



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NY 10007-1866

JUN 15 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7015 3010 0000 7504 0061

Commissioner Matthew J. Driscoll
New York State Department of Transportation
50 Wolf Road
Albany, NY 12232

Re: Notice of Proposed Assessment of a Civil Penalty Class II
New York State Department of Transportation ("NYSDOT") Municipal Separate Storm
Sewer System ("MS4")
SPDES Permit No. NYR20A288
Docket No. CWA-02-2016-3403

Dear Commissioner Driscoll:

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 New York State Department of Transportation ("Respondent"), located at 50 Wolf Road in Albany, New York has violated Section 301 of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §1311. 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)(3), the Complaint proposes that a civil penalty of **\$150,000** be assessed against 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 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 Consolidated Rules of Practice ("CROP"), found at 40 Code of Federal Regulations 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 to 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.

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REGIONAL HEARING CLERK

Regardless of whether or not 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 the use of Supplemental Environmental Projects ("SEPs"), where appropriate, as part of any settlement. Enclosed is a copy of the 2015 Update to the 1998 U.S. Environmental Protection Agency Supplemental Environmental Projects Policy (March 10, 2015) 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:

Timothy Murphy
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) 637-3236
Fax: (212) 637-3199

Should you have any questions concerning this matter, please feel free to contact Mr. Timothy Murphy at the phone number above or Ms. Justine Modigliani, P.E., 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

cc: Joseph DiMura, Director, Bureau of Water Compliance Programs, NYSDEC

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. Environmental
Protection Agency-Region 2
2016 JUN 16 PM 3:24
REGIONAL HEARING
CLERK

IN THE MATTER OF:

New York State Department of Transportation
50 Wolf Road
Albany, NY 12232
SPDES Permit No. NYR20A288

Respondent

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

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

DOCKET NO. CWA-02-2016-3403

**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)(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 of the 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 New York State Department of Transportation (“Respondent”), as a result of Complainant’s determination that 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 State Department of Environmental Conservation’s (“NYSDEC”) State Pollutant Discharge Elimination System (“SPDES”) General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (“MS4s”), issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, at a MS4 that Respondent operates statewide.

II. APPLICABLE LEGAL REQUIREMENTS

1. 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.
2. 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. 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, among other things, an individual, corporation, partnership, association or municipality.
4. "Municipality" is defined by Section 502(4) of the CWA, 33 U.S.C. § 1362(4), to include among other things, a city, town, borough, county, parish, district, associations, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes.
5. "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.
6. "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 further 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 tributaries thereto.
7. "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.
8. "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.
9. 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 MS4s.

10. 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...”
11. 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.
12. 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.
13. 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.
14. 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.
15. NYSDEC issued a SPDES General Permit for Storm Water Discharges from MS4s (GP-0-15-003) (“Permit”) on May 1, 2015 and it expires on April 30, 2017. The Permit supersedes the previous SPDES permit (GP-0-10-002), which became effective on May 1, 2010 and expired on April 30, 2015, SPDES permit GP-0-08-002, which became effective on May 1, 2008 and expired on April 30, 2010, and SPDES permit GP-0-02-02, which became effective on January 8, 2003 and expired on January 8, 2008.
16. 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)(A) 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. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The New York State Department of Transportation (“NYSDOT” or “Respondent”) is a public body established under the laws of the State of New York and is an “owner or operator” of a Statewide Municipal Separate Storm Sewer System (“MS4”) within the State of New York within the meaning of 40 C.F.R. § 122.2 and has jurisdiction over the conveyance and discharge of stormwater from the system.
2. Respondent is an agency of the State of New York and, therefore a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1632(5).
3. The MS4 owned and operated by the Respondent is a small MS4 located in urbanized areas within the meaning of 40 C.F.R. § 122.26(b)(16)(ii) and 40 C.F.R. § 122.32(a)(1).

