



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Bonney Bright Sand Company
5513 Buzzard Neck Road
Virginia Beach, VA 23457

Re: Notice of Proposed Assessment of a Civil Penalty
EPA Docket No. CWA-3-2009-0053

RECEIVED
JAN 31 PM 2:29

Dear Mr. Bright:

Enclosed please find an Administrative Complaint and Notice of Opportunity to Request a Hearing ("Complaint") issued against the Bonney Bright Sand Company ("Respondent") under the authority of Section 309(g) of the Clean Water Act ("Act"), 33 U.S.C. Section 1319(g). The Complaint alleges that Respondent has violated Section 301 of the Act. The violations alleged by EPA are specifically set out in Section II of the Complaint.

Unless you elect to resolve the proceeding by paying the penalty proposed in the Complaint, an Answer must be filed within thirty (30) days of receipt of the Complaint 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, (Consolidated Rules)*, 40 C.F.R. Part 22. The Answer must respond specifically to each of the allegations in the Complaint. Failure to respond to this Complaint and Notice with specific answers within the thirty (30) days will constitute an admission of the allegations made. Failure to Answer may result in the entry of a Default Order imposing the proposed penalties without further proceedings.

You have the right to request a hearing to contest any matter set forth in the Complaint. Such request must be included with your Answer to this Complaint. Whether or not you request a hearing, you may request an informal settlement conference to discuss resolution of this case. A request for a settlement conference may be included in your Answer or you may contact the attorney assigned to this case:

Pamela J. Lazos
Sr. Asst. Regional Counsel (3RC20)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
215/814-2658

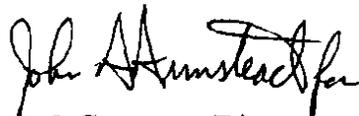
Please note that requesting a settlement conference does not affect in any way the obligation to file an Answer within thirty (30) days.

In addition, your company may be required to disclose to the Securities and Exchange Commission ("SEC") the existence of certain administrative or judicial proceedings taken against your company under Federal, State or local environmental laws. Please see the attached "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings" for more information about this requirement and to aid you in determining whether your company is subject to it.

Finally, to help you determine whether your company is a "small business" under the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), a copy of the SBREFA Fact Sheet is enclosed. This Fact Sheet provides information on contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities and also provides information on compliance assistance. As noted in the Fact Sheet, any decision to participate in such a program or to seek compliance assistance does not relieve you of your obligation to respond in a timely manner to an EPA request or other enforcement action, create any new rights or defenses under law and will not affect EPA's decision to pursue this enforcement action. To preserve your legal rights, you must comply with all the rules governing the administrative enforcement process. The Ombudsman and fairness boards do not participate in the resolution of EPA's enforcement actions.

A copy of the regulations governing the procedures for assessing an administrative penalty are enclosed.

Sincerely,



Jon M. Capacasa, Director
Water Protection Division

Enclosures
as noted

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In The Matter of:

Bonney Bright Sand Company
5513 Buzzard Neck Road
Virginia Beach, VA 23457

Respondent

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

EPA Docket No. CWA-03-2009-0053

**ADMINISTRATIVE COMPLAINT
and NOTICE OF OPPORTUNITY
TO REQUEST HEARING**

I. STATUTORY AUTHORITY

1. This Administrative Penalty Complaint ("APO") 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, 33 U.S.C. § 1319(g)(2)(A) ("CWA" or the "Act"). The Administrator has delegated this authority to the Regional Administrator of EPA, Region III, who in turn has delegated it to the Director, Water Protection Division, pursuant to Delegation No. 2-51 (9/1/05).
2. Pursuant to Section 309 of the Act, 33 U.S.C. § 1319, and in accordance with the enclosed *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* ("Consolidated Rules"), 40 C.F.R. § 22, Complainant hereby requests that the Regional Administrator or his delegatee assess a civil penalty in the amount of thirty-two thousand five hundred dollars (\$32,500) against Bonney Bright Sand Company ("Respondent" or "Bonney Bright") for violations of Section 301 of the Clean Water Act ("Act"), 33 U.S.C. § 1311. Pursuant to 40 C.F.R. § 22.14(a)(6), Respondents are hereby notified that the procedures set forth at 40 C.F.R. Subpart I (40 C.F.R. § 22.50-.52) apply to this proceeding.

