



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION 2  
 290 BROADWAY  
 NEW YORK, NY 10007-1866

SEP 3 2014

U.S. Environmental  
 Protection Agency-Reg 2  
 2014 SEP -8 AM 8:53  
 REGIONAL HEARING  
 CLERK

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**Article Number: 7005 3110 0000 5967 7261 - 7005 3110 0000 5967 7278**

Rabbi Wolf Gluck, Administrator  
 UTA of KJ, Inc.  
 P.O. Box 477  
 Monroe, New York 10949

Rabbi Wolf Gluck, Administrator  
 UTA of KJ, Inc.  
 55 Forest Road  
 Kiryas Joel, NY 10950

Re: Notice of Proposed Assessment of a Civil Penalty Class II  
 United Talmudical Academy of Kiryas Joel, Inc. (UTA of KJ, Inc.) Boys School,  
 Bakertown Road, Kiryas Joel, NY 10950  
 NPDES Tracking No. NYU400900  
 Docket No. CWA-02-2014-3401

Dear Rabbi Gluck:

Enclosed is a Complaint which the U.S. Environmental Protection Agency ("EPA" or "Agency") is issuing to you as a result of our determination that the UTA of KJ, Inc. ("Respondent"), has violated Sections 301, 308 and 402 of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §§ 1311, 1318 and 1342, in your operation of the UTA of KJ Boys School construction site located off of Bakertown Road, Kiryas Joel, New York 10950. This Complaint is filed pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g). Upon consideration of the factors in Section 309(g), the Complaint proposes that a penalty of **\$177,500** be assessed to Respondent for these violations.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or if they are found to be true after you have had an opportunity for a hearing on them, you have the right to contest the penalty proposed in the Complaint. I have enclosed a copy of the Consolidated Rules of Practice ("CROP"), found at 40 Code of Federal Regulations ("C.F.R.") Part 22, which the EPA follows in cases of this kind. Please note the requirements for an Answer at Section 22.15 of the CROP. **If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file an Answer within thirty (30) days of your receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the following address:**

Karen Maples  
 Regional Hearing Clerk  
 U.S. Environmental Protection Agency  
 290 Broadway, 16th Floor  
 New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint, you may be judged to have defaulted (*See*, § 22.17 of the CROP). If a default order is entered, the entire proposed penalty may be assessed without further proceedings.

Regardless of whether you request a formal hearing, EPA encourages you to pursue the possibility of settlement by requesting an informal conference with the Agency concerning the alleged violations and the amount of the proposed penalty. Please note that a request for an informal conference does not substitute for a written Answer, or affect what you may choose to say in an Answer, nor does it extend the thirty (30) day deadline by which you must file an Answer.

The Agency also encourages Respondent to propose and perform Supplemental Environmental Projects ("SEPs"), where appropriate, as part of any settlement. Enclosed is a copy of the Final EPA Supplemental Environmental Projects Policy (May 1, 1998) for your consideration.

You may represent yourself or be represented by an attorney at any stage of the proceedings, including any informal discussions and/or a formal hearing, whether in person or by telephone. Any hearing held in this matter will be conducted in accordance with the CROP.


If you have any questions or wish to discuss a settlement of this matter with the EPA by an informal conference, please immediately contact:

Kara E. Murphy, Esq.  
Assistant Regional Counsel  
Water and General Law Branch  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th Floor  
New York, NY 10007-1866  
Telephone: (212) 637-3211  
Email: [Murphy.Kara@epa.gov](mailto:Murphy.Kara@epa.gov)

For your information, I am enclosing an Information Sheet which may be helpful if you are a small business as defined at 13 C.F.R. § 121.201, in obtaining compliance assistance or if you wish to comment on this action to the Small Business and Agriculture Regulatory Enforcement Ombudsman and Regional Fairness Board.

Should you have any questions concerning this matter, please feel free to contact Kara Murphy at the phone number above or Justine Modigliani, Compliance Section Chief, at (212) 637-4268.

