

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

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U.S. Environmental
Protection Agency

IN THE MATTER OF:

Town of Vestal
605 Vestal Parkway West
Vestal, New York 13850

SPDES Permit No. NYR20A064

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)

**PROCEEDING TO ASSESS A CLASS I CIVIL
PENALTY**

DOCKET No. CWA-02-2017-3310

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

I. STATUTORY AND REGULATORY AUTHORITIES

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative 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” or “CWA”), 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 C.F.R. Part 22 (2017), a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against Respondent, as a result of Complainant’s determination that the Respondent is in violation of Section 301 of the Act, 33 U.S.C. § 1311, by failing to comply with the terms of the New York Department of Environmental Conservation’s (“NYSDEC’s”) State Pollutant Discharge Elimination System (“SPDES”) General Permit for Storm Water Discharges from Municipal Separate Storm Sewer Systems (“MS4s”) for the MS4 that the Respondent owns and operates.

II. DEFINITIONS AND STATUTORY PROVISIONS

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source into waters of the United States, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342.

2. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of EPA to issue a National Pollutant Discharge Elimination System (“NPDES”) permit for the discharge of any pollutant, or combination of pollutants subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The NYSDEC is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with authorized States for violations of the CWA. Additionally, under the authority granted to the NYSDEC by the EPA under Section 402(b) of the CWA, 33 U.S.C. § 1342(b), a SPDES permit is required to be issued to facilities by the NYSDEC for the discharge of pollutants from said facilities from a point source to a navigable water of the United States.
3. “Person” is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a State.
4. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include, among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal, biological materials and agricultural waste discharged into water.
5. “Navigable waters” is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), to include the waters of the United States.
6. “Discharge of a pollutant” is defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12), to include any addition of any pollutant to navigable waters from any point source.
7. “Point source” is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to include any discernible, confined and discrete conveyance, including but, not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
8. Section 402(p) of the CWA, 33 U.S.C. § 1342(p) sets forth the permit requirements for the discharge of stormwater, including discharges of stormwater from Municipal Separate Storm Sewer Systems (“MS4s”).
9. 40 C.F.R. § 122.26(b)(8), defines an MS4 as a “conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law).....that discharges into waters of the United States; (ii) designed or used for collecting or conveying stormwater; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works...”
10. 40 C.F.R. § 122.26(b)(3) defines “incorporated place,” in part, as a city, town, township, or village that is incorporated under the laws of the State in which it is located.
11. 40 C.F.R. § 122.26(b)(16)(ii) defines “small municipal separate storm sewer system,” in part, as not defined as “large” or “medium” MS4s.
12. Pursuant to 40 C.F.R. § 122.32(a)(1), all small MS4s located in an “urbanized area” (as determined by the latest Decennial Census by the Bureau of Census) are regulated small MS4s.

13. 40 C.F.R. §§ 122.33(a) and (b)(1) require operators of regulated small MS4s to seek authorization to discharge under the applicable NPDES general permit issued by the permitting authority, by submitting a Notice of Intent (“NOI”) for coverage under such permit.
14. NYSDEC issued a SPDES General Permit for Storm Water Discharges from MS4s (GP-0-15-003) (“Permit”) on May 1, 2015, expired on April 30, 2017, and has been administratively extended. The Permit supersedes the previous SPDES permit (GP-0-10-002), which became effective on May 1, 2010, and expired on April 30, 2015, and SPDES permit (GP-0-08-002), which became effective on May 1, 2008, and expired on April 30, 2010.
15. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a civil penalty for violations of Section 301 of the CWA, 33 U.S.C. § 1311, or any permit condition or limitation implementing, *inter alia*, Section 301, and contained in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

