

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 Broadway  
New York, New York 10007-1866

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.II  
2009 JUL 15 AM 10:48  
REGIONAL HEARING  
CLERK

IN THE MATTER OF

**Western Monmouth Utilities Authority**  
**Pine Brook STP**  
**2 Utility Road**  
**Manalapan, New Jersey 07726**

Respondent

NPDES Permit No. NJ0023728

Proceeding to Assess Class I  
Civil Penalty Under Section  
309(g) of the Clean Water Act

Docket No. CWA-02-2009-3313

**COMPLAINT**  
**FINDINGS OF VIOLATION, NOTICE OF PROPOSED**  
**ASSESSMENT OF A CIVIL PENALTY, AND**  
**NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

**I. Statutory Authority**

1. This Findings of Violation, Notice of Proposed Assessment of a Civil 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"), 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 Code of Federal Regulations Part 22, a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against the Western Monmouth Utilities Authority ("Respondent") for failure to comply with the reporting requirements imposed by EPA in violation of Section 405(d) of the Act, 33 U.S.C. §1345(d), at its Western Monmouth Utilities Authority ("Sewage Treatment Plant").

## **II. Findings of Violation**

1. Respondent is a duly organized municipality and is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. §1362(5).
2. Respondent owns and operates the Western Monmouth Utilities Authority – Pine Brook Sewage Treatment Plant, located in Manalapan, New Jersey ("the facility"), which is and was at all relevant times a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. §1362(14).
3. Respondent holds a National Pollutant Discharge Elimination System ("NPDES") permit, issued pursuant to Section 402 of the Act, 33 U.S.C. §1342, for its Pine Brook facility.
4. Under the authority of Section 405(d) and the Standards for the Use and/or Disposal of Sewage Sludge (40 CFR Part 503), the Respondent was required to comply with the reporting requirements in §503.18 for land application, §503.28 for surface disposal, and §503.48 for incineration by reporting annually on February 19, 1994 and every year thereafter, to EPA the information and data collected during the previous calendar year (the "Annual Sludge Report"). The first Annual Sludge Report was due by February 19, 1994, and was to include the information and data collected from July 20, 1993 to December 31, 1993.
5. On September 20, 1994, the Respondent, Western Monmouth Utilities Authority, was

issued an Administrative ORDER, Docket EPA-CWA-II-94-163 ("1994 ORDER") for failure to have submitted the first Annual Sludge Report by February 19, 1994, for its Sewage Treatment Plant. The 1994 ORDER stated that "the Respondent shall fully comply with all subsequent 40 CFR Part 503 requirements by reporting annually, on February 19, 1995 and every year thereafter to EPA the information and data collected during the previous calendar year (the "Annual Sludge Report")."

6. On April 15, 2005, the Respondent, Western Monmouth Utilities Authority, was issued an Administrative ORDER, Docket CWA-02-2005-3207 ("2005 ORDER") for failure to have submitted the twelfth Annual Sludge Report for its Sewage Treatment Plant by February 19, 2005. The 2005 ORDER stated that "the Respondent shall fully comply with all subsequent 40 CFR Part 503 requirements by reporting annually, on February 19, 2006 and every year thereafter to EPA the information and data collected during the previous calendar year (the "Annual Sludge Report")."

7. On April 7, 2009, the Respondent, Western Monmouth Utilities Authority, was issued an Administrative ORDER, Docket CWA-02-2009-3058 ("2009 ORDER") for its failure to submit the sixteenth Annual Sludge Report for its Sewage Treatment Plant by February 19, 2009. The 2009 ORDER stated that "the Respondent shall fully comply with all subsequent 40 CFR Part 503 requirements by reporting annually, on February 19, 2010 and every year thereafter to EPA the information and data collected during the previous calendar year (the "Annual Sludge Report")."

8. A letter, dated January 9, 2009, submitted by the Respondent and received by EPA on March 26, 2009, confirmed that the Respondent failed to submit the Annual Sludge Report by February 19, 2009.

9. The Respondent failed to submit the sixteenth Annual Sludge Report for its Sewage Treatment Plant by February 19, 2009.

10. The Respondent's failure to submit the Annual Sludge Report due on

February 19, 2009, as described above constitutes a violation of Section 405(d) of the Act. Since this is the Respondent's third failure to submit a required report, EPA has determined that, under Section 309(g)(2)(A) of the Act, 33 U.S.C. §1319(g)(2)(A), the Respondent is liable for the administrative assessment of civil penalties in an amount not to exceed \$16,000 per violation, up to a maximum of \$37,500.