Sincerely,



Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosures

1. Complaint
2. CROP
3. EPA Supplemental Environmental Projects Policy and SEP Brochure
4. Information for Small Business

cc: Joe DiMura, P.E., Director, Bureau of Water Compliance Programs, NYSDEC  
Edward Hampston, NYSDEC via Quick Place  
Gedalye Szegedin, Village Administrator, Village of Kiryas Joel  
Patrick Ferracane, NYSDEC Region 3, Via Email  
Natalie Browne, NYSDEC Region 3, Via Email  
Joseph S. Scarmato, Esq. (Attorney for UTA of KJ)



SEP 3 2014

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

U.S. Environmental  
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REGIONAL HEARING  
CLERK

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**Article Number: 7005 3110 0000 5967 7254**

Mr. Joseph DiMura, P.E., Director  
Bureau of Water Compliance Programs  
NYSDEC  
625 Broadway  
Albany, New York 12233-4500

**RE: Notice of Proposed Assessment of a Civil Penalty Class II  
United Talmudical Academy of Kiryas Joel, Inc. (UTA of KJ, Inc.) Boys School,  
Bakertown Road, Kiryas Joel, NY 10950  
NPDES Tracking No. NYU400900  
Docket No. CWA-02-2014-3401**

Dear Mr. DiMura:

Enclosed is a copy of the Complaint and Proposed Assessment of a Civil Penalty, which the United States Environmental Protection Agency ("EPA") has issued to the UTA of KJ, Inc. pursuant to § 309(g) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(g). EPA has issued the Complaint to begin the process to administratively assess a civil penalty of **\$177,500** against Respondent for violations of the Act.

Since the violations have occurred in the State of New York, EPA is offering you an opportunity to confer with us regarding the proposed assessment. You may confer with me at (212) 637-4000.

A copy of 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 (40 C.F.R. Part 22), is enclosed for your reference.

Sincerely,



Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosures

1. Complaint
2. CROP

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

U.S. Environmental  
Protection Agency-Reg 2  
2014 SEP -8 AM 8:53  
REGIONAL HEARING  
CLERK

**IN THE MATTER OF:**

UTA of KJ, Inc.  
P.O. Box 477, Monroe, NY 10949  
55 Forest Road, Monroe, NY 10950

**RESPONDENT**

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

United Talmudical Academy of Kiryas Joel,  
Bakertown Road, Kiryas Joel, NY 10950  
NPDES Tracking No. NYU400900

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

**DOCKET No. CWA-02-2014-3401**

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

**I. STATEMENT OF AUTHORITY**

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 ("Administrator" or "EPA") by Section 309(g)(2)(B) of the Clean Water Act ("Act" or "CWA"), 33 U.S.C. § 1319(g)(2)(B). 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)(B) 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, a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against the UTA of KJ, Inc. (United Talmudical Academy of Kiryas Joel, Inc.) ("Respondent"), as a result of Complainant's determination that Respondent is in violation of Sections 301, 308, and 402 of the Act, 33 U.S.C. §§ 1311, 1318 and 1342, for unauthorized discharges of stormwater associated with construction activity and failure to obtain the New York State Department of Environmental Conservation's ("NYSDEC") State Pollutant Discharge Elimination System ("SPDES") General Permit for Stormwater Discharges from Construction Activity ("CGP") on a construction site Respondent owns and operates.

## II. APPLICABLE LEGAL REQUIREMENTS

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into navigable waters, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), this prohibition also applies to discharges of stormwater associated with industrial activity.
4. Section 402(a)(1) of the CWA, 33 U.S.C. § 1342(a)(1), provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that Section.
5. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of EPA to issue a 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. Under Section 402(b), EPA granted the New York State Department of Environmental Conservation (“NYSDEC” or “Department”) the authority to administer the federal NPDES program in New York. EPA maintains concurrent enforcement authority with the authorized State for violations of the CWA. Additionally, the NYSDEC issues a State Pollutant Discharge Elimination System (“SPDES”) permit to facilities for the discharge of pollutants from said facilities from a point source to a navigable water of the United States. Accordingly, any person who will discharge pollutants from a point source to waters of the United States within New York State must first obtain a New York SPDES permit, and must comply with all of its terms.
6. Section 308(a)(2)(A) of the Act, 33 U.S.C. § 1318(a)(A), provides, in relevant part, that the Administrator of EPA may require the owner or operator of any point source to, among other things: maintain such records; make such reports; install, use and monitor such equipment; sample such effluents; and provide such other information as may reasonably be required in order to carry out Section 402 of the Act, 33 U.S.C. § 1342.
7. “Person” is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5) to include, among other things, an individual, corporation, partnership, association or municipality.
8. “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 and agricultural waste discharged into water.
9. “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.
10. “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.
11. “Navigable waters” is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), as the waters of the United States, including the territorial seas, and “waters of the United States” is defined by 40 C.F.R. § 122.2, to include: all waters which are currently used, were used in the past, or may

