



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY

NEW YORK, NY 10007-1866

SEP 17 2014

U.S. Environmental  
Protection Agency-Reg 2  
2014 SEP 19 AM 7:38  
REGIONAL HEARING  
CLERK

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**Article Number: 7005 3110 0000 5967 7292**

The Honorable Donald A. Guardian, Mayor  
City of Atlantic City  
1301 Bacharach Boulevard, Room 706  
Atlantic City, New Jersey 08401

Re: Notice of Proposed Assessment of a Civil Penalty Class II  
City of Atlantic City Municipal Separate Storm Sewer System ("MS4")  
Docket No. CWA-02-2014-3403

Dear Mayor Guardian:

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 City of Atlantic City ("Respondent"), located at 1301 Bacharach Boulevard, in Atlantic City, New Jersey 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), the Complaint proposes that a civil penalty of **\$85,000** 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.

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 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:

Eduardo J. Gonzalez, Esq.  
Water and General Law Branch  
Office of Regional Counsel  
290 Broadway, 16th Floor  
New York, NY 10007-1866  
(212) 637-3223

Should you have any questions concerning this matter, please feel free to contact Mr. Eduardo Gonzalez at the phone number above or Ms. 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

cc: Marcedius T. Jameson, Director, Division of Water & Land Use Enforcement, NJDEP



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

SEP 17 2014

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**Article Number: 7005 3110 0000 5967 7308**

Mr. Marcedius T. Jameson, Director  
Division of Water & Land Use Enforcement  
NJDEP  
Mail Code 401-04B  
401 East State Street  
P.O. Box 420  
Trenton, NJ 08625-0420

**RE: Notice of Proceeding to Assess a Class II Civil Penalty  
City of Atlantic City, Atlantic City, New Jersey  
Docket No. CWA-02-2014-3403**

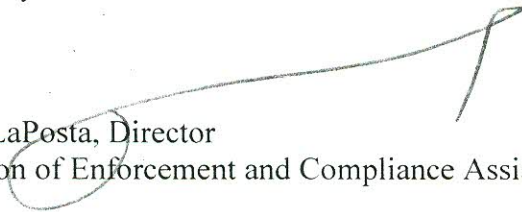
Dear Mr. Jameson:

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 City of Atlantic City pursuant to § 309(g) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(g). The EPA has issued the Complaint to begin the process to administratively assess a civil penalty of **\$85,000** against Respondent for violations of the Act.

Since the violations have occurred in the State of New Jersey, 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

**IN THE MATTER OF:**

City of Atlantic City  
1301 Bacharach Boulevard  
Atlantic City, New Jersey 08401

NJPDES Permit NJG0153168

**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-02-2014-3403

U.S. Environmental  
Protection Agency-Reg 2  
2014 SEP 19 AM 7:38  
REGIONAL HEARING  
CLERK

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

**I. STATUTORY AND REGULATORY AUTHORITIES**

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing (“Complaint”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g)(2)(A) of the Clean Water Act (“Act” or “CWA”), 33 U.S.C. §1319(g)(2)(A). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Division of Enforcement and Compliance Assistance (“DECA”) of EPA, Region 2 (“Complainant”).
2. Pursuant to Section 309(g)(2)(A) of the Act, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“CROP”), 40 C.F.R. Part 22 (2001), a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against Respondent, as a result of Complainant’s determination that the Respondent is in violation of Section 301 of the Act, 33 U.S.C. §1311, by failing to comply with the terms of the New Jersey Department of Environmental Protection (“NJDEP”) New Jersey Pollutant Discharge Elimination System (“NJPDES”) Tier A Municipal Stormwater General Permit for the small Municipal Separate Storm Sewer System (“MS4”) that the Respondent owns and operates.