### **III. 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 penalty of \$5,500. 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 has been found to have violated the Act in three (3) instances.

### **IV. Notice of Opportunity to Request a Hearing**

1. Respondent may, within thirty (30) days of receipt of this Complaint and as part of any Answer filed in this matter, request a Hearing on the proposed civil penalty assessment and at the Hearing may contest the factual allegations set forth in the Findings of Violation contained in Section II above, and the appropriateness of any penalty amount. The procedures for the Hearing, if one is requested, are set out in the CROP, including Subpart I thereof.

2. Be aware that 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.

#### **V. Filing an Answer**

1. If Respondent wishes to avoid being found in default, it must file a written Answer to this Complaint with the Regional Hearing Clerk no later than thirty (30) days from the date of receipt of this Complaint. EPA may make a motion pursuant to §22.17 of the CROP seeking a default order thirty (30) days after Respondent's receipt of the Complaint unless Respondent files an Answer within that time. If a default order is entered, the entire proposed penalty may be assessed without further proceedings.

2. The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which Respondent has knowledge or clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The Answer also shall state:

- a) The circumstances or arguments which are alleged to constitute grounds of any defense;
- b) The facts which Respondent disputes;
- c) The basis for opposing the proposed relief;

- d) Whether a Hearing is requested.
3. Failure of Respondent to admit, deny, or explain any material factual allegations in this Complaint shall constitute admission of the allegation.

#### **VI. Filing of Documents**

1. 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

290 Broadway - 16th Floor (Room 1631)

New York, New York 10007-1866

2. A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to **Nadine Orrell**, Esq., Assistant Regional Counsel, Office of Regional Counsel, U.S. Environmental Protection Agency, 290 Broadway - 16<sup>th</sup> Floor, New York, New York 10007, (212) 637-3244.

#### **VII. 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 thereunder, 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 10<sup>th</sup> DAY OF JULY, 2009.



Dere LaPosta, Director  
Division of Enforcement and  
Compliance Assistance  
U.S. EPA - Region 2  
290 Broadway  
New York, New York 10007-1866

To: Mr. Michael A. Dimino, Executive Director  
Western Monmouth Utilities Authority  
2 Utility Road  
Manalapan, New Jersey 07726

**CWA-02-2009-3313**

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 Broadway  
New York, New York 10007-1866

IN THE MATTER OF

Western Monmouth Utilities Authority  
Pine Brook STP  
2 Utility Road  
Manalapan, NJ 07726

Respondent

NPDES Permit No. NJ0023728

**CONSENT AGREEMENT AND**

**FINAL ORDER**

Docket No. CWA-02-2009-3313

**CONSENT AGREEMENT**

**A. STATUTORY AUTHORITY**

1. This Consent Agreement and Final Order ("CA/FO") 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"), as amended, 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 of EPA, Region 2. 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 Code of Federal Regulations Part 22, the Director, Division of Enforcement and Compliance Assistance hereby issues this CA/FO.

## **B. STIPULATIONS AND FINDINGS**

Upon Consent of the Parties by their attorneys or other authorized officials, the parties stipulate:

1. On JUL 10 2009 EPA issued an Administrative Complaint, Docket No. CWA-02-2009-3313, pursuant to Section 309(g)(2)(A) of the Act, alleging that Respondent was in violation of Section 405(d) of the Act, 33 U.S.C. §1345(d), and proposing a penalty of \$5,500. In the Administrative Complaint, EPA alleged that the Respondent in three (3) instances failed to submit to EPA the Annual Sludge Reports which were due on February 19, 1994, February 19, 2005 and February 19, 2009, respectively.

2. Respondent admits the jurisdictional allegations in the Administrative Complaint as set forth above and admits the specific violations alleged in the Administrative Complaint.

3. Respondent knowingly and explicitly waives its right to a hearing under Section 309(g)(2)(A) of the Act, and to appeal this order under Section 309(g)(8) of the Act, 33 U.S.C. §1319(g)(8).

## **C. SETTLEMENT TERMS**

1. A Class I Civil Penalty of \$1,100 is hereby assessed against Respondent. Respondent shall pay such penalty as follows.

### **Payment Terms**

2. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of \$1,100 payable to the "Treasurer of the United States of America". The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document.