be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; all interstate waters, including interstate "wetlands;" all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce, including but not limited to, tributaries thereto.

12. Section 402(p) of the CWA, 33 U.S.C. § 1342(p) sets forth the requirements for municipal and industrial stormwater discharges.
13. NYSDEC issued the construction general permit ("CGP") or SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-10-001), which became effective on January 29, 2010 and expires on January 28, 2015 (hereinafter "CGP" or "Permit").
14. Under 40 C.F.R. §§ 122.26(b)(14)(x), (15)(i), and (15)(ii), permit coverage is required for discharges of stormwater associated with construction activity for sites equal to or greater than 1 acre or part of a common plan that is greater or equal to acre. As required by Sections 301 and 402 of the CWA and Part II.B.1 of the CGP, the owner or operator must have coverage under a SPDES permit prior to commencing construction activity.
15. "Storm water" is defined by 40 C.F.R. § 122.26(b)(13) as storm water runoff, snow melt runoff, and surface runoff and drainage.
16. "Owner or operator" is defined by 40 C.F.R. § 122.2 as the owner or operator of any "facility or activity" subject to regulation under the NPDES program.
17. Part I.A.1 of the CGP authorizes stormwater discharges to surface waters of the State from the following construction activities identified within 40 C.F.R. §§ 122.26(b)(14)(x), 122.26(b)(15)(i) and 122.26(b)(15)(ii), provided all of the eligibility provisions of the CGP are met: construction activities involving soil disturbances of one (1) or more acres; including disturbances of less than one acre that are part of a larger common plan of development or sale that will ultimately disturb one or more acres of land; excluding routine maintenance activity that is performed to maintain the original line and grade, hydraulic capacity or original purpose of a facility.
18. Operators regulated under 40 C.F.R. § 122.26(b)(14)(x) or 40 C.F.R. § 122.26(b)(15)(i) may seek CGP coverage by filing a Notice of Intent ("NOI") form under the terms and conditions of Part II of the CGP.
19. Part II of the CGP requires an owner or operator to develop a stormwater pollution prevention plan ("SWPPP") in accordance with the applicable requirements and then file a completed NOI form to obtain permit coverage and fulfill all of the requirements of Part II.A and B of the CGP. The owner must not commence construction activity until coverage under the CGP is obtained.
20. Appendix A of the CGP defines the following terms:
  - a) "Construction activity(ies)" is defined as the grading, excavation, filling, demolition or stockpiling activities that result in soil disturbance. Clearing activities can include, but are not limited to, logging equipment operation, the cutting and skidding of trees, stump removal

and/or brush root removal. Construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of a facility.