III. FINDINGS OF FACTS AND VIOLATIONS

1. The Town of Vestal (“Town” or “Respondent”) is a public body chartered under the laws of the State of New York, and as such, the Respondent is a person, as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2, and is an “incorporated place” as defined in 40 C.F.R. § 122.26(b)(3).
2. Respondent owns and operates the MS4, located in the Town of Vestal, Broome County, New York and is an “owner or operator” within the meaning of 40 C.F.R. § 122.2.
3. The MS4 owned and operated by the Respondent is a small MS4 located in a urbanized area within the meaning of 40 C.F.R. § 122.26(b)(16)(ii) and 40 C.F.R. § 122.32(a)(1).
4. The MS4 in the Town of Vestal is a point source within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
5. Respondent discharges stormwater, which is a pollutant within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), into the Susquehanna River, Tracy Creek, Willow Run, Fuller Hollow Creek, Choconut Creek, and Bunn Hill Creek, which are waters of the United States within the meaning of 40 C.F.R. § 122.2, via its MS4. As such, Respondent discharges pollutants within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).
6. The Town of Vestal submitted a Notice of Intent (“NOI”) to NYSDEC on February 27, 2003 and subsequently received authorization under the MS4 General Permit pursuant to permit No. NYR20A064, and has been covered under the conditions and limitations in the MS4 General Permit at all relevant times addressed by this Order.
7. On September 9, 2014 through September 11, 2014, the EPA conducted a Compliance Audit of the Respondent’s MS4.
8. NYSDEC General Permit for Storm Water Discharges from Municipal Separate Storm Sewer Systems (GP-0-10-002), effective on May 1, 2010, was the effective permit at the time of the audit.
9. At the time of the Audit, the EPA identified the following violations of the Permit:

- a. Part IV.G of the Permit requires that all permittees must, through a signed certification statement, contract or agreement, provide adequate assurance that the third parties will comply with permit requirements applicable to the work performed by the third party. Third parties conducting SWMP-related work within the Town include the Broome-Tioga Stormwater Coalition who assist the Town with implementing Minimum Control Measures 1 & 2 (Public Education & Outreach and Public Participation & Involvement) as well as preparation of the Annual Report and contractors such as paving contractors. The Town did not require a signed certification from its third parties that their activities will comply with permit requirements as applicable. Therefore, Respondent violated Part IV.G of the Permit
- b. Part V.B of the Permit states that all permittees must keep records required by this MS4 general permit (records that document SWMP, records included in SWMP Plan, other records that verify reporting required by the permit, NOI, past annual reports, and comments from the public and the NYSDEC, etc.) for at least five (5) years after they are generated. Records, including the NOI and the SWMP Plan, must be available to the public at reasonable times during regular business hours. During the Audit, the Town was unable to provide EPA with SWMP implementation documentation including documentation of illicit connections (identified and/or eliminated), SWPPP review comments, Town construction stormwater oversight inspections, post-construction stormwater management practice inspections and maintenance records, and SWMP implementation documentation. Therefore, Respondent violated Part V.B of the Permit.
- c. Part VII.A.3.c of the Permit states that all permittees must field verify outfall locations. During the Audit, the Town stated that it had not field verified the outfall mapping that was done by Broome County as part of its mapping efforts in 2005. Therefore, Respondent violated Part VII.A.3.c of the Permit.
- d. Part VII.A.3.d of the Permit requires all permittees to conduct an outfall reconnaissance inventory (ORI), as described in the EPA publication entitled "Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessment," addressing every outfall within the urbanized area and additionally designated area within the permittee's jurisdiction at least once every five years, with reasonable progress each year. The NYSDEC SPDES MS4 General Permit GP-0-08-002 with the effective date of May 1, 2008, includes this requirement; therefore, the five-year deadline was May 1, 2013. At the time of the Audit, the Town stated that it had not conducted any outfall reconnaissance inventory activities. Therefore, Respondent violated Part VII.A.3.d of the Permit.
- e. Part VII.A.3.g of the Permit requires permittees to develop (for newly authorized MS4s) and implement a program to detect and address non-stormwater discharges to the small MS4. The program must include: procedures for identifying priority areas of concern (geographic, audiences, or otherwise) for the IDDE program; description of priority areas of concern; available equipment, staff, funding, etc.; procedures for identifying and locating illicit discharges (trackdown); procedures for eliminating illicit discharges; and procedures for documenting actions. In accordance with the 2003 permit, the Town was required to develop and have fully implemented its SWMP by January 8, 2008. The Town has not developed a written IDDE program that includes the required information. Therefore, Respondent violated Part VII.A.3.g of the Permit.