## **II. DEFINITIONS AND STATUTORY PROVISIONS**

1. Section 301(a) of the CWA, 33 U.S.C. §1311(a), prohibits the discharge of pollutants from a point source into waters of the United States, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. §1342.
2. Section 402 of the CWA, 33 U.S.C. §1342, authorizes the Administrator of EPA to issue a 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 NJDEP is the agency with the authority to administer the federal NPDES program in New Jersey 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 NJDEP by the EPA under Section 402(b) of the CWA, 33 U.S.C. §1342(b), a NJPDES permit is required to be issued to facilities by the NJDEP for the discharge of pollutants from said facilities from a point source to a navigable water of the United States.
3. “Person” is defined by Section 502(5) of the CWA, 33 U.S.C. §1362(5), to include an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State.
4. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. §1362(6), to include, among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal, biological materials and agricultural waste discharged into water.
5. “Navigable waters” is defined by Section 502(7) of the CWA, 33 U.S.C. §1362(7), to include the waters of the United States.
6. “Discharge of a pollutant” is defined by Section 502(12) of the CWA, 33 U.S.C. §1362(12), to include any addition of any pollutant to navigable waters from any point source.
7. “Point source” is defined by Section 502(14) of the CWA, 33 U.S.C. §1362(14), to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
8. Section 402(p) of the CWA, 33 U.S.C. §1342(p) sets forth the permit requirements for the discharge of stormwater, including discharges of stormwater from Municipal Separate Storm Sewer Systems (“MS4s”).
9. 40 C.F.R. §122.26(b)(8), defines an MS4 as a “conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law).....that discharges into waters of the United States; (ii) designed or used for collecting or conveying stormwater; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works...”

10. 40 C.F.R. §122.26(b)(3) defines “incorporated place,” in part, as a city, town, township, or village that is incorporated under the laws of the State in which it is located.
11. 40 C.F.R. §122.26(b)(16)(ii) defines “small municipal separate storm sewer system,” in part, as not defined as “large” or “medium” MS4s.
12. Pursuant to 40 C.F.R. §122.32(a)(1), all small MS4s located in an “urbanized area” (as determined by the latest Decennial Census by the Bureau of Census) are regulated small MS4s.
13. 40 C.F.R. §§122.33(a) and (b)(1) require operators of regulated small MS4s to seek authorization to discharge under the applicable NPDES general permit issued by the permitting authority, by submitting a Notice of Intent (“NOI”) for coverage under such permit.
14. NJDEP issued its NJPDES Tier A Municipal Stormwater General Permit (NJ0141852) (“Permit”) on March 1, 2009 and it expired on February 28, 2014 and has since been administratively extended until the issuance of a renewal permit. The Permit supersedes the previous SPDES permit (NJ0141852), which was issued on April 1, 2004, modified on September 1, 2005, and expired on February 28, 2009.
15. Section 309(g) of the CWA, 33 U.S.C. §1319(g), authorizes the Administrator to assess a civil penalty for violations of Section 301 of the CWA, 33 U.S.C. §1311, or any permit condition or limitation implementing, inter alia, Section 301, and contained in a permit issued under Section 402 of the CWA, 33 U.S.C. §1342.

### **III. FINDINGS OF VIOLATION**

1. The City of Atlantic City (“Respondent”) is a municipal corporation chartered under the laws of the State of New Jersey, and as such, Atlantic City is a person, as defined in Section 502(5) of the CWA, 33 U.S.C. §1362(5), and 40 C.F.R. §122.2, and is an “incorporated place” as defined in 40 C.F.R. §122.26(b)(3).
2. Respondent owns and operates the MS4, located in the City of Atlantic City, Atlantic County, New Jersey and is an “owner or operator” within the meaning of 40 C.F.R. §122.2.
3. The MS4 in the City of Atlantic City is a small MS4 located in a urbanized area within the meaning of 40 C.F.R. §122.26(b)(16)(ii) and 40 C.F.R. §122.32(a)(1).
4. The MS4 in the City of Atlantic City is a point source within the meaning of Section 502(14) of the CWA, 33 U.S.C. §1362(14).
5. The City of Atlantic City’s MS4 discharges stormwater, a pollutant within the meaning of Section 502(6) of the CWA, 33 U.S.C. §1362(6), to the Atlantic Ocean to the east, Absecon Bay and Absecon Inlet to the north, and Inside Thorofare, Beach Thorofare, and Great Thorofare to the west, waters of the United States within the meaning of 502(7) of the CWA, 33 U.S.C. §1362(7), and 40 C.F.R. §122.2, and as such, discharges pollutants within the meaning of Section 502(12) of the CWA, 33 U.S.C. §1362(12).
6. The City of Atlantic City submitted a Notice of Intent (“NOI”) to NJDEP on March 2, 2004, seeking coverage under the NJPDES Tier A Municipal Stormwater General Permit

