

REAGER & ADLER, P.C.
Linus E. Fenicle, Esquire
PA Atty. I.D. #20944
LFenicle@ReagerAdlerPC.com
Wayne S. Martin, Esquire
PA Atty. I.D. #208078
WMartin@ReagerAdlerPC.com
2331 Market Street
Camp Hill, PA 17011
Phone: (717) 763-1383
Facsimile: (717) 730-7366

ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:

Antrim Township	:	Docket No. CWA-03-2009-0265DN
10655 Antrim Church Road	:	
Greencastle, PA 17225-9577	:	Appeal No. NPDES 09-14

**ANTRIM TOWNSHIP'S RESPONSE TO REGION'S
MOTION TO DISMISS PETITION FOR REVIEW**

NOW COMES, Antrim Township, by and through its special counsel, Reager & Adler, P.C., and submits this Response to Region's Motion to Dismiss Petition for Review pursuant to 40 C.F.R. § 22.16(b).

Antrim Township filed an appeal to the FINDINGS OF VIOLATION, Docket No. CWA-03-2009-0265DN, which was issued to Antrim Township on September 30, 2009. The FINDINGS OF VIOLATION was an ORDER issued by Jon M. Capacasa, Director, Water Protection Division, EPA, Region III that Antrim Township "discharged pollutants contained in storm water associated with an MS4, in violation of [its] Permit and section 301 of the CWA, 33 U.S.C. § 1311." *See* FINDINGS OF VIOLATION ¶ 21. The FINDINGS OF VIOLATION ORDER also states that the EPA may initiate civil and/or criminal sanctions for said violation. *See* FINDINGS OF VIOLATION ¶¶ 23-27. The Region's Motion to Dismiss argues that Antrim

Township cannot challenge the finding of violation until the Region imposes a penalty. Antrim Township appealed the FINDINGS OF VIOLATION, not to dispute the EPA's authority to assess civil and criminal penalties for violations of the Clean Water Act, but to dispute whether the Director of the Water Protection Division has the authority to issue the FINDINGS OF VIOLATION against Antrim Township since Antrim Township does not have a municipal storm sewer system and does not discharge any pollutant into navigable waters from any point source

The Region, in its Motion to Dismiss, qualifies its FINDINGS OF VIOLATION and compliance order as a pre-enforcement administrative order. The FINDINGS OF VIOLATION ORDER does not state that it is a "pre-enforcement administrative order." Instead, the Region cited the statutory authority for issuing the FINDINGS OF VIOLATION ORDER based on findings of fact and conclusion of law which are clearly erroneous. Before this Board can address the Region's question as to whether the Board has jurisdiction to adjudicate the Region's FINDINGS OF VIOLATION and compliance order, the Board would necessarily have to determine whether the Region had the statutory authority to issue the FINDINGS OF VIOLATION ORDER.

Finally, Antrim Township did not alter its separate storm sewer system as alleged in the Region's Motion to Dismiss. Antrim Township never had a "point source" as that term is defined by the Clean Water Act and it should never have obtained a NPDES Permit. However, there is currently no administrative procedure in place to have an improperly issued NPDES Permit terminated because the application for the exemption and/or request for waiver form must include a Notice of Intent (NOI), but the new NOI form was currently under review and the old NOI form will not be accepted. Antrim Township has and will continue in a good faith effort to comply with the PADEP and the Region, but Antrim Township cannot comply with the NPDES

permit requirements because it does not it does not discharge and never has discharged any pollutant into navigable waters from any point source.

Respectfully submitted

REAGER & ADLER, PC

Date: December 22, 2009

By: 

Linus E. Fenicle, Esquire
PA Atty. I.D. #20944
Wayne S. Martin, Esquire
PA Atty. I.D. #208078
2331 Market Street
Camp Hill, PA 17011
(717) 763-1383

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2009, true copies of the Petition and Exhibits were served upon Jon M. Capacasa of United States Environmental Protection Agency Region III as follows:

Jon M. Capacasa, Director
Water Protection Division
United States Environmental Protection Agency Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Attn: Scott R. Williamson
Pennsylvania Department of Environmental Protection
Southcentral Regional Office
909 Elmerton Avenue
Harrisburg, PA 17110

Attn: Chuck Schadel
U.S. E.P.A., Region III, (3WP42)
1650 Arch Street
Philadelphia, PA 19103-2029


Jessica Shull