- f. VII.A.4.a.i of the Permit requires all permittees to develop (for newly authorized MS4s), implement and enforce a program that provides equivalent protection to the New York State General Permit for Stormwater Discharges from Construction Activities (CGP), unless more stringent requirements are contained within the MS4 SPDES general permit. At the time of the audit, EPA observed that the Town had not implemented and enforced a program that provided equivalent protection to the New York State CGP. Specifically, EPA observed the following violations of the CGP at construction sites within the Town's jurisdiction, in violation of Part VII.A.4.a.i of the Permit:
- i. Part II.B.5 of the CGP authorizes stormwater discharges only from those areas of disturbance identified in the Notice of Intent ("NOI"). At the time of the inspection at Our Lady of Sorrows (NYR10V934), EPA observed that an area had been cleared in the northeast corner of the site for construction of an additional building that was not included in the original SWPPP or NOI. The site was approximately 2 acres, at least half of which was temporarily stabilized at the time of the Audit. It should be noted that subsequent to the inspection, EPA received notification from the site that it had received a Stop Work Order from the Town.
 - ii. Part II.C.1 of the CGP requires the owner or operator to ensure that the provisions of the SWPPP are implemented from commencement of construction activity until all areas of disturbance have achieved final stabilization and a Notice of Termination has been submitted to the NYSDEC in accordance with Part V. of the Permit. In addition, Part IV.A.1 of the Permit states that the owner or operator must ensure that all erosion and sediment control practices identified in the SWPPP are maintained in effective operating conditions at all times. During the Audit, the EPA Audit team observed that the Vestal Park Rehabilitation and Nursing Center (NYR10W308) had not implemented or maintained specific SWPPP elements.
 - iii. Part IV.C.4.k of the CGP states that the qualified inspector shall take digital photographs, with date stamp, that clearly show the condition of all practices that have been identified as needing corrective action. The qualified inspector shall also take digital photographs, with date stamp, that clearly show the condition of the practice(s) after the corrective action has been completed and shall attach paper copies of the digital photographs to the inspection report that documents the completion of the corrective action work within seven (7) calendar days of that inspection. Based upon EPA's review of inspection reports retained by the Our Lady of Sorrows and Vestal Park Rehabilitation and Nursing Center at the time of the Audit, corrective actions had not been clearly identified as required by the CGP.

Therefore, Respondent violated Part VII.A.4.a.i of the Permit.

- g. Part VII.A.4.a.vi of the Permit requires all permittees to develop (for newly authorized MS4s), implement and enforce a program that contains requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality, pursuant to the requirement of construction permit. During the audit, it was observed that the Town of Vestal did not have specific language or requirements requiring construction site operators to control waste such as discarded building materials, concrete truck washout, etc. Therefore, Respondent violated Part VII.A.4.a.vi of the Permit.

- h. Part VII.A.4.a.vii and Part VII.A.5.a.v of the Permit requires all permittees to develop (for newly authorized MS4s), implement and enforce a program that describes procedures for SWPPP review for both construction and post-construction minimum control measures. In accordance with the 2003 permit, the Town was required to develop and have fully implemented its SWMP by January 8, 2008. The Town of Vestal did not have written procedures for SWPPP review at the time of the Audit. Therefore, Respondent violated Parts VII.A.4.a.vii and VII.A.5.a.v of the Permit.
- i. Part VII.A.4.a.viii of the Permit requires all permittees to develop (for newly authorized MS4s), implement and enforce a program that describes procedures for receipt and follow up on complaints or other information submitted by the public regarding construction site stormwater runoff. In accordance with the 2003 permit, the Town was required to develop and have fully implemented its SWMP by January 8, 2008. During the Audit, EPA observed that the Town did not have a program that described procedures for receipt and follow-up on complaints or other information submitted by the public. The Town stated that all calls related to stormwater would be forwarded to the Town Engineer's office for follow-up, but that the Town had not received any calls to date. Therefore, Respondent violated Part VII.A.4.a.viii of the Permit.
- j. Part VII.A.4.a.ix of the Permit requires all permittees to develop (for newly authorized MS4s), implement and enforce a program that describes procedures for site inspections and enforcement of erosion and sediment control measures, including steps to identify priority sites for inspection and enforcement and Notice of Termination ("NOT") procedures for signing the MS4 acceptance statement on the NOT. In accordance with the 2003 permit, the Town was required to develop and have fully implemented its SWMP by January 8, 2008. At the time of the Audit, the Town of Vestal did not have written procedures for construction site inspections, enforcement, identifying priority sites for inspection and NOT procedures that included signing the MS4 acceptance statement on the NOT. Therefore, Respondent violated Part VII.A.4.a.ix of the Permit.
- k. Part VII.A.4.xi of the Permit requires all permittees to develop (for newly authorized MS4s), implement and enforce a program that ensures that construction site operators have received erosion and sediment control training before they do work within the covered entity's jurisdiction and maintain records of that training. During the time of the Audit, Town representatives stated that while they do check to ensure that construction site operators have received the appropriate erosion and sediment control training, they do not retain records of that training. Therefore, Respondent violated Part VII.A.4.xi of the Permit.
- l. Part VII.A.4.xii of the Permit requires all permittees to develop (for newly authorized MS4s), implement and enforce a program that establishes and maintains an inventory of active construction sites, including the location of the site and owner/operator contact information. At the time of the Audit, the Town did not maintain an inventory that included the required information. Therefore, Respondent violated Part VII.A.4.xii of the Permit.
- m. Part VII.A.5.a.vi of the Permit requires all permittees to develop (for newly authorized MS4s), implement and enforce a program that maintains an inventory of post-construction stormwater management practices within the MS4's jurisdiction. At a minimum, it must include practices discharging to the small MS4 that have been installed since March 10, 2003, all practices owned by the small MS4, and those practices found to cause or contribute to water quality standard violations. The inventory shall also include at a minimum: location