(NJ0141852). Permit coverage was granted with an effective date of permit authorization (“EDPA”) of April 1, 2004 (Permit No. NJG0153168), and permit coverage was maintained under the subsequent, and current, NJPDES permit which became effective on March 1, 2009.

7. EPA, accompanied by NJDEP, conducted a compliance Audit of Atlantic City’s MS4 on two separate occasions, June 14, 2011 through June 16, 2011 and April 1 through April 2, 2014.
8. NJDPES Tier A Municipal Stormwater Permit (NJ0141852), effective on March 1, 2009, was the effective permit at the time of both Audits.
9. At the time of the Audit, the EPA inspector identified the following violations of the Permit:
  - a. Part I.E.2.a and Part I.H.1.a of the Permit requires Stormwater Pollution Prevention Plans (“SPPP”) to be revised on or before June 1, 2009. Specifically, Part I.H.1.a states that the SPPP shall include, at a minimum, all of the information and items identified in Attachment A. EPA inspectors observed that the City failed to revise its SPPP to include the information and items specified in Attachment A. This includes, but is not limited to, updating the SPPP to identify and discuss each Statewide Basic Requirement and Best Management Practice required by the Permit. In addition, for each Statewide Basic Requirement, the SPPP shall:
    - a. Describe the method of implementation;
    - b. Include detailed record keeping, as appropriate or as required;
    - c. Include an implementation schedule consistent with permit requirements, including interim milestones;
    - d. Include any special diagrams required by the permit (i.e., Storm Drain Inlet Labeling and Illicit Connection Elimination and MS4 Outfall Pipe Mapping);
    - e. Sharing responsibilities (if the Tier A Municipality wants to share responsibilities for implementing one or more control measures) with one or more entities pursuant to N.J.A.C. 7:14A-25.7(a), the SPPP must describe which measure(s) the Tier A Municipality will implement, and identify the entity(ies) that will implement the other measure(s);
    - f. Include maintenance schedules, as appropriate; and
    - g. Include inspection schedules, as appropriate.

Therefore, Atlantic City failed to revise its SPPP, in violation of Part I.E.2.a and Part I.H.1.a of the Permit.

- b. Part I.E.2.c of the Permit requires ensuring that awarded contracts to private contractors have conditions that the contractor must conduct such projects or activities in a manner that is in compliance with the City’s SPPP and the Permit’s conditions. EPA inspectors observed that the City contracts out maintenance of the City Yard to First Vehicle Services but has not included stormwater provisions in the contract with First Vehicle Services. Therefore, Atlantic City failed to ensure that City awarded contracts contained conditions that the contractor must conduct such projects or activities in a manner that is in compliance with the City’s SPPP and the Permit conditions, in violation of Part I.E.2.c of the Permit.
- c. Part I.F.2.a of the Permit requires the City to comply with applicable State and local public notice requirements. EPA inspectors observed that the City did not provide public notice documentation for ordinances that have been adopted in the City in

accordance with N.J.S.A. 40:49-2, which states that ordinances must be published in their entirety or by title or by title and summary at least once in a newspaper published and circulated in the municipality, or in a newspaper printed in the county and circulating in the municipality. After passage of the ordinance, the ordinance, the title, or the title and summary must be published in a newspaper again. Therefore, Atlantic City failed to maintain documentation that public notice requirements were satisfied in accordance with applicable State and local public notice requirements, in violation of Part I.F.2.a of the Permit.

