetts Department of Environmental Protection of the filing of this Complaint. Thank you very much for your help.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Jeffrey Kopf".

Jeffrey Kopf  
Senior Enforcement Counsel

Enclosures

cc: Curtis Dix Coleman, Registered Agent, Alvin J. Coleman & Son, Inc.



# U.S. Environmental Protection Agency

Region I New England  
5 Post Office Square – Suite 100  
Boston, MA 02109-3912

September 12, 2103

CDR Cornell Rosiu  
First Coast Guard District  
Captain John Foster Williams Building  
408 Atlantic Avenue  
Boston, MA 02210-2209  
[Cornell.J.Rosiu@uscg.mil](mailto:Cornell.J.Rosiu@uscg.mil)

*Via email*

Gretchen R. Hamel/Jeffrey Andrews  
New Hampshire Department of Environmental Services  
PO Box 95  
29 Hazen Dr.  
Concord, NH 03301  
[ghamel@des.state.nh.us](mailto:ghamel@des.state.nh.us)

*Via certified mail,  
return receipt  
requested*

Re: *In the Matter of Alvin J. Coleman & Son, Inc.*  
Docket No. CWA 01-2013-0023

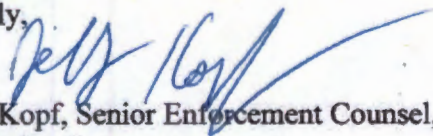
Dear Commander Rosiu, Ms. Hamel and Mr. Andrews:

Enclosed please find a copy of an Administrative Complaint proposing to assess a civil penalty under Sections 309(g) and 311(b) of the Clean Water Act against Alvin J. Coleman & Son, Inc. for unauthorized discharge of stormwater, for failing to apply for a stormwater permit, and for failure to maintain and fully implement a Spill Prevention, Control, and Countermeasure ("SPCC") Plan in accordance with the Oil Pollution Prevention regulations found at 40 C.F.R. Part 112.

We are initiating an administrative enforcement action seeking a civil penalty of up to \$177,500 for each Count in the Complaint.

Should you wish to consult further on this matter, please call me at (617) 918-1796.

Sincerely,

  
Jeffrey Kopf, Senior Enforcement Counsel,  
EPA Region 1

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

RECEIVED

\_\_\_\_\_  
IN THE MATTER OF )  
ALVIN J. COLEMAN & SON, INC. )  
Conway, NH )  
Respondent. )  
Proposing to Assess a Civil Penalty )  
Under Sections 309(g) and 311(b) of the Clean )  
Water Act, 33 U.S.C. §§ 1319(g), 1321(b) )  
\_\_\_\_\_ )

2013 SEP 12 A 10:42  
Docket No. CWA-01-2013-0023  
EPA ORC  
OFFICE OF  
REGIONAL HEARING CLERK  
**COMPLAINT AND NOTICE OF  
OPPORTUNITY FOR HEARING**

**I. STATEMENT OF AUTHORITY**

1. The United States Environmental Protection Agency (“EPA”) issues this administrative Complaint and Notice of Opportunity for Administrative Hearing (“Complaint”) to Alvin J. Coleman & Son, Inc. (“Respondent” or “AJ Coleman”) pursuant to Sections 309(g) and 311(b)(6) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. §§ 1319(g) and 1321(b)(6), as amended by the Oil Pollution Act of 1990, and the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits” (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. The Complainant is the Director, Office of Environmental Stewardship, EPA Region 1.

2. Pursuant to Sections 309(g) and 311(b)(6) of the Act, 33 U.S.C. §§ 1319(g) and 1321(b)(6), and in accordance with the Consolidated Rules of Practice, EPA hereby provides notice that it seeks to assess penalties against Respondent for the following violations of the Act: (1) discharge of stormwater associated with industrial activity without authorization under a National Pollutant Discharge Elimination System (“NPDES”) permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a); (2) failure to apply for an NPDES permit in violation of Section 308 of the CWA, 33 U.S.C. § 1318(a); and (3) failure to adequately maintain and



implement a Spill Prevention, Control, and Countermeasure (“SPCC”) Plan in accordance with the requirements of 40 C.F.R Part 112, in violation of Section 311 of the CWA, 33 U.S.C. § 1321.