of practice (street address or coordinates); type of practice; maintenance needed per the NYS Stormwater Design Management Manual, SWPPP, or other provided documentation; and dates and type of maintenance performed. In accordance with the 2003 permit, the Town was required to develop and have fully implemented its SWMP by January 8, 2008. According to Town representatives, the Town of Vestal maintains an inventory of all post-construction stormwater management practices discharging to the small MS4 that have been installed since March 10, 2003. During the Audit, EPA observed that the inventory did not include all of the information required by the Permit as it did not include information such as the type of maintenance needed per the NYS Stormwater Design Management Manual, SWPPP, or other provided documentation and the date and type of maintenance performed. Therefore, Respondent violated Part VII.A.5.a.vi of the Permit.

- n. Part VII.A.5.a.vii of the Permit requires all permittees to develop (for newly authorized MS4s), implement and enforce a program that ensures adequate long-term operation and maintenance of management practices identified in Part VII.5.a.vi by trained staff, including inspections to ensure that practices are performing properly. In accordance with the 2003 permit, the Town was required to develop and have fully implemented its SWMP by January 8, 2008. During the Audit, EPA observed that the Town of Vestal conducts annual inspections of post-construction stormwater management practices; however, the Town does not fully document its inspections. In addition, EPA observed that staff who are tasked with conducting inspections have not received training. Therefore, Respondent violated Part VII.A.5.a.vii of the Permit.
- o. Part VII.A.6.a.i of the Permit requires all permittees to develop (for newly authorized MS4s) and implement a pollution prevention / good housekeeping program for municipal operations and facilities that addresses municipal operations and facilities that contribute or potentially contribute pollutants of concern (“POCs”) to the small MS4 system. In accordance with the 2003 permit, the Town was required to develop and have fully implemented its SWMP by January 8, 2008. According to Town representatives, there is no pollution prevention / good housekeeping program in place that addresses municipal operations and facilities that contribute or potentially contribute POCs to the Town’s MS4. Therefore, Respondent violated Part VII.A.6.a.i of the Permit.
- p. Part VII.A.6.a.ii of the Permit requires that all permittees must at a minimum frequency of once every three years, perform a self-assessment of all municipal operations addressed by the SWMP to: determine the sources of pollutants potentially generated by the permittee’s operations and facilities and identify the municipal operations and facilities that will be addressed by the pollution prevention and good housekeeping program, if it is not done already. At the time of the Audit, the Town stated that self assessments had not been done as required. Therefore, Respondent violated Part VII.A.6.a.ii of the Permit.
- q. Part VII.A.6.a.iii of the Permit requires all permittees to develop (for newly authorized MS4s) and implement a pollution prevention/good housekeeping program for municipal operations and facilities that determines management practices, policies, procedures, etc. that will be developed and implemented to reduce or prevent the discharge of (potential) pollutants. In accordance with the 2003 permit, the Town was required to develop and have fully implemented its SWMP by January 8, 2008. At the time of the Audit, the Town stated that there were no specific procedures, management practices or policies to reduce or prevent the discharge of (potential) pollutants from its facilities, even though its SWMP Plan stated that the Town had “identified BMPs to reduce and prevent the discharge of pollutants to the

MEP [Maximum Extent Practicable] from municipal activities.” In addition, the Town’s SWMP Plan stated that “[d]ocuments are reviewed annually to identify changes in operations that affect stormwater runoff, and develop / implement new BMPs or modify existing BMPs to better prevent the discharge of pollutants from municipal operations.” Therefore, Respondent violated Part VII.A.6.a.iii of the Permit.