4. The statewide MS4 owned and operated by the Respondent 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), to multiple waters of the United States within the meaning of 40 C.F.R. § 122.2, via its statewide MS4. As such, Respondent discharges pollutants within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).
6. On March 10, 2003, Respondent submitted a Notice of Intent (“NOI”) to NYSDEC and subsequently received authorization under the MS4 General Permit pursuant to permit identification No. NYR20A288. Permit coverage was maintained under the subsequent permits, as well as the current permit, which became effective on May 1, 2015.
7. Respondent operates through its Headquarters office in Albany, New York and eleven (11) regional offices, including: Capital District (Region 1), Mohawk Valley (Region 2), Central New York (Region 3), Genesee Valley (Region 4), Western New York (Region 5), Southern Tier/Central New York (Region 6), North Country (Region 7), Hudson Valley (Region 8), Southern Tier (Region 9), Long Island (Region 10), and New York City (Region 11).
8. On June 19 through 21, 2012, November 27 through 29, 2012, and June 25 through 27, 2013, the EPA, assisted by its contractor and accompanied by NYSDEC, conducted Compliance Audits of the Respondent’s MS4 in the following NYSDOT Regions: Southern Tier (Region 9), Hudson Valley (Region 8), and Western New York (Region 5), respectively.
9. 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.
10. At the time of the Audits, the EPA identified the following violations of the Permit:
 - a. Part IV.D of the Permit states that covered entities authorized under the previous permit (GP-0-08-002) shall continue to fully implement their SWMP, unless otherwise stated in the Permit. Part IV.D further states that a covered entity may modify its SWMP if it determines changes are needed to improve implementation of its SWMP and changes must be reported to NYSDEC in the MS4’s annual report and municipal compliance certification form. Specifically, the EPA Audit team found that the Respondent was not implementing the following sections of its SWMP Plan:
 - i. Section IV.C.2.c stated that the Respondent developed a Quality Control Program to improve its Erosion and Sediment Control program whereby review of active construction sites are conducted by the Main Office and regional staff. In addition, Section IV.C.2.c of the SWMP Plan stated that the Respondent has established goals and procedures, a rating system, and a checklist for conducting these project reviews. At the time of the Audit in NYSDOT Region 9, the EPA Audit team found no evidence of established goals and procedures, a rating system, or a checklist for conducting construction project reviews as outlined in the Respondent’s SWMP Plan.
 - ii. Section III.2.d identified outfall reconnaissance field screening procedures for staff. At the time of the Audit in NYSDOT Region 5, the EPA Audit team observed that NYSDOT Region 5 staff were not following the procedures identified as outlined in the Respondent’s SWMP Plan.

- iii. Section IV.i.b stated that all temporary controls shall be inspected by the contractor every seven calendar days and after each rainfall of 0.5 inch or more within a 24-hour period to determine if the control is functioning as intended. During the Audits, Respondent stated that a NYSDOT environmental specialist or consultant contractor conducts construction stormwater inspections of each construction site at least once every seven calendar days and after rainfall events producing greater than 0.5 inch of precipitation within a 24-hour period, and document the inspection on an inspection form. The EPA Audit team reviewed the frequency of construction site stormwater inspections in NYSDOT Region 9, and observed that inspections had not been conducted after rainfall events producing greater than 0.5” of precipitation within a 24-hour period during the April 2012 - June 2012 time period. According to precipitation data from the Binghamton, NY weather station, there were at least 6 precipitation events where greater than 0.5 inches of rainfall fell. However, Respondent did not provide inspection reports immediately following rainfall events of 0.5 inch or more within a 24-hour period for the I-81/I-86 Bridge Replacement project.

Therefore, Respondent violated Part IV.D of the Permit, as it had not fully implemented its SWMP Plan.