- d. Part I.F.3 of the Permit requires the City to implement and enforce a post-construction stormwater control program by March 1, 2009. EPA inspectors observed that the City did not develop and is not implementing or enforcing a program to address stormwater runoff from new development and redevelopment projects that discharge into the City's MS4. This includes, but is not limited to, the failure to adopt and reexamine a municipal stormwater management plan in accordance with N.J.A.C. 7:8-4 and as required by Part I.F.3.i of the Permit, as well as the failure to implement a municipal stormwater control ordinance, as required by Part I.F.3.ii of the Permit. Therefore, Atlantic City failed to implement and enforce a post-construction stormwater control program, in violation of Part I.F.3.a.i-vii of the Permit.
- e. Part 1.D.1.iii of the Permit requires the City to specify in its Annual Report if it is relying on other entities to satisfy some of the City's permit obligations. The City is still responsible for compliance with the permit if the other entity fails to implement the measure(s), or component(s) thereof. EPA inspectors observed that the City has indicated in its Annual Reports that it is not relying on another entity to satisfy any part of its permit requirements, including all requirements associated with the post-construction SBR, when in fact, the City stated during the audit that it is the responsibility of other entities, including the Casino Reinvestment and Development Authority ("CRDA") and the State of New Jersey through the Coastal Area Facility Review Act ("CAFRA"), to implement and enforce post construction stormwater controls throughout the City. However, no formal agreement between the City or the CRDA or the State of New Jersey exists. Therefore, Atlantic City failed to specify that they are relying on other entities to satisfy some of the City's permit obligations in violation of Part 1.D1.iii of the Permit.
- f. Part I.F.4.a of the Permit requires the City to develop and implement a Local Public Education Program by March 1, 2009. EPA inspectors observed that the City has not developed a local public education program as required by the Permit, nor had the City conducted educational activities that total a minimum of ten points as described in Attachment E of the Permit. Therefore, Atlantic City failed to develop and implement its Local Public Education Program by March 1, 2009, in violation of Part I.F.4.a of the Permit.
- g. Part I.F.4.b of the Permit requires the City to label all storm drain inlets along municipal streets with sidewalks, and all storm drain inlets within plazas, parking areas, or maintenance yards that are operated by the municipality within 60 months from the original EDPA (April 1, 2004). EPA inspectors observed that the City did not start labeling inlets until April 2011, two years after the deadline elapsed. According to the City's 2004 SPPP, labeling was to have been completed by April 2009. Therefore,



Atlantic City failed to label all storm drain inlets as required by April 1, 2009, in violation of Part I.F.4.b of the Permit.