## **II. STATUTORY AND REGULATORY AUTHORITY**

### **Discharge of Pollutants**

3. The CWA is designed to restore and maintain the chemical, physical, and biological integrity of the nation’s waters. 33 U.S.C. § 1251(a). To accomplish these objectives, Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into navigable waters except in compliance with the terms and conditions of a permit issued pursuant to Section 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, and EPA’s implementing regulations, found at 40 C.F.R. Part 122.

4. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), authorizes the Administrator of EPA to issue NPDES permits for the discharge of pollutants into navigable waters in compliance with the CWA.

5. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” to include “an individual, corporation, [or] partnership.”

6. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

7. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, solid waste, chemical wastes, rock, sand, and industrial waste discharged into water.

8. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance . . . from which pollutants are or may be

discharged.”

9. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including the territorial seas.” The term “waters of the United States” includes, among other things: (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; (ii) all inter-state waters; (iii) tributaries to such waters; and (iv) wetlands adjacent to such waters or their tributaries. 40 C.F.R. § 122.2.

#### Stormwater Permits

10. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes the Administrator of EPA to require the owner or operator of any point source to provide such information as the Administrator may reasonably need to carry out the objectives of the CWA, which includes, among other things, the development and issuance of NPDES permits.

11. Pursuant to Sections 308 and 402 of the CWA, 33 U.S.C. §§ 1318 and 1342, EPA promulgated storm water discharge regulations at 40 C.F.R. § 122.26.

12. Forty C.F.R. § 122.26(b)(13) defines “stormwater” to include stormwater runoff, snow melt runoff, and surface runoff and drainage.

13. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulation 40 C.F.R. § 122.26(a)(1)(ii), require that facilities discharging stormwater associated with industrial activity obtain a permit. Under 40 C.F.R. § 122.26(c)(1), dischargers of stormwater associated with industrial activity must apply for an individual NPDES permit or seek coverage under a general permit.

14. Forty C.F.R. § 122.26(b)(14)(iii) specifies that facilities “engaging in industrial activity”

includes facilities classified under Standard Industrial Classification (“SIC”) codes 10 through 14, including SIC code 1422 (construction sand and gravel) and SIC code 1423 (crushed and broken granite).

15. Forty C.F.R. § 122.26(b)(14) specifies that, for the categories of facilities classified under SIC codes 10 through 14, the term “stormwater discharge associated with industrial activity” includes stormwater discharges from, among others, (1) immediate access roads used or travelled by carriers of raw materials, manufactured products, waste products, or by-products used or created by the facility, and (2) sites used for the storage and maintenance of material handling equipment.

16. On September 29, 1995, EPA issued an NPDES Stormwater Multi-Sector General Permit for Industrial Activities” (“1995 MSGP”). 73 Fed. Reg. 56,527 (Sept. 29, 2008). EPA reissued the Multi-Sector General Permit for Industrial Activities on October 30, 2000 (“2000 MSGP”), 65 Fed. Reg. 64746, and reissued it again on September 29, 2008 (“2008 MSGP”). The 2008 MSGP became effective on the date of issuance. 73 Fed. Reg. 56,572 (Sept. 29, 2008).

17. The 2008 MSGP (the “Permit”) contains terms and conditions designed to ensure the implementation of practices to minimize the pollutants in stormwater discharges associated with industrial activity.

18. Under the 2008 MSGP, a facility discharging stormwater associated with industrial activity is required to submit a Notice of Intent (“NOI”) to be covered under the Permit, prepare and implement a Stormwater Pollution Prevention Plan (“SWPPP”), conduct inspections, conduct monitoring and sampling, and meet other eligibility requirements.

19. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), provides for the assessment of

penalties for violations of Sections 301 and 308 of the CWA.

Spill Prevention Control and Countermeasure Plan

20. Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances . . . from onshore and offshore facilities, and to contain discharges . . . .”