II. GENERAL ALLEGATIONS

3. Respondent, Bonney Bright Sand Company is a Virginia Corporation with headquarters at 5513 Buzzard Neck Road, Virginia Beach, Virginia 23457 and with a principal place of business at 200 Princess Anne Road, Virginia Beach, Virginia 23457. The Respondent is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
4. Respondent owns, and at all times relevant to this APO, has operated the Bonney Bright Sand Company, located at 200 Princess Anne Road, Virginia, VA 23457 as further defined on the map attached hereto as Exhibit “A” (hereinafter the “Site”).
5. The Bonney Bright Sand Company is a sand and gravel mine. The Site consists of a borrow pit that drains co-mingled process water and storm water to several agricultural drainage ditches which ultimately drain to a canal through wetlands along the south side of the Respondent’s property until it reaches Back Bay, a navigable-in-fact water, and hence a “water of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).
6. The canal is a “water of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2; and 40 C.F.R. § 122.2.
7. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source to waters of the United States except in compliance with, among other things, a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
8. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as described in the permit.
9. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Virginia Department of Environmental Quality (“VA DEQ”) issued an NPDES Permit numbered VAG840148 to Respondent on July 22, 2002 (“NPDES Permit”) for Nonmetallic Mineral Mining for its facility located at 200 Princess Anne Road in Virginia Beach, Virginia. Respondent’s NPDES Permit expired on June 30, 2004.

10. An NPDES permit is required for discharges of pollutants, including discharges of storm water associated with “industrial activity,” pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.21 and 122.26.
11. “Storm Water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).
12. Pursuant to 40 C.F.R. § 122.26(b)(14), facilities subject to the storm water effluent limitations guidelines at 40 C.F.R. § 122.26(b)(14)(i), are considered to be engaging in “industrial activity.”
13. Respondent at all times relevant to this APO has owned and operated a sand and gravel plant at the facility.
14. Respondent is therefore engaged in “industrial activity” at the Facility.
15. On May 6, 2005, duly authorized inspectors from the Virginia Department of Environmental Quality (“DEQ”) inspected the Facility. During the inspection, the DEQ inspector observed a discharge of sand and/or other particulate matter from the Facility entering a series of drainage swales enroute to Back Bay.
16. Pursuant to section 502 (6) of the CWA, runoff from sand and particulate matter are pollutants.
17. The Facility is a “point source” which “discharges” “pollutants” contained in storm water and/or process water as those terms are defined at Sections 502(16), (14) and (6) of the Act, 33 U.S.C. §§ 1362(16), (14) and (6), respectively, and 40 C.F.R. § 122.2, and at all times relevant to this Complaint has “discharged” “pollutants” contained in storm water runoff and/or process water.
18. Respondent failed to comply with the terms of its permit by discharging pollutants to waters of the U.S. in violation of those terms, as set forth below.

Count I – Reporting Violations

19. Respondent failed to timely submit the 3rd and 4th Quarter 2003 Discharge Monitoring Reports (DMRs) which were received by VA DEQ on 7/28/04, and which were due in their offices on 10/10/03 and 1/10/04, respectively.

20. Respondent failed to timely submit the 1st and 2nd Quarter 2004 DMRs which were received by VA DEQ on 7/28/04, and which were due in their offices on 4/10/04 and 7/10/04 respectively.
21. Respondent failed to timely submit the 3rd Quarter 2004 DMR which was received by VA DEQ on 2/22/05, and which was due in their offices on 10/10/04.
22. Respondent failed to timely submit the 4th Quarter 2004 DMR which was received by VA DEQ on 2/22/05, and which was due in their offices on 1/10/05.
23. Respondent failed to submit the 3rd Quarter 2006 DMR for Outfall 002.
24. Respondent submitted a deficient Storm Water Pollution Prevention Plan (SWPPP) as noted in a 10/12/06 VA DEQ site inspection, attached hereto as Exhibit "B". Deficiencies include, but are not limited to, failure to include drainage patterns for the discharge of storm water runoff and the outfall locations on the Site map; failure to maintain up-to-date records on Site; failure to specify frequency of training; failure to specify frequency of inspections; failure to keep sampling records available for review on Site; failure to comply with and document review and inspection procedures; and failure to maintain the Comprehensive Site Compliance Evaluation Report or the Certification of Compliance in the records as required by the Permit.
25. Respondent's failure to comply with the applicable reporting and monitoring requirements under Part III, C - Reporting and Monitoring Results, of Respondent's NPDES permit is a violation of Section 301 of the Act, 33 U.S.C. § 1311, and 40 C.F.R. § 122.26(c)(1).