- h. Part I.F.5.f of the Permit requires the City to adopt and enforce a Refuse Container/Dumpster Ordinance by September 1, 2010. While reviewing the City's 2010 Annual Report, the City stated that they adopted a Refuse Container/Dumpster Ordinance on March 23, 2005. The requirement to have a Refuse Container/Dumpster Ordinance was not part of the Permit until the Permit was renewed on March 1, 2009. EPA inspectors reviewed the City's ordinances and did not observe a "Refuse Container/Dumpster Ordinance" as required by the Permit. Therefore, Atlantic City failed to adopt and enforce a "Refuse Container/Dumpster Ordinance" as required by September 1, 2010, in violation of Part I.F.5.f of the Permit.
- i. Part I.F.5.h of the Permit requires the City to adopt and enforce a Private Storm Drain Retrofitting Ordinance by September 1, 2010. During the audit, City staff informed EPA inspectors that the City did not have a "Private Storm Drain Retrofitting Ordinance" as required by the Permit. Therefore, Atlantic City failed to adopt and enforce a "Private Storm Drain Retrofitting Ordinance" as required by September 1, 2010, in violation of Part I.F.5.h of the Permit.
- j. Part I.F.6.a of the Permit requires the City to complete and maintain an outfall pipe map showing the location of the end of all MS4 outfall pipes owned and operated by the city. EPA inspectors observed that the City conducted mapping of its system during the early 1990's as part of the Sewage Infrastructure Improvement Act, but the City failed to create a new map or verify that the map from the Sewage Infrastructure Improvement Act was still accurate. In addition, the City failed to develop and implement a program to detect and eliminate illicit connections, as EPA observed dry weather flow from an unidentified outfall at the Sgt. Bobby Rowan Memorial Ramp on June 16, 2011. Therefore, Atlantic City failed to complete and maintain an up-to-date outfall pipe map and develop and implement a program to detect and eliminate illicit connections, in violation of Part I.F.6.c of the Permit.
- k. Part I.F.6.a of the Permit requires the City to complete an initial physical inspection of all outfall pipes. EPA inspectors observed that there were no records available for initial inspections of outfall pipes. In addition, EPA inspectors did not observe records of inspections of all 103 outfalls, which the City stated take place annually. Therefore, Atlantic City failed to maintain documentation of the required initial physical inspection of all outfall pipes, in violation of Part I.F.6.a of the Permit.
- l. Part I.F.7.c of the Permit requires the City to implement a stormwater facility maintenance program for cleaning and maintenance of all municipally owned and operated stormwater facilities. EPA inspectors observed that the City failed to implement, or develop, a stormwater facility maintenance program that meets the requirements, including but not limited to providing documentation that stormwater facilities are inspected and maintained properly. The Permit states if stormwater facilities were found to not be functioning properly and repairs were not made, a schedule for repairs shall be included in the Annual Report. EPA inspectors did not observe copies of repair schedules where it was noted that repairs were not made. In addition, the City is required to maintain records, including the date of inspection,

maintenance, and description of repairs performed. This information is required to be submitted to NJDEP each year with the Annual Report but has not been submitted, according to EPA's review of the City's Annual Reports for 2006 – 2010. Therefore, Atlantic City failed to develop or implement a stormwater facility maintenance program, in violation of Part I.F.7.c of the Permit.

- m. Part I.F.7.d of the Permit requires the City to maintain records, including the number of municipally owned and operated catch basins within the municipality, the number of catch basins cleaned, and the amount of materials collected during catch basin cleaning activities. EPA inspectors observed that the City does not maintain records of actual catch basin cleanings or keep track of what was removed from the catch basins, as catch basin debris is commingled with street sweeping debris. Therefore, Atlantic City failed to maintain records of catch basin cleaning, in violation of Part I.F.7.d of the Permit.
- n. Part I.F.7.e of the Permit requires the City to maintain a stormwater outfall pipe scouring detection, remediation and maintenance program to detect and control localized stream and stream bank scouring in the vicinity of outfall pipes operated by the municipality. During the audit, City staff informed EPA inspectors that the City did not have a program as all outfalls discharged directly to a body of water and all outfalls were either "T'd" or duckbilled. However, based on information provided to EPA by NJDEP, there are at least seven outfalls that do not directly discharge to a body of water and as such, the City should be maintaining a stormwater outfall pipe scouring program. Therefore, Atlantic City failed to develop and maintain a stormwater outfall pipe program, in violation of Part I.F.7.e of the Permit.
- o. Part I.F.8.a of the Permit requires the City to perform regular maintenance and inspections of the salt storage structure and the surrounding area. EPA inspectors observed that the City contracts out maintenance of the City Yard where the salt storage is located to a private contractor, First Vehicle Services. The City has not done inspections of the salt storage or provided records of inspections completed by its private contractor. Therefore, Atlantic City failed to provide evidence of regular maintenance and inspections of the salt storage, in violation of Part I.F.8.a of the Permit.
- p. Part I.F.8.b of the Permit requires the City to manage equipment and vehicle washing so that there are no unpermitted discharges of wash wastewater to the surface or ground waters of the State and maintain records of where and when equipment and vehicle washing occurred. EPA inspectors observed that the City has a designated wash rack area but did not operate or maintain it properly, as breaks in the berm around the wash rack area and runoff from the wash rack area flowing toward a catch basin were observed. At the time of the audit, City staff stated that a truck had been washed outside of the wash area but no soap had been used despite the fact that there is a large sign posted on the wash rack stating all equipment and vehicles should be kept inside the wash area. Therefore, Atlantic City failed to manage equipment and vehicle washing, in violation of Part I.F.8.b of the Permit.
- q. Part I.F.8.c of the Permit requires the City to develop Standard Operating Procedures ("SOPs") for vehicle fueling and receiving of bulk fuel deliveries, vehicle maintenance and repair activities, and good housekeeping practices for all materials or machinery