- r. Part VII.A.6.a.iv of the Permit requires all permittees to develop (for newly authorized MS4s) and implement a pollution prevention/good housekeeping program for municipal operations and facilities that prioritizes pollution prevention and good housekeeping efforts based on geographic area, potential to improve water quality, facilities or operations most in need of modification or improvement, and covered entity’s capabilities. In accordance with the 2003 permit, the Town was required to develop and have fully implemented its SWMP by January 8, 2008. At the time of the Audit, the Town of Vestal did not have a municipal operations program that prioritizes pollution prevention and good housekeeping efforts based on specific factors. During the Audit, the EPA Audit Team observed inadequate pollution prevention/good housekeeping at the following locations:
- i. Severe erosion of the bank on the east of the Highway Yard due to runoff from vehicle washing / hose down activities that take place in the stone / gravel stockpile area. At the base of the bank is the Choconut Creek.
 - ii. Oil and grease were observed in a catch basin near an uncovered fueling station at Highway Yard. The catch basin receives roof drainage from the garage, in addition to overland flow from the surrounding area. Town staff were not certain where the catch basin ultimately discharged.
 - iii. Debris piles on southeast corner of Highway Yard in the materials staging area. The bank was observed to be unstabilized and debris was observed on the hillside leading to the Choconut Creek which flowed parallel to the bank and hillside.
 - iv. Unburied mortalities in east corner of Highway Yard. The Choconut Creek is immediately to the east and downstream of hillside.
 - v. Town staff stated that vehicle washing at the Water Department is done outside using a concentrated soap mix on a weekly basis to the southeast of the garage bays. EPA observed a catch basin in the general vicinity of the area identified by Town staff. The catch basin discharges to the Town’s storm sewer system.

Therefore, Respondent violated Part VII.A.6.a.iv of the Permit.

- s. Part VII.A.6.a.vi of the Permit requires that all permittees develop (for newly authorized MS4s) and implement a pollution prevention / good housekeeping program for municipal operations and facilities that includes an employee pollution prevention and good housekeeping training program and ensures that staff receive and utilize training. In accordance with the 2003 permit, the Town was required to develop and have fully implemented its SWMP by January 8, 2008. According to Town representatives, there is no formal routine training for Town employees. Therefore, Respondent violated Part VII.A.6.a.vi of the Permit.

10. On February 11, 2015, the EPA issued an Administrative Compliance Order, Docket No. CWA-02-2015-3028, which was mailed to the Respondent along with a copy of the MS4 Audit report. The Administrative Compliance Order directed the Respondent to correct the above violations and come into compliance with the Act.
11. Based on the foregoing Findings of Fact and Conclusions of Law, the Respondent is liable for nineteen thousand four hundred sixty-three (19,463) days of violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

IV. 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 the Respondent assessing a penalty of **\$18,500**. 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 violations, and Respondent’s prior compliance history, degree of culpability, economic benefit or savings accruing to the Respondent by virtue of the violations, and the Respondent’s ability to pay the proposed penalty. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after Respondent’s receipt of this Notice, unless Respondent files an Answer to the Complaint within that time and requests a Hearing on this Notice pursuant to the following section.

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE ACTION

The rules of procedure governing this civil administrative litigation have been set forth in the CROP, 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

A. Answering The Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007-1866**

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a). Respondent’s Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which the Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in the Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that the Respondent disputes (and thus intends to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether Respondent requests a Hearing. 40 C.F.R. § 22.15(b).

Respondent's failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of a defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a Hearing.

B. Opportunity To Request A Hearing

If requested by Respondent in its Answer, a Hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If however, Respondent does not request a Hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a Hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any Hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A Hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

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.

C. Failure To Answer

If Respondent fails in any Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely Answer to the Complaint [*i.e.* not in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)], Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondent, and to collect the assessed penalty amount, in Federal court.

VI. INFORMAL SETTLEMENT CONFERENCE

Regardless of whether the Respondent requests a formal Hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, the Respondent may comment on the charges made in this Complaint and the Respondent may also provide whatever additional information is believed to be relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on the