Count II – Effluent Violations

26. Respondent failed to comply with the terms of its permit by exceeding the permit's effluent limits.
27. Respondent exceeded its Total Suspended Solids (TSS) discharge limitations in the 4th Quarter 2003 with a grab sample of 141.2 mg/L of TSS where the limit under its NPDES Permit was 60.
28. Respondent exceeded its Maximum TSS discharge limitations in the 1st Quarter 2004 with a grab sample of 130.6 mg/L TSS where the limit under its NPDES Permit was 60.
29. Respondent exceeded its Maximum TSS discharge limitations in the 3rd Quarter 2004 with a grab sample of 133.1 mg/L TSS where the limit under its NPDES Permit was 60.

30. Respondents failure to comply with the effluent requirements under Part III, L - Duty to Comply, of Respondent's NPDES permit is a violation of Section 301 of the Act, 33 U.S.C. § 1311, and 40 C.F.R. § 122.26(c)(1).

Count III - Unpermitted Discharges

31. During the inspections of May 6, 2005, and May 24, 2005, VA DEQ inspectors discovered a second, unpermitted discharge location, (Outfall 002), that was not covered under Respondent's NPDES permit. Outfall 002 was not permitted until approximately one year later on May 1, 2006.
32. Respondents, by discharging pollutants from a point source associated with processes and/or industrial activity at the Facility to water of the United States without being in compliance with an NPDES permit is a violation of Section 301 of the Act, 33 U.S.C. § 1311, and 40 C.F.R. § 122.26.
33. Respondent's NPDES Permit expired on June 30, 2004. The new application was not received by VA DEQ until September 9, 2004. Pursuant to 40 C.F.R. § 122.21, a new application must be received at least one hundred and eighty (180) days prior to the expiration of the permit.
34. Respondent's failure to submit a new application at least one hundred and eighty (180) days before the expiration of its NPDES permit is a violation of Section 301 of the Act, 33 U.S.C. § 1311, and 40 C.F.R. § 122.21.
35. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. § 19, violations of the Act, such as these, which occurred subsequent to January 30, 1997 subject the violator to civil penalties in an amount not to exceed \$11,000 per day for each day the violation continues, up to a maximum of \$32,500.
36. EPA has consulted with the Commonwealth of Virginia regarding this action as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), by mailing a copy of this document to the appropriate State official and offering an opportunity for the State to consult further with EPA on this proposed penalty assessment.

III. PROPOSED CIVIL PENALTY

37. Based upon the foregoing allegations, and pursuant to the authority of Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), Complainant hereby proposes to issue a Final Order Assessing Administrative Penalties to the Respondent in the amount of thirty-two thousand five hundred dollars (\$32,500). This does not constitute a “demand” as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.
38. The proposed penalty was determined after taking into account the nature, circumstances, extent and gravity of the violation, Respondent’s prior compliance history, Respondent’s ability to pay, the degree of culpability for the cited violations, and any economic benefit or savings to Respondent because of the violations, all factors identified at Section 309(g)(3) of the Clean Water Act, 33 U.S.C. § 1319(g)(3). In addition, to the extent that facts or circumstances unknown to Complainant at the time of issuance of this Complaint become known after issuance of this Complaint, such facts or circumstances may also be considered as a basis for adjusting the proposed administrative penalty.
39. The Regional Administrator or his delegatee may issue the Final Order Assessing Administrative Penalties after 30 days and without further proceedings following Respondent’s receipt of this Complaint, unless Respondent, within that time, either pays the penalty or responds to the allegations in the Complaint and requests a hearing according to the terms of Section IV, below.

IV. SETTLEMENT CONFERENCE

40. EPA encourages settlement of proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the Act. Whether or not a hearing is requested, Respondent may request a settlement conference with Complainant to discuss the allegations of the Complaint and the amount of the proposed civil penalty. **However, a request for a settlement conference does not relieve the Respondent of the responsibility to file a timely Answer to the Complaint.**
41. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The execution of such a Consent Agreement shall constitute a waiver of Respondent’s right to contest the allegations of the Complaint or to appeal the Final Order accompanying the Consent Agreement.