listed in the Inventory Requirements for Municipal Maintenance Yards. EPA inspectors observed that the City does not have SOPs in place for vehicle fueling and receiving of bulk fuel deliveries, vehicle maintenance and repair activities, and good housekeeping practices for all materials or machinery listed in the Inventory Requirements for Municipal Maintenance Yards. In addition, EPA's review of the City's Annual Reports for 2006-2010 showed that the City certified in its Annual Reports for 2006, 2007, 2008 and 2009 that SOPs were in place when, in fact, they were not. Therefore, Atlantic City failed to develop SOPs for vehicle fueling and receiving of bulk fuel deliveries, vehicle maintenance and repair activities, and good housekeeping practices for all materials or machinery listed in the Inventory Requirements for Municipal Maintenance Yards, in violation of Part I.F.8.c of the Permit.

- r. Part A.1 of Attachment D of the Permit requires the City to develop an inventory of Municipal Maintenance Yard Operations (including Ancillary Operations). EPA inspectors observed that the City or its private contractor did not develop an inventory of Maintenance Yard Operations (including Ancillary Operations). Therefore, Atlantic City failed to develop an inventory of Municipal Maintenance Yard Operations (including Ancillary Operations), in violation of Part A.1 of Attachment D.
- s. Part D.1 of Attachment D of the Permit requires the City to properly mark or label all containers, ensure that containers are kept in good condition, and provide proper outdoor storage. EPA inspectors observed outdoor storage of containers that were not covered throughout the City Yard, some in poor condition, and most were not labeled. Therefore, Atlantic City failed to properly mark or label all containers, ensure containers are kept in good conditions and failed to provide proper outdoor storage, in violation of Part D.1 of Attachment D.
- t. Part D.2 of Attachment D of the Permit requires the City to properly clean up spills of liquids or dry materials immediately after discovery. EPA inspectors observed standing oil in the center of the maintenance garage immediately adjacent to and entering a trench drain and informed City staff. A used oil receptacle was located next to the trench drain. Therefore, Atlantic City failed to properly clean up spills of liquids immediately after discovery, in violation of Part D.2 of Attachment D.
- u. Part F.1 of Attachment D of the Permit requires regular inspections of all municipal maintenance yard operations. EPA inspectors observed that the City was uncertain if inspections were done, as maintenance yard operations are contracted out to a private entity. Therefore, Atlantic City failed to ensure that regular inspections of all municipal maintenance yard operations are done, whether by City staff or by contract staff, in violation of Part F.1 of Attachment D.
- v. Part I.F.9 of the Permit requires the City to conduct annual employee training program by March 1, 2009. EPA inspectors observed that the City has only provided training on May 11, 2011 based on review of training records. City staff was unaware of trainings offered in previous years; however, EPA review of the City's Annual Reports for 2009 and 2008 indicated that training was provided to employees on July 17, 2009 and May 2008, respectively. However, the City was unable to provide records for the July 17, 2009 and May 2008 training events. Therefore, Atlantic City failed to conduct annual

employee training and provide records of annual training, in violation of Part I.F.9 of the Permit.