- b. Part V.B of the Permit states that all permittees must keep records required by this SPDES 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. Respondent was unable to provide the EPA with adequate SWMP implementation documentation, including but not limited to, required procedures and training records. Therefore, Respondent violated Part V.B of the Permit.
- c. Part VIII.A.3.a of the Permit states that at a minimum, all permittees must develop (for newly authorized MS4s), implement and enforce a program to detect and eliminate illicit discharges into the MS4. Specifically, Part VIII.A.3.b.i of the Permit states that all permittees must develop (for newly authorized MS4s) and maintain a map, at a minimum within the permittees’ jurisdiction in the urbanized area and additionally designated area, showing the location of all outfalls. At the time of the Audit, EPA identified at least five (5) unmapped MS4 outfalls at locations in NYSDOT Regions 5 and 9, including four (4) located at residencies in NYSDOT Region 5. Therefore, Respondent violated Part VIII.A.3.b.i of the Permit.
- d. Part VIII.A.3.d of the Permit requires all permittees to conduct an outfall reconnaissance inventory, 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 Audits, Respondent had not fully completed its outfall reconnaissance inventory at outfalls within the MS4 boundaries, nor had Respondent shown reasonable progress toward the five year deadline. Specifically, NYSDOT Region 8 staff stated that outfalls in Dutchess, Rockland, Orange, and Ulster counties may not be completed by the end of the permit term, as

they were focusing on completing outfalls in the East of Hudson watershed counties (Westchester and Putnam counties). Therefore, Respondent violated Part VIII.A.3.d of the Permit.

- e. Part VIII.A.3.f.ii of the Permit requires permittees to have a written directive from the person authorized to sign the Notice of Intent (“NOI”) stating that updated mechanisms must be used, and who is responsible for ensuring compliance with and enforcement of the mechanisms for the covered entity’s IDDE program. Respondent did not provide a written directive from the person authorized to sign the NOI stating that updated mechanisms must be used and who is responsible for ensuring compliance with and enforcing the mechanisms for NYSDOT’s IDDE program. Therefore, Respondent violated Part VIII.A.3.f.ii of the Permit.
- f. Part VIII.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 and locating illicit discharges (trackdown); procedures for eliminating illicit discharges; and procedures for documenting actions. Respondent had not developed an adequate written IDDE program that included procedures for identifying and locating illicit discharges (trackdown); procedures for eliminating illicit discharges; and procedures for documenting actions. Therefore, Respondent violated Part VIII.A.3.g of the Permit.
- g. Part VIII.A.3.h of the Permit requires permittees to inform the public of the hazards associated with illegal discharges and the improper disposal of waste. Part VIII.A of the Permit states that the traditional non-land use control MS4s and non-traditional MS4s should consider their public to be the employee / user population, visitors, or contractors / developers, and provides examples. Respondent did not provide documentation that the public had been informed of the hazards associated with illegal discharges and the improper disposal of waste. Respondent had developed a page on its website that provided information about NYSDOT’s stormwater management issues. However, the website did not provide targeted outreach regarding the hazards associated with illegal discharges and the improper disposal of waste. In addition, NYSDOT staff in Regions 5, 8 and 9 stated that NYSDOT had not provided formal outreach to the public regarding illegal discharges and the improper disposal of waste. Therefore, Respondent violated Part VIII.A.3.h of the Permit.
- h. Part VIII.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. Part IV.A.1 of the CGP requires owners or operators to ensure that all erosion and sediment control practices identified in the Stormwater Pollution Prevention Plan (“SWPPP”) are maintained in effective operating condition at all times. During the Audits, the EPA observed erosion and sediment control deficiencies at six (6) sites owned and operated by the Respondent in violation of Part VIII.A.4.a.i of the Permit.
- i. Part VIII.A.4.a.v 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. At the time of the Audits, Respondent did not have written procedures for receipt and

follow up on complaints by the public regarding construction site stormwater runoff. Therefore, Respondent violated Part VIII.A.4.a.v of the Permit.