21. Pursuant to Section 311(j)(1) of the CWA, EPA’s Oil Pollution Prevention regulations at 40 C.F.R. Part 112 establish procedures, methods, and requirements for preventing the discharge of oil. These requirements apply to owners or operators of non-transportation-related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products which, due to their location, could reasonably be expected to discharge oil in harmful quantities (as defined in 40 C.F.R. Part 110) to navigable waters of the United States or adjoining shorelines. 40 C.F.R. § 112.1(b). However, except as provided in 40 C.F.R. § 112.1(f), these requirements do not apply to the owner or operator of any facility which meets both of the following requirements: (1) the completely buried storage capacity of the facility is 42,000 U.S. gallons or less of oil; and (2) the aggregate above ground storage capacity of the facility is 1,320 U.S. gallons or less of oil. 40 C.F.R. § 112.1(d)(2).

22. Under 40 C.F.R. § 112.3(a)(1), an owner or operator of an onshore facility that became operational prior to August 16, 2002 and that has discharged or, due to its location, could reasonably be expected to discharge, oil in harmful quantities into or upon the navigable waters of the United States must prepare and fully implement a Spill Prevention, Control, and Countermeasure (“SPCC”) plan in accordance with the requirements of 40 C.F.R. § 112.7.

23. Section 311(b)(6), 33 U.S.C. § 1321(b)(6), of the CWA provides for the assessment of penalties for violations of Section 311(j) of the CWA.

### **III. GENERAL ALLEGATIONS**

#### *The Facility*

24. At all times relevant to the allegations in this Complaint, Respondent was a corporation organized under the laws of the State of New Hampshire with its principal place of business located at 9 NH Route 112, Conway, New Hampshire.

25. Respondent is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

26. At all times relevant to the allegations in this Complaint, Respondent owned a facility called the Madison Pit and Mill located at Ledge Pond Road, Madison, New Hampshire (the “Facility”).

27. Respondent has operated the Facility since 1955.

28. At all times relevant to the allegations in this Complaint, Respondent controlled all daily business and industrial operations at the Facility, and otherwise met the definition of an “operator” of the Facility, as defined at 40 C.F.R. § 122.2.

29. At all times relevant to the allegations in this Complaint, the Facility included three areas: the Quarry, the Main Pit, and the Office Complex, which includes a Vehicle Maintenance Shop.

30. At all times relevant to the allegations in this Complaint, operations at the Facility included, but were not limited to, construction sand and gravel mining (SIC code 1442); crushed and broken granite mining and quarrying (SIC code 1423); sand and gravel processing, including rock crushing (SIC codes 1442 and 1423); and sand and gravel washing (SIC codes 1442 and



1423). Therefore, Respondent engaged in "industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14)(iii).

31. More specifically, at all times relevant to the allegations in this Complaint, Respondent conducted rock, sand, and gravel mining; rock crushing; oil storage; and/or oil transferring activities in the Quarry. At all times relevant to the allegations in this Complaint, Respondent conducted rock crushing and washing, sand and gravel processing and washing, and oil storage; and/or oil transferring activities in the Main Pit.

32. At all times relevant to the allegations in this Complaint, Respondent transported raw materials, manufactured products, waste products, or by-products used or created by the Facility via an immediate access road called Haul Road or Ledge Pond Road to and from the Quarry and the Main Pit.

33. At all times relevant to the allegations in this Complaint, Respondent used the Vehicle Maintenance Shop area as a site for storing material handling equipment.

34. On March 27, 2012, EPA conducted an inspection at the Facility to determine compliance with stormwater and Oil Pollution Prevention regulations.

Stormwater Discharges from the Facility

35. During storm events from at least October 1, 2008 to May 26, 2012, stormwater from Haul Road flowed from Outfall 001 into a swale (trench drain) and discharged into Cream Brook.

36. During storm events from at least October 1, 2008 to May 14, 2012, stormwater from the Main Pit and Haul Road discharged to Cream Brook and Upper Pequawket Pond at Outfall PSD-1 and Outfall PSD-2, respectively.

