



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
ONE CONGRESS STREET SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

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BY HAND

September 28, 2012

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

Re: In the Matter of City of Portland, Maine; Docket No. CWA-01-2012-0113

Dear Ms. Santiago:

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

Thank you for your attention to this matter.

Sincerely,


Michael Wagner
Senior Enforcement Counsel

Enclosure

cc: The Honorable Michael F. Brennan

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED

SEP 28 2012

EPA ORC
Office of Regional Hearing Clerk

In the Matter of:)
)
)
)
The City of Portland, Maine,)
389 Congress Street)
Portland, Maine)
)
Respondent.)
_____)

Docket No. CWA-01-2012-0113

**COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING**

I. STATEMENT OF AUTHORITY

1. This Administrative Complaint and Notice of Opportunity for Administrative Hearing (“Complaint”) is issued to the City of Portland, Maine (“Respondent” or “Portland”) pursuant to Section 309(g) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. § 1319(g), 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, United States Environmental Protection Agency, Region 1 (“EPA”).

2. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice, Complainant hereby provides notice of a proposal to assess a civil penalty against Respondent for the discharge of untreated sewage into navigable waters of the United States without authorization in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), from various components of Respondent’s sewage collection and conveyance system (“Collection System”).

II. STATUTORY AND REGULATORY BACKGROUND

3. The CWA is designed to restore and maintain the chemical, physical, and biological integrity of the nation's waters. Section 101(a) of the Act, 33 U.S.C. § 1251(a).

4. To accomplish the objectives of the Act, Section 301(a) of the CWA, 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 of the CWA, 33 U.S.C. § 1342, and EPA's implementing regulations, found at 40 C.F.R. Part 122.

5. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines "person" to include, among other things, a "municipality."

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, among other things, "sewage."

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."

10. Forty C.F.R. § 122.2 defines "waters of the United States" to include, 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.

11. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), provides that the EPA

Administrator may authorize a state to issue NPDES permits in accordance with the requirements of the CWA. On January 12, 2001, the Administrator granted the State of Maine the authority to issue Maine Pollutant Discharge Elimination System (“MEPDES”) permits for all areas of the State outside of Indian country, pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b).

12. Section 309(g) of the CWA, 33 U.S.C. § 1319, provides for the assessment of penalties for violations of Section 301 of the CWA 33 U.S.C. § 1311.

III. ALLEGATIONS

13. The Respondent is a person under Section 502(5) of the Act, 33 U.S.C. § 1362(5). The Collection System is a portion of a Publicly Owned Treatment Works (“POTW”).

14. The Maine Department of Environmental Protection (“MEDEP”) issued NPDES Permit No. ME0101435 (“Permit”) to the Respondent on July 7, 2003 for a five-year term (“2003 Permit”) and reissued it on October 23, 2008 (“2008 Permit”) for another five-year term. The 2003 Permit and the 2008 Permit authorized the discharge, subject to conditions, of untreated sewage from combined sewer overflow (“CSO”) Outfalls 006, 013, 014, 017, 018 and 019 to Back Cove, from CSO Outfalls 024 and 026 to Portland Harbor, from CSO Outfall 039 to Nasons Brook, and from CSO Outfalls 036, 042 and 043 to Capisic Brook for a total of twelve CSOs.

15. Back Cove, Portland Harbor, Nasons Brook, and Capisic Brook are waters of the United States under Section 502(7) of the Act, 33 U.S.C. § 1362(7), and the regulations promulgated thereunder.

IV. VIOLATIONS

16. Since September 1, 2007, on at least 22 occasions over a period of 24 days, the Respondent discharged untreated sewage to Back Cove, Portland Harbor, Nasons Brook, and

Capisic Brook or other waters of the United States from various components of the Collection System other than the permitted outfalls.

