

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
1 Congress Street
Suite 1100 - SES
Boston, MA 02114-2023

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BY HAND

August 21, 2009

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REGION I

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region I
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114-2023

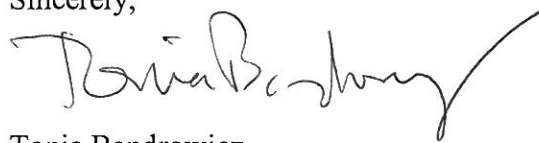
Re: Notice of CWA Administrative Penalty Complaint Issued to
Town of North Providence, Rhode Island
Docket No. CWA-01-2009-0093

Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of an Administrative Complaint and Opportunity to Request a Hearing.

Thank you for your attention to this matter.

Sincerely,



Tonia Bandrowicz
Senior Enforcement Counsel

Enclosure

cc: Charles A. Lombardi, Mayor
Stephen H. Burke, Esq.

In the Matter of Town of North Providence, RI
EPA Docket No. CWA-01-2009-0093

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CERTIFICATE OF SERVICE

7/20/09 AUG 21 P 1:09

I certify that the foregoing Complaint was transmitted to the following persons, in the manner specified, on the date below:

EPA ORC
OFFICE OF
REGIONAL HEARING CLERK

Original and one copy
hand-delivered:

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA - Region I
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114-2023

Copy by certified mail,
return receipt requested:

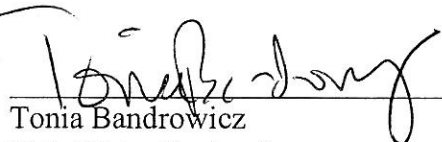
Stephen H. Burke, Esq.
Ratcliffe Burke Haren & Elias, LLP
1600 Financial Plaza
Providence, RI 02903

Charles A. Lombardi, Mayor
North Providence Town Hall
2000 Smith St.
North Providence, RI 02911

Copy by certified mail:

David Chopy, Acting Chief
Office of Compliance and Inspection
Rhode Island Dept. of Environmental
Management
235 Promenade Street
Providence, RI 02908-5767

Dated: 8/21/09



Tonia Bandrowicz
U.S. EPA - Region I
One Congress Street, Suite 1100 (SEL)
Boston, MA 02114-2023
Phone: (617) 918-1734
Fax: (617) 918-0734

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

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IN THE MATTER OF)

DOCKET NO. CWA-01-2009-0093

Town of North Providence,)
Department of Public Works)
2 Mafalda Street)
North Providence, RI 02904)
_____)

Proposal to Assess)
Administrative Penalty)
Under Section 309(g) of)
the Clean Water Act)

EPA ORC
OFFICE OF
REGIONAL HEARING CLERK

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

I. STATUTORY AUTHORITY

The following Findings are made and Notices given under the authority vested in the U.S. Environmental Protection Agency ("EPA") by Section 309(g)(1)(B) of the Clean Water Act (the "Act"), 33 U.S.C. § 1319(g)(1)(B). The Complainant is the Director of the Office of Environmental Stewardship, EPA, Region 1.

II. FINDINGS OF VIOLATION

1. The Town of North Providence, Rhode Island ("Respondent") is a person within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
2. The Respondent owns and operates a wastewater collection system located in North Providence, Rhode Island, which engages in the "discharge of a pollutant," as defined in Section 502(12) and of the Act, 33 U.S.C. § 1362(12), from a "point source," as defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14), into "navigable waters," as defined at Section 502(7) of the Act, 33 U.S.C. § 1362(7).

3. Section 308(a) of the Act, 33 U.S.C. § 1318(a), authorizes EPA to require the submission of information whenever necessary for the purpose of carrying out the objectives of the Act.

4. Pursuant to Sections 308(a) and 309(a)(3) of the Act, 33 U.S.C. §§ 1318(a) and 1319(a)(3), on April 7, 2008, EPA issued an administrative order (“2008 Order”) to the Respondent that required, among other tasks, that the Respondent submit a Capacity, Management, Operation and Maintenance Program Implementation Annual Report (“CMOM Annual Report”) on January 31, 2009, and each January 31st annually thereafter. The Respondent failed to provide the required information by January 31, 2009 in violation of Section 308(a) and 309(a)(3) of the Act, 33 U.S.C. §§ 1318(a) and 1319(a)(3).

5. Pursuant to Section 308 of the Act, 33 U.S.C. § 1318, on January 26, 2009, EPA issued a Request for Information (“2009 Information Request”) requesting the submission of additional information pertaining to the ultimate fate of any sanitary sewer overflow discharges that occurred in the previous calendar year. The 2009 Information Request was received by the Respondent on January 27, 2009 and required a response within 30 days; therefore a response was due to EPA no later than February 26, 2009. The Respondent failed to provide the requested information by February 26, 2009 in violation of Section 308 of the Act, 33 U.S.C. § 1318.

6. On March 17, 2009, EPA sent a letter to the Respondent informing it that EPA had not received the CMOM Annual Report or a written response regarding the 2009 Information Request and reminding Respondent that compliance with the 2008 Order and the 2009 Information Request is mandatory.

7. To date, the Respondent has failed to provide the requested information, in violation of Section 308 of the Act, 33 U.S.C. § 1318.