37. During storm events from at least October 1, 2008 to May 14, 2012, stormwater discharged from the Facility's Vehicle Maintenance Shop/Office Complex area to Pequawket Brook. Specifically, stormwater from the Vehicle Maintenance Shop/Office Complex area, where industrial machinery and vehicles were stored, flowed to a basin and discharged through a channel into Pequawket Brook at an outfall herein referred to as Outfall EPA-B. At the time of the March 27, 2012 inspection, EPA's inspector observed hay bales between the channel and the brook at Outfall EPA-B. After the inspection, Respondent informed EPA on May 14, 2012 that any potential storm water discharge from the basin associated with Outfall EPA-B had been eliminated.

38. Cream Brook flows into the Upper Pequawket Pond, which flows into the Pequawket Brook. The Pequawket Brook flows into the Swift River, which then flows into the Saco River in the Town of Conway, NH.

39. The Pequawket Brook, Cream Brook, and Upper Pequawket Pond, Swift River, and Saco River are "waters of the United States," as defined at 40 C.F.R. § 122.2, and thereby are "navigable waters," as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

40. The stormwater discharges described in paragraphs 37, 38 and 39 contain, *inter alia*, total suspended solids, iron, and nitrate plus nitrite nitrogen, which constitute "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

41. Outfalls PSD-1, PSD-2, 001, and EPA-B, and the basins associated with said outfalls, are "point sources" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

42. The stormwater discharges described in paragraphs 37, 38 and 39 result in the "discharge of pollutants," as defined at Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

43. Accordingly, at all times relevant to the allegations in this Complaint, Respondent operated a sand and gravel mining facility that discharged “stormwater associated with industrial activity,” as defined at 40 C.F.R. § 122.26(b)(14)(iii), to waters of the United States.

*Permit Coverage*

44. Respondent did not apply for an individual NPDES permit or submit a NOI for coverage under the 2008 MSGP for the Facility until April 27, 2012.

45. Respondent received coverage under the 2008 MSGP on May 27, 2012.

*Stormwater Management Practices at the Facility*

46. Respondent developed and signed a SWPPP dated December 2010 (hereinafter the “December 2010 SWPPP”). On May 14, 2012, Respondent submitted to EPA an amended SWPPP dated “May 2012” (hereinafter “May 2012 SWPPP”).

47. The December 2010 SWPPP identified three stormwater outfalls at the Facility: PSD-1, PSD-2, and PSD-3. It failed, however, to identify stormwater discharges at Outfall 001 and Outfall EPA-B, which are described above in paragraphs 37 and 39.

48. The amended May 2012 SWPPP includes Outfall 001. Respondent informed EPA on May 14, 2012 that it had taken steps to eliminate any potential stormwater discharge from Outfall EPA-B.

49. Respondent’s December 2010 SWPPP did not identify control measures to prevent or minimize run-off from Haul Road.

50. According to the May 2012 SWPPP, Respondent took steps to improve stormwater ponds located down-gradient of the Main Pit and stormwater barriers on Haul Road to minimize pollutants in stormwater discharges.

51. Based on the March 27, 2012 inspection, EPA determined that Respondent had failed to:

- a) Adequately stabilize exposed soils in and surrounding existing stormwater basins.
- b) Design and install structural controls in combination to minimize the velocity of stormwater flows and pollutants to surface waters (e.g., earthen berm/curbing in concert with stormwater basins and erosion and sedimentation control fencing).
- c) Maintain and service existing structural controls (e.g., existing basins) to prevent solids and sediment from passing through the basin to surface waters.
- d) Implement procedures for plainly labeling oil storage containers in the Vehicle Maintenance Shop area that could be susceptible to spillage or leakage to encourage proper handling and facilitate rapid response if spills or leaks occur.

52. Respondent informed EPA it had taken steps to improve certain control measures at the Facility on May 14, 2012.

*Spill Prevention, Control, and Countermeasure Regulations*

53. Respondent is the “owner or operator” of the Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2. At all times relevant to the allegations in this Complaint, Respondent engaged in storing, using, and consuming “oil” or oil products located at the Facility within the meaning of 40 C.F.R. § 112.2.