- j. Part VIII.A.4.a.vii of the Permit requires all permittees to develop (for newly authorized MS4s), implement and enforce a program that ensures that construction site contractors have received erosion and sediment control training, including trained contractors as defined in the SPDES general permit for construction, before they do work within the covered entity's jurisdiction. In NYSDOT Regions 8 and 9, Respondent did not provide adequate documentation that procedures are in place to ensure that construction site contractors have received erosion and sediment control training. Therefore, Respondent violated Part VIII.A.4.a.vii of the Permit.
- k. Part VIII.A.5.a.vi 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 by trained staff, including assessment to ensure that practices are performing properly. Respondent does not consistently implement an adequate long-term operation and maintenance post-construction BMP program across its regional offices. The EPA Audit team observed wide variations in program implementation in Regions 5, 8 and 9. Specifically, NYSDOT Region 9 had not developed a formal method of assessment to ensure that stormwater management practices are performing properly. NYSDOT Region 9 representatives stated that specific tests for assessing the proper installation of post-construction BMPs were not conducted. NYSDOT Region 9 representatives stated that maintenance had not occurred on post-construction BMPs implemented since 2009, other than practices located at NYSDOT facilities. In addition, NYSDOT Region 9 staff stated that they were not aware of training that had been conducted specifically for employees that conduct post-construction BMPs inspections and maintenance activities. NYSDOT Region 5 representatives stated that inspections of post-construction BMPs are conducted informally and not documented. However, the NYSDOT Region 5 representative stated that the Region 5 had recently implemented monthly post-construction BMP inspections for all existing structures. NYSDOT Regions 5 and 9 did not provide records of inspections or maintenance or training for post-construction stormwater practices as maintenance was either not performed or training provided by Region 9 or inspections were not documented by Region 5. Therefore, Respondent violated Part VIII.A.5.a.vi of the Permit.
- l. Part VIII.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 to the small MS4 system. Furthermore, Part VIII.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 the management practices, policies, procedures, etc. that will be developed and implemented to reduce or prevent the discharge of (potential) pollutants. According to representatives for the Respondent in NYSDOT Regions, 5, 8 and 9, NYSDOT facilities do not have site specific BMP Plans that addresses potential pollutant sources from multiple NYSDOT facilities. NYSDOT representatives stated that the NYSDOT *Environmental Handbook for Transportation Operation* specifies general procedures to be followed for a subset of potential sources of pollution from their facilities. However, the information provided in the handbook is generic, did not provide adequate procedures to prevent the discharge of pollutants, and did not cover all potential sources of pollutants (e.g. handling and

storage of scrap metal). Therefore, Respondent violated Parts VIII.A.6.a.i and VIII.A.6.iii of the Permit.

- m. Part VIII.A.6.a.ii 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 the performance and documentation of a self-assessment of all municipal operations 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 EPA Audits in NYSDOT Regions 5, 8 and 9, representatives for the Respondent stated that the Respondent had not performed self-assessments of NYSDOT facilities specifically for stormwater purposes, nor did Respondent's program provide for performance or documentation of a self-assessment of its facilities. Therefore, Respondent violated Part VIII.A.6.a.ii of the Permit.
- n. Part VIII.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. Respondent's SWMP Plan does not specifically address the requirement to develop and implement a pollution prevention / good housekeeping training program. NYSDOT Region 5 representatives stated that a semi-annual safety training is conducted each spring and fall and that the training will sometimes touch on the subject of good housekeeping in regards to employee safety and work hazards. During the EPA site visit in NYSDOT Region 5, it was noted that multiple NYSDOT employees from different facilities attended a stormwater webinar in June 2013, but it did not appear that the class was offered to all NYSDOT personnel. NYSDOT Region 8 representatives provided documentation of two types of stormwater pollution prevention training provided to specific employees, but not all NYSDOT personnel. Records provided by NYSDOT Region 8 did not specify which facilities or staff attended either training provided in NYSDOT Region 8. NYSDOT Region 9 representatives stated that pollution prevention and good housekeeping training for staff working in the residencies was non-existent. Therefore, Respondent violated VIII.A.6.a.vi of the Permit.
- o. Part VIII.A.6.d of the Permit requires all permittees to develop (for newly authorized MS4s) and implement a pollution prevention / good housekeeping for municipal operations and facilities that selects and implements appropriate pollution prevention and good housekeeping BMPs and measurable goals to ensure the reduction of pollutants of concern ("POCs") in stormwater discharges to the Maximum Extent Practicable ("MEP"). As identified in subparagraph m above, Respondent had not developed site specific plans that addressed potential pollutant sources at multiple facilities. Specifically, the EPA Audit team observed inadequate pollution prevention/good housekeeping at multiple facilities in NYSDOT Regions 5, 8 and 9 that contribute or potentially contribute POCs to the small MS4 system, in violation of Part VIII.A.6.d of the Permit.