**Such check shall be mailed to:**

**US Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, MO 63197-9000**

3. Respondent shall also send a copy of this payment to the Chief, Water Compliance Branch, U.S. Environmental Protection Agency, 290 Broadway - 20th Floor, New York, New York 10007-1866.

4. Payment must be received at the above address on or before forty five (45) calendar days after the effective date hereof, set out below (the date by which payment must be received shall hereafter be referred to as the "due date").

- a. Failure to pay the penalty in full according to the above provisions may result in the referral of this matter to the U.S. Department of Justice for collection.
- b. Further, if payment is not received on or before the due date, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. §3717, on the overdue amount from the due payment handling charge of \$15.00 will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid.
- c. In addition, pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. §1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of

penalties and quarterly nonpayment penalties which are penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter. You may also be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.

#### **D. GENERAL PROVISIONS**

1. Issuance of the CA/FO does not constitute a waiver by EPA of its right to enforce legal requirements underlying this penalty assessment, either administratively or judicially pursuant to Section 309(a), (b) and (c). Pursuant to Section 309(g)(7) of the Act, 33 U.S.C. §1319(g)(7), issuance or compliance with this CA/FO does not exempt Respondent from responsibility to comply with all requirements of the Act and of any legal order or permit issued thereunder.

2. Respondent's execution of this CA/FO and payment of the penalty assessed by this CA/FO shall constitute a complete and final release by EPA of the Respondent of any civil penalties under Section 309 of the Act, 33 U.S.C. §1319, for violations alleged in the Administrative Complaint.

3. Respondent knowingly and explicitly waives its rights under Section 309(g)(2) and (8) of the Act, 33 U.S.C. §1319(g)(2) and (8), to a hearing on this penalty assessment, and to judicial review of this penalty assessment.

4. Respondent waives any right it may have pursuant to 40 CFR §22.08 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, or Deputy Regional Administrator, where the purpose of such discussion, memorandum or communication is to persuade such officials to accept and issue this CA/FO.

5. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CA/FO to execute and legally bind that party to it.

6. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this CA/FO.

**Effective Date**

7. The effective date of this order shall be thirty (30) calendar days from the date it is signed by the Division of Enforcement and Compliance Assistance Director, shown below.

Western Monmouth Utilities Authority

Date: \_\_\_\_\_

U.S. Environmental Protection Agency  
Region 2

Date: \_\_\_\_\_

\_\_\_\_\_  
Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance

ISSUED AND ORDERED THIS \_\_\_ DAY OF \_\_\_\_\_, 2009

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Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance

Re: Mr. Michael A. Dimino, P.E., Executive Director  
Western Monmouth Utilities Authority  
2 Utility Road  
Manalapan, New Jersey 07726

**CWA-02-2009-3313**

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

-----X	:	
IN THE MATTER OF	:	
	:	
Western Monmouth Utilities Authority	:	
Pine Brook STP	:	
2 Utility Road	:	Proceeding to Assess Class I
Manalapan, NJ 07726	:	Administrative Penalty Under Section 309(g)
	:	of the Clean Water Act
Respondent	:	
	:	
Proceeding Pursuant to §309(g) of the	:	Docket No.
Clean Water Act, 33 U.S.C. §1319(g)	:	CWA-02-2009-3313
-----X	:	

**CERTIFICATE OF SERVICE**

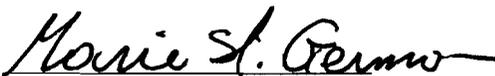
I certify that, on the date noted below, I caused to be mailed, by certified mail, return receipt requested, a copy of the foregoing "ADMINISTRATIVE COMPLAINT" and a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," 40 Code of Federal Regulations Part 22 (July 1, 2000)) to the following persons at the addresses listed below:

Mr. Michael A. Dimino, P.E., Executive Director  
Western Monmouth Utilities Authority  
2 Utility Road  
Manalapan, New Jersey 07726

Mr. Wolf Skacel  
Assistant Commissioner for Compliance and Enforcement  
New Jersey Department of Environmental Protection  
401 East State Street  
CN-422  
Trenton, New Jersey 08625

I hand carried / mailed the original and a copy of the foregoing Complaint to the office of the Regional Hearing Clerk, United States Environmental Protection Agency, Region 2.

Date: 07/14/09  
New York, New York

  
[Signature of Sender]