42. If you wish to arrange a settlement conference, or if you have any questions related to this proceeding, please contact Ms. Pamela Lazos, Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, Region III, at (215) 814-2658 before the expiration of the thirty (30) day period following your receipt of this Complaint. If you are represented by legal counsel, you must have your counsel contact Ms. Lazos on your behalf. Once again, however, such a **request for a settlement conference does not relieve the Respondent of the responsibility to file an Answer within thirty (30) days following Respondent's receipt of this Complaint.**

V. QUICK RESOLUTION

43. In accordance with 40 C.F.R. § 22.18(a), and subject to the limitations in 40 C.F.R. § 22.45, Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint. If Respondent pays the specific penalty proposed in this Complaint within thirty (30) days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1), no Answer need be filed.
44. If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2), Respondent may file a written statement with the Regional Hearing Clerk within thirty (30) days after receiving this Complaint stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be filed with the
Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street, Philadelphia, Pennsylvania 19103-2029

and a copy shall be provided to

Pamela J. Lazos (3RC20)
Sr. Asst. Regional Counsel
U.S. EPA, Region III
1650 Arch Street, Philadelphia, PA 19103-2029.

Within sixty (60) days of receiving the Complaint, Respondent shall pay the full amount of the proposed penalty. Failure to make such payment within sixty (60) days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17.

45. Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3), the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the final order.
46. Payment of the penalty shall be made by sending a certified or cashier's check made payable to the Treasurer of the United States of America, in care of:

EPA Region III
Regional Hearing Clerk
P. O. Box 360515
Pittsburgh, PA 15251-6515

Copies of the check shall be mailed at the same time payment is made to:

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

and to:

Pamela J. Lazos (3RC20)
Sr. Asst. Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029.

VI. OPPORTUNITY TO REQUEST HEARING

47. Pursuant to Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), Respondent may request a hearing on the proposed civil penalty within thirty (30) days of receiving this Complaint.
48. At the hearing, Respondent may contest any material fact contained in the Allegations listed in Section II, above, and the appropriateness of the penalty amount in Section III, above.

49. The procedures for hearings are set out in 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*, (Consolidated Rules), 40 C.F.R. § 22, a copy of which is enclosed.

50. Any Request for Hearing and Answer to this Complaint Respondent wishes to file must be filed within thirty (30) days of receiving this Complaint with the following:

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

51. Copies of the Request for Hearing and the Answer along with other documents filed in this action shall also be sent to the following:

Pamela J. Lazos
Sr. Asst. Regional Counsel (3RC20)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Failure to file an Answer may result in entry of a default judgment against Respondent. Upon issuance of a default judgment, the civil penalty proposed herein shall become due and payable. Respondent's failure to fully pay the entire penalty, assessed by the Default Order, by its due date may result in a civil action to collect the assessed penalty, plus interest, attorney's fees, costs, and an additional quarterly nonpayment penalty pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9).

In addition, the default penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.

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

- a. the specific factual and legal circumstances or arguments which are alleged to constitute any grounds of defense;

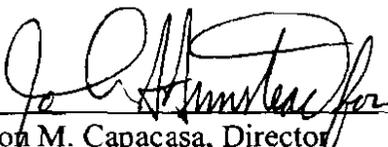
- b. the facts which Respondent disputes;
- c. Respondent's basis for opposing the proposed relief; and
- d. whether a hearing is requested.

Failure to admit, deny or explain any of the factual allegations in the Complaint constitutes admission of the undenied allegations.

53. If 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) of the Act, 33 U.S.C. § 1319(g)(4), to be heard and to present evidence on the appropriateness of the penalty assessment. If Respondent does not request a hearing, EPA will issue a Final Order Assessing Administrative Penalties, and only members of the public who submit timely comments on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon. 33 U.S.C. § 1319(g)(4)(C). EPA will grant the petition and will hold a hearing if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.
54. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309 of the Act, 33 U.S.C. § 1319, shall affect Respondent's continuing obligation to comply with the Clean Water Act, any other Federal or State laws, 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.

Date: _____

12/31/08



Jon M. Capacasa, Director
Water Protection Division
U.S. Environmental Protection
Agency, Region III

CERTIFICATE OF SERVICE

I certify that the enclosed Administrative Complaint with Notice of Opportunity to Request Hearing was delivered to the following persons:

Delivery by Certified Mail Return Receipt Requested:

Bonney Bright Sand Company
5513 Buzzard Neck Road
Virginia Beach, VA 23457

and

David K. Paylor
Director, Virginia Department of Environmental Quality
DEQ Central Office
629 East Main Street
Richmond, VA 23219

and

Delivery by hand (original and one copy):

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Date: 12/31/08



Charles A. Schadel
Environmental Engineer
NPDES Enforcement Branch
Water Protection Division