- b) "Commencement of construction activities" is defined as the initial disturbance of soils associated with clearing, grading, excavation activities or other construction activities that disturb or expose soils such as demolition, stockpiling of fill material, and the initial installation of erosion and sediment control practices required in the SWPPP.
  - c) "Discharge" is defined as any addition of any pollutant to waters of the State through an outlet or point source.
  - d) "Larger common plan of development or sale" is defined as a contiguous area where multiple separate and distinct construction activities are occurring, or will occur, under one plan. The term "plan" in "larger common plan of development or sale" is broadly defined as any announcement or piece of documentation (including a sign, public notice or hearing, marketing plan, advertisement, drawing, permit application, State Environmental Quality Review Act (SEQRA) application, zoning request, computer design, etc.) or physical demarcation (including boundary signs, lot stakes, surveyor markings, etc.) indicating that construction activities may occur on a specific plot. For discrete construction projects that are located within a larger common plan of development or sale that are at least 1/4 mile apart, each project can be treated as a separate plan of development or sale provided any interconnecting road, pipeline or utility project that is part of the same "common plan" is not concurrently being disturbed.
  - e) "Owner or Operator" is defined as the person, persons or legal entity which owns or leases the property on which the construction activity is occurring; and/or an entity that has operational control over the construction plans and specifications, including the ability to make modifications to the plans and specifications.
  - f) "SPDES" is defined as State Pollutant Discharge Elimination System, the system established pursuant to Sections 301 and 402 of the CWA and 6 NYCRR Part 750 for issuance of permits authorizing discharges to the waters of the state.
  - g) "Final Stabilization" means that all soil disturbance activities have ceased and a uniform, perennial vegetative cover with a density of eighty (80) percent over the entire pervious surface has been established, or other equivalent stabilization measures, such as permanent landscape mulches, rock rip-rap or washed/crushed stone have been applied on all disturbed areas that are not covered by permanent structures, concrete or pavement.
21. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes the Administrator, upon a finding that any person has violated, among other things, Section 301(a) of the Act, or has violated any permit condition or limitation implementing such section in a permit issued under Section 402 of the Act, to assess a civil penalty, and Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted by 40 C.F.R. § 19.4, authorizes the assessment of a penalty of up to \$16,000 per day of violation, and not exceeding \$187,500.



### **III. JURISDICTIONAL FINDINGS**

22. United Talmudical Academy of Kiryas Joel (“UTA of KJ” or “Respondent”) is a private school and corporation, and is therefore a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
23. According to the Notices of Intent (“NOIs”) received by NYSDEC on April 5, 2013 and March 7, 2014, as well as Respondent’s February 21, 2014 letter to EPA, Respondent is the operator of the UTA of KJ Boys School construction site (“Site”), which is located off of Bakertown Road in the Village of Kiryas Joel, Town of Monroe, New York 10950. Based on the February 21, 2014 letter, Respondent also indicated it owns 2 of the 2.5 acres where construction activities are taking place. Therefore, Respondent UTA of KJ, is an owner/operator within the meaning of 40 C.F.R. § 122.2

### **IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

24. EPA conducted Site inspections on March 20 and 21, 2013, June 13, 2013, August 28, 2013, and April 8, 2014. EPA identified that the Site was greater than one acre, discharged stormwater to Highland Brook, and did not have CGP coverage. During the inspections, EPA identified that, among other things, clearing, grading, excavation and stockpiling activities are occurring at the Site and a new building is being constructed. During the inspections, EPA observed that the Site was built adjacent to and abutting Highland Brook as well as an unnamed tributary to Highland Brook. EPA identified unstabilized material storage piles situated adjacent to and within the unnamed tributary and observed water flowing from the unnamed tributary resulting in discharges to Highland Brook. EPA also observed turbid stormwater discharges from the Site go directly into Highland Brook.
25. Highland Brook is a tributary of Tributary No. 25 of the Ramapo River, a water of the United States, pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7). The Ramapo River flows into New Jersey into the Pompton River, to the Passaic River, and then to Newark Bay, and ultimately the Atlantic Ocean, which is currently used in interstate and foreign commerce, and is therefore a water of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.
26. EPA consulted with NYSDEC and Kiryas Joel Municipal Separate Storm Sewer System (“MS4”) personnel during the week of March 20, 2013, and both informed EPA that the Site does not have CGP coverage as required.
27. Respondent submitted an NOI, received by the NYSDEC on March 7, 2014, for coverage under the SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (“MSGP”). The MSGP is not the correct Permit for Respondent’s construction activities and therefore permit coverage was not obtained. Respondent submitted an NOI for CGP coverage dated April 5, 2014, but based on correspondence with NYSDEC, did not receive coverage under the CGP because the NOI was incomplete. To date, Respondent has failed to obtain CGP coverage and continues to discharge stormwater associated with construction activities from its Site.
28. Respondent’s Stormwater Pollution Prevention Plan (“SWPPP”) dated October 28, 2013, and revised November 8, 2013, and NOI received by the NYSDEC on March 7, 2014, indicated that

the Respondent's total disturbed area is 2 acres. Respondent's February 21, 2014 letter to EPA in response to EPA RFI CWA-IR-13-012 indicated that the disturbed area is 2.5 acres, including 2 acres on UTA of KJ's property and 0.5 acres on Burdock Realty Associates' property.