54. At all times relevant to the allegations in this Complaint, the Facility had an aggregate above ground oil storage capacity greater than 1,320 gallons. 40 C.F.R. § 112.1(d)(2).

55. At all times relevant to the allegations in this Complaint, oil tanks and fuel transfer stations at the Facility were found in the Quarry, the Main Pit, and the Office Complex/Vehicle Maintenance Shop area.



56. At all times relevant to the allegations in this Complaint, oil tanks and fuel transfer stations at the Facility were located adjacent to Cream Brook, Pequawket Brook and Upper Pequawket Pond.

57. The Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

58. The Facility is a “non-transportation-related” facility within the meaning of Appendix A to 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.

59. Accordingly, the Facility is a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to navigable waters of the United States or its adjoining shorelines in a harmful quantity.

60. Respondent is therefore subject to the Oil Pollution Prevention regulations at 40 C.F.R. Part 112 at the Facility.

61. Respondent submitted an updated SPCC plan to EPA signed by Facility Management on May 14, 2012.

#### **IV. VIOLATIONS**

##### **COUNT I**

##### **Unauthorized Discharge of Stormwater Associated with Industrial Activity**

62. Paragraphs 1 through 61 are incorporated by reference as if fully set forth herein.

63. Respondent discharged stormwater associated with industrial activity at the Facility to waters of the United States during storm events from at least October 1, 2008 through and including May 26, 2012 without authorization under any NPDES permit, and thereby violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

### **Failure to Apply for a NPDES Permit**

64. Respondent failed to apply for an individual NPDES permit or submit an NOI for coverage under the 2008 MSGP from October 1, 2008 until April 27, 2012.

65. Respondent violated Section 308(a) of the CWA, 33 U.S.C. § 1318(a), each day from at least October 1, 2008 through and including April 26, 2012.

66. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 *et seq.*, the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 *et seq.*, and the rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.1-19.4 (61 Fed. Reg. 69360 (Dec. 31, 1996); 69 Fed. Reg. 7121 (Feb. 13, 2004); 73 Fed. Reg. 75340 (Dec. 11, 2008)), Respondent is subject to civil penalties of up to eleven thousand dollars (\$11,000) per day for each day prior to and including January 12, 2009, during which the violations continued, and up to sixteen thousand dollars (\$16,000) per day for each day after January 12, 2009, during which the violations continued, up to a maximum of one hundred and seventy-seven thousand five hundred dollars (\$177,500).

### **COUNT II**

#### **Failure to Maintain and Implement an SPCC plan**

67. Paragraphs 1 through 66 are incorporated herein by reference.

68. During the March 27, 2012 inspection, and based on additional information submitted by Respondent, EPA determined that Respondent had an SPCC Plan for the Facility, but the SPCC Plan was deficient and Respondent neither maintained nor fully implemented the SPCC Plan, in violation of Section 311(j) of the Act.

69. Respondent failed to adequately provide for measures which would prevent the

discharge of oil from reaching waters of the United States and failed to implement specific requirements listed in 40 C.F.R. §§ 112.7 and 112.8, in accordance with good engineering practice. Respondent's failure to maintain and fully implement an SPCC plan, includes, but is not limited to the following deficiencies:

- a. The Facility diagram in Respondent's SPCC plan dated July 23, 2009 failed to identify and list oil storage containers located at the Facility's Quarry and Main Pit, which totalled more than 13,000 gallons of additional oil storage capacity. Therefore, Respondent failed to include a facility diagram marking the location contents and storage capacity of each oil container as required by 40 C.F.R. § 112.7(a)(3).
- b. During the March 27, 2012 inspection, EPA observed that Respondent failed to provide adequately sized secondary containment for several above ground oil storage containers located in the Facility's Vehicle Maintenance Shop area and the Quarry as required by 40 C.F.R. § 112.8(c)(2).

70. By failing to maintain and fully implement a SPCC plan for the Facility in accordance with the requirements of 40 C.F.R. §§ 112.7 and 112.8, as described above, Respondent violated 40 C.F.R. § 112.3 and Section 311(j) of the CWA, 33 U.S.C. § 1321(j), from at least July 23, 2009 through May 13, 2012.