17. Each of the various components of the Collection System from which the Respondent discharged untreated sewage to waters of the United States is a point source within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

18. The 2003 Permit and the 2008 Permit did not authorize the Respondent to discharge untreated sewage from these various components of the Collection System. No other instrument authorized or authorizes the Respondent to discharge untreated sewage to waters of the United States from these various components of the Collection System.

19. The Respondent's discharges of untreated sewage to waters of the United States from various components of the Collection System without authorization occurred in violation of Section 301(a) of the Act, 33 U.S.C. §1311(a).

20. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. § 19.4 authorize administrative penalties in an amount not to exceed \$11,000 per violation per day for violations occurring between March 15, 2004 and January 12, 2009, and \$16,000 per violation per day for violations occurring after January 12, 2009, up to a maximum of \$177,500.

V. NOTICE OF PROPOSED ASSESSMENT OF CIVIL PENALTY

21. Based upon the foregoing allegations and pursuant to the authority of Section 309(g) of the CWA, 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)), Complainant proposes that a Final Order be issued against

Respondent assessing civil penalties for violations occurring on 24 days of up to eleven thousand dollars (\$11,000) per violation per day for violations occurring between March 15, 2004 and January 12, 2009 and of up to sixteen thousand dollars (\$16,000) per violation per day for violations occurring after January 12, 2009, up to a maximum of one hundred and seventy-seven thousand five hundred dollars (\$177,500).

22. Sewage contains viruses, bacteria (including E. coli) and other pathogens.

Exposure to contamination from Collection System overflows can therefore result in significant illness. Exposure to sewage contamination can result from swimming and other recreational contact, accidental consumption of contaminated water, and consumption of contaminated shellfish. Children, the elderly, and people with suppressed immune systems are more likely than healthy adults to catch sewage born disease, are more likely to develop the most serious form of disease and suffer more significant consequences from exposure. Violations making such exposure possible warrant a significant penalty.

23. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty, as required by the Consolidated Rules of Practice, taking into account the seriousness, nature, circumstances, extent, and gravity of the violation, or violations, and Respondent's prior compliance history, the 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 penalties, and such other matters as justice may require.

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

24. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.14, notice is hereby given that Respondent has the right to request a hearing on any material fact alleged raised 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 Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to comment on any proposed penalty and to be heard and to present evidence at the hearing.

25. 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) calendar days of receipt of the Complaint. To be entitled to a hearing, Respondent must include its request for a hearing in its Answer to the Complaint.

26. 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 Michael Wagner, the attorney assigned to represent the EPA and designated to receive service in this matter at:

Michael Wagner
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code: OES04-3)
Boston, Massachusetts 02109-3912

27. 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.

28. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in any default order shall

become due and payable by Respondent without further proceedings thirty (30) days after the default order becomes final.

VII. CONTINUED COMPLIANCE OBLIGATION

29. Neither assessment nor payment of a civil penalty pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), 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

09/27/12
Date

In the Matter of: UniFirst Corporation
Docket No. CWA-01-2012-0113

CERTIFICATE OF SERVICE

I certify that the foregoing ADMINISTRATIVE COMPLAINT (Docket No. CWA-01-2012-0113) was sent to the following persons, in the manner specified on the date below:

Original and one copy
hand delivered:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA Region 1
5 Post Office Square, Suite 100
Mail Code: ORA18-1
Boston, MA 02109-3912

Copy, via Certified Mail,
Return Receipt Requested,
and a copy of 40 C.F.R. Part 22

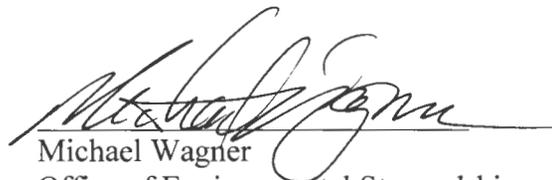
Michael F. Brennan
Mayor
The City of Portland
389 Congress Street
Portland, Maine 04101

Copy, via Certified Mail,
Return Receipt Requested

Brian Kavanah, Director
Division of Water Quality Management
Maine Department of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

Date:

9/28/2012



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