29. EPA issued the following to Respondent to obtain compliance as well as to obtain additional information:

Description of Document Sent	Docket No.	Date of Document	Date of Receipt
Information Request and Administrative Compliance Order	CWA-02-2013-3032	6/20/2013	7/2/2013
Request for Information	CWA-IR-13-012	7/25/2013	7/30/2013
Request for Information Overdue Notice	CWA-IR-13-012	11/5/2013 (Note final document incorrectly dated October 5, 2013)	11/8/2013
Administrative Order Noncompliance Notification	CWA-02-2013-3032	11/19/2013	11/25/2013
EPA Comment Letter for UTA of KJ's NOI and SWPPP	CWA-02-2013-3032	3/16/14	Sent by Email March 2014
Request for Information	CWA-IR-14-019	7/16/2014	07/21/2014

30. Based on UTA of KJ's response to EPA's RFI, IR-13-012, dated January 15, 2014, construction activity at the Site began on April 26, 2012.
31. On August 28, 2013, EPA's inspection documented violations of New York State Narrative Water Quality Standards in 6 NYCRR Part 703.2 <http://www.dec.ny.gov/regs/4590.html#16133>), applicable for Highland Brook, a Class C stream, which specify that: there can be no increase in turbidity that will cause a substantial visible contrast to natural conditions; and, that there can be no suspended, colloidal or settleable solids from sewage, industrial wastes or other wastes that will cause deposition or impair the waters for their best usages. UTA of KJ's turbid discharges documented during this inspection violated New York State Narrative Water Quality Standards.
32. EPA sent a Request for Information ("RFI"), CWA-IR-13-012, dated July 25, 2013 that was received by Respondent on July 30, 2013. A response to the RFI was due within 30 days or on August 29, 2013. EPA received an extension request on October 28, 2013, for a 30 day extension. By letter issued on November 5, 2013 (incorrectly dated October 5, 2013), EPA granted an extension only through October 13, 2013 because while EPA accounted for the holiday season, EPA did not believe that such an extension was warranted past October 13, 2013 given Respondent had plenty of time to respond to the simple RFI. A complete response to the RFI was not submitted by Respondent until February 21, 2014, and therefore was 130 days late.
33. Respondent has failed to submit a completed NOI form in accordance with the CGP.
34. Respondent's SWPPP dated October 28, 2013 and revised November 8, 2013 was deficient. EPA provided comments on the SWPPP to Respondent in March 2014 and requested a revised SWPPP within 14 days. To date, Respondent has not submitted a revised SWPPP.

35. EPA sent an RFI, CWA-IR-14-019, dated July 16, 2014 that was received by Respondent on July 21, 2014. A response to the RFI was due within 15 days or on August 5, 2014. Respondent responded to the RFI on August 14, 2014.
36. Respondent failed to obtain CGP coverage prior to the start of the construction activity at the Site in accordance with the CGP.
37. Respondent failed to respond to EPA's RFI CWA-IR-13-012 by the second deadline of October 13, 2013. EPA received Respondent's response on February 26, 2014.
38. Respondent failed to respond to EPA's RFI CWA-IR-14-019 by the deadline of August 5, 2014. Respondent submitted a partial response on August 14, 2014.
39. Based upon the Paragraphs above, the EPA finds that Respondent has violated Sections 301, 308, and 402, 33 U.S.C. §§ 1311, 1318 and 1342, for failing to obtain and comply with the conditions and limitations in the CGP and for its late response to EPA's RFI.

#### **V. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY**

Based on the foregoing Findings, 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 Respondent assessing a penalty of **\$177,500**. 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 Respondent by virtue of the violations, and 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 this Complaint within that time and requests a Hearing on this Notice pursuant to the following section.