- w. Part I.H.3.b of the Permit requires the City to submit Annual Reports to NJDEP in a timely manner by May 2 on an annual basis. EPA inspectors observed that five of the past five Annual Reports were not submitted to NJDEP by the May 2 deadline each year as indicated in the table below:

Annual Report Year	Period Covered	Date Report is Due	Date Report Received by NJDEP	Days Late
2006	January 1, 2006 to December 31, 2006	May 2, 2007	July 13, 2007	72
2007	January 1, 2007 to December 31, 2007	May 2, 2008	June 11, 2008	40
2008	January 1, 2008 to December 31, 2008	May 2, 2009	July 27, 2010	451
2009	January 1, 2009 to December 31, 2009	May 2, 2010	June 29, 2010	58
2010	January 1, 2010 to December 31, 2010	May 2, 2011	August 4, 2011	94

Therefore, Atlantic City failed to submit Annual Reports in a timely manner by May 2 on an annual basis to NJDEP, in violation of Part I.H.3.b of the Permit.

10. Based on the Findings cited in paragraphs 1-9 above, Respondent violated Sections 301 of the Act, 33 U.S.C. §1311.

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

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. §1319(g), and the Debt Collection Improvement Act of 1996, EPA, Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties (“Final Order”) to Respondent assessing a civil penalty of **\$85,000**. 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 violation (or 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. Based on the Findings set forth above, the **Respondent is liable for violations of the Act, one of which has continued for at least one thousand eight hundred and fifty-seven (1,857) days**. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after Respondent’s receipt of this Notice, unless Respondent files an Answer to the Complaint within that time and requests a Hearing on this Notice pursuant to the following section.

#### **V. PROCEDURES GOVERNING THIS ADMINISTRATIVE ACTION**

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

## **A. Answering The Complaint**

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

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

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

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

## **B. Opportunity To Request A Hearing**

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

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

Should Respondent request a Hearing on this proposed penalty assessment, members of the public to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. §1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondent not request a Hearing, EPA will issue a Final Order, and only members of the public who submit timely comment on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a Hearing thereon. EPA will grant the petition and will hold a Hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

### **C. Failure To Answer**

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

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

### **VI. INFORMAL SETTLEMENT CONFERENCE**

Regardless of whether 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 is believed to be relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

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:

Eduardo J. Gonzalez, Esq.  
Water and General Law Branch  
Office of Regional Counsel  
290 Broadway, 16th Floor  
New York, NY 10007-1866  
Telephone (212) 637-3223  
Fax: (212) 637-3202

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 requesting 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. Note that no penalty reduction will be made simply because an informal settlement conference is held.

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 accepting the Consent Agreement, Respondent waives any right to contest the allegations in the Complaint and waives any right to appeal the Final Order that is to accompany the 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).

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 (note that a new enforcement action may be initiated based on continued non-compliance). 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.

## **VII. 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 **\$85,000** within 30 days after receipt of the Complaint, provided that Respondent file 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-02-2014-3403

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 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 in accordance with 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 (note that a new enforcement action may be initiated based on continued non-compliance). 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.

### **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:

Eduardo J. Gonzalez, Esq.  
Water and General Law Branch  
Office of Regional Counsel  
290 Broadway, 16th Floor  
New York, NY 10007-1866  
Telephone (212) 637-3223

### **IX. 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 17<sup>th</sup> DAY OF SEPTEMBER, 2014.

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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:**

City of Atlantic City  
1301 Bacharach Boulevard  
Atlantic City, New Jersey 08401

NJPDES Permit NJG0153168

**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-02-2014-3403**

CERTIFICATE OF SERVICE

SEP 18 2014

I certify that on \_\_\_\_\_, 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:

Donald A. Guardian, Mayor  
City of Atlantic City  
1301 Bacharach Boulevard  
Atlantic City, New Jersey 08401

Copy by Certified Mail  
Return Receipt Requested

Mr. Marcedius T. Jameson, Director  
Division of Water & Land Use Enforcement  
NJDEP  
Mail Code 401-04B  
401 East State Street  
P.O. Box 420  
Trenton, NJ 08625-0420

Dated: 9/18/14

  
\_\_\_\_\_  
NAME OF SECRETARY, Secretary  
New York, NY