- 11. On March 5, 2014, the EPA issued the Respondent an Administrative Order, Docket No. CWA-02-2014-3028, which was mailed to the Respondent along with copies of the Audit reports for NYSDOT Regions 5, 8 and 9. The Administrative Order ordered the Respondent to correct the above violations and come into compliance with the Act.

12. On May 13, 2014, the EPA and the Respondent met to discuss revisions to the compliance schedule outlined in CWA-02-2014-3028 and a revised schedule of compliance was agreed to by both parties.
13. On June 5, 2014, the EPA issued the Respondent an Administrative Order, Docket No. CWA-02-2014-3041 that provided a revised schedule of compliance and superseded the deadlines originally established in the Administrative Order (CWA-02-2014-3028) issued on March 5, 2014.
14. Based on the foregoing Findings of Fact and Conclusions of Law, the Respondent is liable for sixteen thousand two hundred and eighteen (16,218) 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, 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 **\$150,000.00**. 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 the Respondent’s prior compliance history, degree of culpability, economic benefit or savings accruing to the Respondent by virtue of the violations, the Respondent’s ability to pay the proposed penalty. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after the Respondent’s receipt of this Notice, unless the Respondent files an Answer to this 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 the 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 the Respondent is entitled to judgment as a matter of law, the 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**

The 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). The 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 Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where the Respondent lacks knowledge of a particular factual allegation and so state 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 intend to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether the 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 the 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 the Respondent in an Answer, a Hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If however, the 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 the CROP, at 40 C.F.R. §§ 22.21-22.26.

Should the Respondent request a Hearing, 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)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), to be heard and to present evidence on the appropriateness of the penalty assessment. Should the 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 the 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 the 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)], the Respondent may be found in default upon motion by Complainant. 40 C.F.R. § 22.17(a). Default by the Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of the Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by the 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 the 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 the 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 they believe to be relevant to the disposition of this matter, including: (1) actions the 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 the Respondent's ability to continue in business and/or (4) any other special facts or circumstances the 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. The Respondent is referred to 40 C.F.R. § 22.18.

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

Timothy Murphy
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) 637-3236
Fax: (212) 637-3199

The parties may engage in settlement discussions regardless of whether the Respondent has requested a Hearing. 40 C.F.R. § 22.18(b)(1). The Respondent's request for a formal Hearing does not prevent the 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 the 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, the 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 would terminate this administrative litigation and these civil proceedings against the Respondent. Entering into a settlement agreement would

not extinguish, waive, satisfy or otherwise affect the Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance, and EPA would retain authority to initiate a new enforcement action based on evidence of new or continued violations.

VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, the Respondent may choose to pay the total amount of the proposed penalty, **\$150,000.00**, within thirty (30) days after receipt of the Complaint, provided that the 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 in Section VI 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-02-2016-3403

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 the 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 the Respondent shall constitute a waiver of the 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 the 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. 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:

Timothy Murphy
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) 637-3236
Fax: (212) 637-3199

IX. GENERAL PROVISIONS

1. The 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 the 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 15th DAY OF June, 2016.



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:

New York State Department of Transportation
50 Wolf Road
Albany, NY 12232
SPDES Permit No. NYR20A288

Respondent

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

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

DOCKET NO. CWA-02-2016-3403

I certify that on JUN 16 2016, 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:

New York State Department of Transportation
50 Wolf Road
Albany, New York 12232

Copy by Certified Mail
Return Receipt Requested:

Joseph DiMura, P.E., Director
Bureau of Water Compliance Programs
Division of Water
NYSDEC
625 Broadway
Albany, New York 12233-3506

Dated: 6/16/16


Marie St. Germain, Branch Secretary
New York, New York