8. Section 309(g)(1)(B) of the Act, 33 U.S.C. § 1319(g)(1)(B), authorizes EPA to assess Class II administrative penalties for violations of Section 308 of the Act, 33 U.S.C. § 1318. Respondent is therefore subject to an assessment of penalties under Section 309(g)(1)(B) of the CWA as amended by 40 C.F.R. § 19.4, which authorizes EPA to assess a civil penalty of up to \$16,000 per day for each day during which the violations of Section 311 continue, up to a maximum of \$177,500.

III. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

Based on the forgoing Findings of Violation, and pursuant to the authority of Section 309(g)(2)(B) of the CWA, as amended by 40 C.F.R. § 19.4, the Complainant proposes that a Final Order assessing administrative penalties be issued against Respondent in an amount not to exceed the amounts set forth above.

When calculating the penalty under Section 309(g)(3), EPA takes into account the nature, circumstances, extent and gravity of the violation; or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and such other matters as justice may require.

Respondent's failure to respond to the administrative order and information request issued under Section 308 of the CWA represents a significant violation of the CWA because it seriously impedes the EPA's ability to assess the possible environmental impact of the discharges.

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), Respondent may request a hearing on the proposed penalty assessment and, at the hearing, may contest any material fact contained in the Findings of Violation set forth in Section II above, and the appropriateness of the proposed penalty amount. The requirements for requesting a hearing, and the procedures for

the hearing, if one is requested, are set forth in the Consolidated Rules of Practice, found at 40 C.F.R. Part 22, a copy of which is enclosed herewith.

A request for a hearing must be incorporated into the Respondent's Answer to this Complaint, which must be filed with the Regional Hearing Clerk at the following address within thirty (30) days of receipt of the Complaint:

Wanda Santiago
Regional Hearing Clerk, RCA
U.S. Environmental Protection Agency
Region I
1 Congress Street, Suite 1100
Boston, Massachusetts 02114-2023

The Answer must comply with Section 22.15 of the enclosed Consolidated Rules of Practice.

Members of the public, to whom the 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 comment on the proposal and to be heard and present evidence at the hearing.

Be advised that if the Respondent does not file a timely Answer to this Complaint, Respondent may be found in default. Default constitutes an admission of all facts alleged in this Complaint and a waiver of the right to a hearing on such factual allegations. In order to avoid default in this matter, Respondent must within 30 days after receipt of this Complaint either: (1) settle this matter with the Complainant; or (2) file both an original and one copy of a written Answer to this Complaint to:

Wanda Rivera
Regional Hearing Clerk (RAA)
U.S. Environmental Protection Agency-Region 1
One Congress Street, Suite 1100
Boston, Massachusetts 02114-2023

Respondent is also required to provide a contemporaneous copy of any Answer to Complainant's legal counsel, who is authorized to receive service on behalf of EPA pursuant to 40 C.F.R. § 22.5(c)(4), at the following address:

Tonia Bandrowicz, Senior Enforcement Counsel
Office of Environmental Stewardship (SEL)
U.S. Environmental Protection Agency – Region 1
One Congress Street, Suite 1100
Boston, Massachusetts 02114-2023
Tel: 617-918-1734 Fax: 617-918-0734
Email: bandrowicz.toni@epa.gov

Pursuant to 40 C.F.R. § 22.15, the Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has knowledge. If the Answer asserts no knowledge of a particular factual allegation, the allegation shall be deemed denied. Otherwise, the failure to admit, deny, or explain any material factual allegation contained in this Complaint constitutes an admission of the allegation. The Answer shall also state the circumstances or arguments for any defense Respondent may wish to assert, challenges to any factual allegation in the Complaint, and any basis Respondent may have to oppose the Complainant's proposed penalty.

Following receipt of the Answer, a Presiding Officer will be assigned. The Presiding Officer will notify the parties of his assignment, and shall notify the parties of the time and place of further proceedings in the case.

VI. PUBLIC NOTICE FOR CLEAN WATER ACT VIOLATION

Pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, the Complainant is providing public notice of, and reasonable opportunity to, comment on this proposed issuance of a Final Order assessing administrative penalties against Respondent for CWA violations. If a hearing is

held on this matter, members of the public who submitted timely comments on this proceeding have the right under Section 309(g) of the CWA to be heard and present evidence at the hearing.

VII. SETTLEMENT

You may request an informal conference with Complainant's attorney, Tonia Bandrowicz, concerning the alleged violations and the amount of the proposed penalty. A request for an informal conference does not extend any deadlines in this proceeding, including the deadline by which you must submit an Answer to this Complaint.

If you have any questions concerning the enclosed Complaint, or wish to arrange for an informal conference, please contact Ms. Bandrowicz at (617) 918-1734.

Date: 08/20/09

Susan Studlien
Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region I
1 Congress Street, Suite 1100
Boston, Massachusetts 02114-2023

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EPA Docket No. CWA-01-2009-0093**

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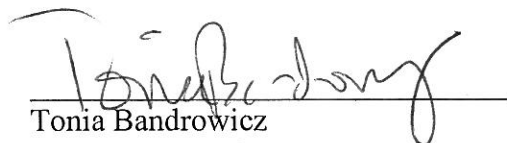
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Ratcliffe Burke Haren & Elias, LLP
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