71. Pursuant to Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 *et seq.*, the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 *et seq.*, and the rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.1-19.4 (61 Fed. Reg. 69360 (Dec. 31, 1996); 69 Fed. Reg. 7121 (Feb. 13, 2004); 73 Fed. Reg. 75340 (Dec. 11, 2008)), Respondent is subject

to civil penalties of up to eleven thousand dollars (\$11,000) per day for each day prior to and including January 12, 2009, during which the violations continued, and up to sixteen thousand dollars (\$16,000) per day for each day after January 12, 2009, during which the violations continued, up to a maximum of one hundred and seventy-seven thousand five hundred dollars (\$177,500).

#### **V. NOTICE OF PROPOSED ASSESSMENT OF CIVIL PENALTY**

72. Based on the foregoing allegations and pursuant to the authority of Section 309(g) and 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1319(g) and 33 U.S.C. § 1321(b)(6)(B)(ii); 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 Civil Monetary Penalty Inflation Adjustment Rule, 73 Fed. Reg. 75,340 (Dec. 11, 2008) (codified at 40 C.F.R. Part 19), Complainant proposes that a Final Order assessing civil penalties be issued against Respondent of up to eleven thousand dollars (\$11,000) per day for each day during which the violations continued through January 12, 2009, and up to sixteen thousand dollars (\$16,000) per day for each day after January 12, 2009 during which the violations continued, up to a maximum of one hundred and seventy-seven thousand and five hundred dollars (\$177,500) for each of Count I (unauthorized stormwater discharge and failure to apply for a permit) and Count II (failure to adequately maintain and implement an SPCC plan).

73. In determining the amount of the penalty to be assessed under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), EPA takes into account the statutory factors listed in Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), including the nature, circumstances, extent and gravity of the violations; Respondent's prior compliance history; Respondent's degree



of culpability for the cited violations; any economic benefit or savings accruing to Respondent resulting from the violations; Respondent's ability to pay the proposed penalty; and such other matters as justice may require.

74. In determining the amount of the penalty to be assessed under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), EPA takes into account the statutory factors listed in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), including the seriousness of the violations; the economic benefit accruing to Respondent as a result of the violation; the degree of Respondent's culpability; any other penalty for the same incident; any history of prior violations; the nature, extent, and degree of success of any efforts by Respondent to minimize or mitigate the effects of the discharge; the economic impact of the penalty on Respondent; and any other matters as justice may require.

75. EPA is seeking civil penalties for each day of violation under Count I (unauthorized discharge of stormwater and failure to apply for a permit), of up to eleven thousand dollars (\$11,000) per day for each day prior to and including January 12, 2009, and up to sixteen thousand dollars (\$16,000) per day for each day thereafter, for the duration of Respondent's violations, which was up to a total of 1304 days. The maximum total civil penalty EPA is seeking for Count I is not more than one hundred and seventy-seven thousand five hundred dollars (\$177,500),

76. EPA is seeking civil penalties for each day of violation under Count II (failure to adequately maintain and implement an SPCC plan) of up to eleven thousand dollars (\$11,000) per day for each day prior to and including January 12, 2009, and up to sixteen thousand dollars (\$16,000) per day for each day thereafter, for the duration of Respondent's violations, which was

up to a total of 1026 days. The maximum total civil penalty EPA is seeking for Count II is not more than one hundred and seventy-seven thousand five hundred dollars (\$177,500).

77. The stormwater violations alleged in Count I represent significant violations of the CWA because of the extent and duration of the violations and because compliance with the federal stormwater program is important for ensuring that stormwater runoff does not contribute to the impairment of water quality. Among other concerns, untreated and unmanaged stormwater from the Facility may contain pollutants that reduce the oxygen levels in surface waters and have the potential to stress aquatic animals and plants. When they settle, solids can form sediment deposits on the bottom of the water body that destroy the bottom fauna and the spawning grounds of fish.