#### **VI. 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 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 for 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 on 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 the CROP, at 40 C.F.R. §§ 22.21-22.26.

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 by Complainant. 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.

## **VII. INFORMAL SETTLEMENT CONFERENCE**

Regardless of whether 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, Respondent may comment on the charges made in this Complaint and Respondent may also provide whatever additional information it believes 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 the amount of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business, and/or (4) any other special facts or circumstances Respondent wishes to raise. Note that no penalty reduction will be made simply because an informal settlement conference is held.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, in response to any relevant information previously not known to Complainant that demonstrates that any of the findings herein are without merit, or that the proposed penalty is not warranted. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Kara E. Murphy, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th Floor  
New York, NY 10007-1866  
Telephone: (212) 637-3211  
Email: [Murphy.Kara@epa.gov](mailto:Murphy.Kara@epa.gov)

The parties may engage in settlement discussions regardless of whether Respondent has requested a Hearing. 40 C.F.R. § 22.18(b)(1). Respondent's request for a formal Hearing does not prevent Respondent from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint.

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3). In accepting the Consent Agreement, Respondent waives any right to contest the allegations in the Complaint and waive any right to appeal the Final Order. 40 C.F.R. § 22.18(b)(2).

Entering into a settlement through the signing of such Consent Agreement and complying with the terms

and conditions set forth in such Consent Agreement and Final Order terminates this administrative litigation and these civil proceedings against Respondent. Entering into a settlement agreement does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance, and EPA may initiate a new enforcement action based on evidence of new or continued violations.

### **VIII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE**

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty, **\$177,500**, within thirty (30) days after receipt of the Complaint, provided that Respondent files with the Regional Hearing Clerk, Region 2 (at the address noted above), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Attorney identified above. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America", in the full amount of the penalty assessed in this Complaint to the following addressee:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
Docket No. CWA-02-2014-3401

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency".

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within thirty (30) days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order pursuant to 40 C.F.R. § 22.18(a)(3). In accordance with 40 C.F.R. § 22.45(c)(3), no Final Order shall be issued until at least ten (10) days after the close of the comment period on this Complaint. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance, and EPA may initiate a new enforcement action based on evidence of new or continued violations.

### **IX. FILING OF DOCUMENTS**

The Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

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

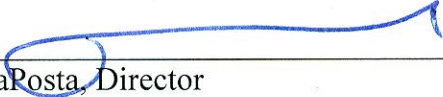
A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Kara E. Murphy, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th Floor  
New York, NY 10007-1866

#### **X. GENERAL PROVISIONS**

1. Respondent has a right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated there under, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act will affect Respondent's continuing obligation to comply with the Act, 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.

ISSUED THIS 3<sup>rd</sup> DAY OF SEPTEMBER, 2014.

  
\_\_\_\_\_  
Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance  
U. S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, New York 10007

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

**IN THE MATTER OF:**

UTA of KJ, Inc.  
P.O. Box 477, Monroe, NY 10949  
55 Forest Road, Monroe, NY 10950

**RESPONDENT**

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

United Talmudical Academy of Kiryas Joel,  
Bakertown Road, Kiryas Joel, NY 10950  
NPDES Tracking No. NYU400900

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

**DOCKET No. CWA-02-2014-3401**

**CERTIFICATION OF SERVICE**

I certify that on SEP 05 2014, I served the foregoing fully executed  
Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an  
Administrative Penalty, and Notice of Opportunity to Request a Hearing, bearing the above  
referenced docket number, on the persons listed below, in the following manner:

Original and One Copy  
By Hand:

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

Copy by Certified Mail  
Return Receipt Requested:

Rabbi Wolf Gluck, Administrator  
UTA of KJ, 55 Forest Road, Monroe, NY, 10950  
P.O. Box 477, Monroe NY, 10949

Copy by Certified Mail  
Return Receipt Requested

Mr. Joseph DiMura, P.E., Director  
Bureau of Water Compliance Programs  
NYSDEC  
625 Broadway  
Albany, New York 12233-4500

Dated: 9/5/14

  
Secretary

New York, New York