78. The violations of the Oil Pollution Prevention regulations alleged in Count II represent significant violations of the CWA because failure to maintain and implement an adequate SPCC plan leaves a facility unprepared to deal with an oil spill and to prevent a spill from having potentially serious environmental consequences.

79. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty, as required by the Consolidated Rules of Practice.

**VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING  
AND FILE AN ANSWER**

80. Pursuant to Sections 309(g) and 311(b)(6) of the Act, 33 U.S.C. §§ 1319(g) and 1321(b)(6), 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 would be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22, 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 Sections 309(g)(4)(B) and 311(b)(6)(C) of the Act, 33 U.S.C. §§ 1319(g)(4)(B) and 1321(b)(6)(C), to comment on any proposed penalty and to be heard and to present evidence at the hearing.

81. To be entitled to a hearing, Respondent must include its request for a hearing in an Answer to the Complaint. Respondent's Answer must comply with 40 C.F.R. § 22.15 and must be filed with the Regional Hearing Clerk at the address listed below within thirty (30) days of receipt of the Complaint.

82. In its Answer, Respondent may also: (1) dispute any material fact in the Complaint; (2) contend that the proposed penalty is inappropriate; or (3) contend that it is entitled to judgment as a matter of law. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. If Respondent has no knowledge of a particular factual allegation and so states, the allegation is considered denied. The failure to deny an allegation constitutes an admission of that allegation. The Answer must also include the grounds for any defense and the facts Respondent intends to place at issue.

83. The original and one copy of the Answer, as well as a copy of all other documents which Respondent files in this action, must be sent to:

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square  
Suite 100 (Mail Code: ORA18-1)  
Boston, Massachusetts 02109-3912

Respondent should also send a copy of the Answer, as well as a copy of all other documents

which Respondent files in this action, to Jeffrey Kopf, the attorney assigned to represent EPA and designated to receive service in this matter at:

Jeffrey Kopf  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square  
Suite 100 (Mail Code: OES04-4)  
Boston, Massachusetts 02109-3912  
Tel: 617-918-1796  
Email: Kopf.jeff@epa.gov

84. If Respondent fails to file a timely Answer to this Complaint, it may be found to be in default, pursuant to 40 C.F.R. § 22.17, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing.

85. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in any default order shall become due and payable by Respondents without further proceedings thirty (30) days after the default order becomes final.

#### **VII. CONTINUED COMPLIANCE OBLIGATION**

86. Neither assessment nor payment of a civil penalty pursuant to Section 309(g)(4)(B) or Section 311(b)(6)(C) of the Act shall affect Respondent's continuing obligation to comply with the CWA, the regulations promulgated thereunder, or any other applicable requirements of Federal, State, or local law.

Susan Studlien  
Susan Studlien, Director  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency  
Region 1 – New England

09/11/13  
Date



IN THE MATTER OF: *Alvin J. Coleman & Son, Inc.*, Docket No. CWA-01-2013-0023

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity to Request a Hearing has been sent to the following persons on the date noted below:

Original and one copy,  
hand-delivered:

Ms. Wanda Santiago  
Regional Hearing Clerk  
U.S. EPA, Region I (ORA18-1)  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

Copy, by Certified Mail,  
Return Receipt Requested:

Calvin J. Coleman, President  
Alvin J. Coleman & Son, Inc.  
9 NH Route 113  
Conway, New Hampshire 03818


Copy, by Certified Mail,  
Return Receipt Requested, with  
copy of 40 C.F.R. Part 22:

Curtis Dix Coleman (Registered Agent)  
Alvin J. Coleman & Son, Inc.  
9 NH Route 113  
Conway, New Hampshire 03818

Copy, by Certified Mail,  
Return Receipt Requested:

Jeffrey Andrews  
New Hampshire Department of Environmental Services  
29 Hazen Drive  
P.O. Box 95  
Concord, New Hampshire 03302-0095

Dated: 9/12/13

  
\_\_\_\_\_  
Jeffrey Kopf  
Senior Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (OES04-3)  
Boston, MA 02109-3912  
Tel (617) 918-1796  
Fax (617) 918-0796