



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

October 19, 2021

VIA EMAIL - [mayors.office@baynj.org](mailto:mayors.office@baynj.org)

Mr. Jimmy Davis, Mayor  
City of Bayonne  
630 Avenue C  
Bayonne, New Jersey 07002

October 19, 2021 @ 6:57 pm

USEPA – Region II  
Regional Hearing Clerk

**Re: Notice of Proposed Assessment of a Civil Penalty Class I  
City of Bayonne Municipal Separate Storm Sewer System (“MS4”), NJG0151033  
Docket No. CWA-02-2022-3303**

Dear Mayor Davis:

Enclosed is a Complaint which the United States Environmental Protection Agency (“EPA” or “Agency”) is issuing to you as a result of our determination that the City of Bayonne (“Respondent”), located in Bayonne, New Jersey 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 **\$18,000** be assessed against Respondent specifically for violations of the New Jersey Department of Environmental Protection (“NJDEP”) New Jersey Pollutant Discharge Elimination System (“NJPDES”) R9 – Tier A Municipal Stormwater General Permit, NJ0141852, for stormwater discharges from Municipal Separate Storm Sewer Systems (“MS4s”) that have occurred through September 15, 2021.

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  
[maples.karen@epa.gov](mailto:maples.karen@epa.gov)

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.

Internet Address (URL): <http://www.epa.gov>

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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.

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:

Tim Murphy, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
Telephone (212) 637-3236  
[Murphy.Tim@epa.gov](mailto:Murphy.Tim@epa.gov)

Should you have any questions concerning this matter, please feel free to contact Mr. Tim Murphy at the phone number above or Ms. Justine Modigliani, Compliance Section Chief at (212) 637-4268 or [Modigliani.Justine@epa.gov](mailto:Modigliani.Justine@epa.gov).

Sincerely,

**For** Dore LaPosta, Director  
Enforcement and Compliance Assurance Division

Enclosures

1. Complaint
2. CROP

cc: Don Hirsch, Bureau Chief - Northern, NJDEP ([Don.Hirsch@dep.nj.gov](mailto:Don.Hirsch@dep.nj.gov))

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

October 19, 2021 @ 6:57 pm  
USEPA – Region II  
Regional Hearing Clerk

**IN THE MATTER OF:**

City of Bayonne  
630 Avenue C  
Bayonne, New Jersey 07002

NJPDES Permit No. NJG0151033

**Respondent**

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

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

**DOCKET No. CWA-02-2022-3303**

**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 United States 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 redelegated it to the Director, Enforcement and Compliance Assurance Division (“ECAD”) 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”) R9 – Tier A Municipal Stormwater General Permit, NJ0141852, for stormwater discharges from Municipal Separate Storm Sewer Systems (“MS4s”) for the MS4 that the Respondent owns.

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

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, among other things, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to 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 the 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 New Jersey Department of Environmental Protection (“NJDEP”) is the agency with the authority to administer the federal NPDES program in New Jersey pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b). A New Jersey Pollutant Discharge Elimination System (“NJPDES”) permit is required to be issued by the NJDEP to facilities for the discharge of pollutants from point sources to navigable waters of the United States. The EPA maintains concurrent enforcement authority with authorized States for violations of the CWA and permits issued by authorized States thereunder.
3. “Person” is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include 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, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes.
5. “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.
6. “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 to water.
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. “Navigable waters” are defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), as “waters of the United States, including the territorial seas.” “Waters of the United States” have been further defined to include, inter alia, waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce (hereinafter “traditional navigable waters”) and tributaries of such waters. 40 C.F.R. § 122.2.
7. 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”).

8. 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...”
9. 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.
10. 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.
11. 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.
12. 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 Request for Authorization (“RFA”) for coverage under such permit.
13. NJDEP issued R9 – Tier A Municipal Stormwater General Permit, NJ0141852, a NPDES general permit for stormwater discharges from Municipal Separate Storm Sewer Systems (“MS4s”) (“Permit” or “MS4 General Permit”) on January 1, 2018 and expires on December 31, 2022. The Permit supersedes the previous NJPDES permit (NJ0141852), which became effective in 2009 and expired on February 28, 2014 but had been administratively extended until the issuance of the current Permit.
14. 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 Bayonne (“Respondent” or the “City”) is a municipal corporation chartered under the laws of the State of New Jersey, and as such, Respondent is a “person,” as that term is 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 that term is defined in 40 C.F.R. § 122.26(b)(3).
2. Respondent owns the MS4 located in the City of Bayonne, New Jersey, and is an owner or operator within the meaning of 40 C.F.R. § 122.2.
3. Respondent’s MS4 is a small MS4 located in an 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. Respondent’s MS4 includes at least ninety (90) stormwater outfalls pipes, which are “point sources” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14). Respondent’s MS4 discharges stormwater, which is a “pollutant” within the meaning of Section 502(6) of the

CWA, 33 U.S.C. § 1362(6), to Newark Bay, Upper New York Harbor and the Kill Van Kull which are “Waters of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2. As such, Respondent discharges pollutants within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

5. Respondent submitted a Request for Authorization (“RFA”) to the NJDEP and subsequently received authorization in 2004 under the MS4 General Permit pursuant to permit identification number NJG0151033 and has been covered under the conditions and limitations in the MS4 General Permit at all relevant times addressed by this Order.
6. The MS4 General Permit authorizes Respondent to discharge pollutants from MS4 outfalls to waters of the United States, under the conditions and limitations prescribed in the Permit.
7. On December 5, 2019 and December 6, 2019, EPA, accompanied by EPA contractors, conducted an Audit of the Respondent’s MS4 (the “Audit”).
8. The NJDEP MS4 General Permit was the effective permit at the time of the Audit.
9. Based on the Audit findings, the EPA finds that the Respondent failed to comply with the CWA and the conditions and limitations of the MS4 General Permit, including but not limited to the following:
  - a. Part IV.B.5.c of the Permit requires Tier A Municipalities to implement the Best Management Practices (“BMPs”) described in Attachment E (*Best Management Practices for Municipal Maintenance Yards and Other Ancillary Operations*) for municipal maintenance yards and other ancillary operations owned or operated by the Tier A Municipality. At the time of the audit, the EPA Audit Team observed the following regarding BMPs, in violation of Part IV.B.5.v of the Permit:
    - i. Attachment E requires the City to inspect each municipal maintenance yard and ancillary operation monthly to ensure good housekeeping and pollution prevention practices are being implemented properly. Inspections are supposed to be documented in a log. The City was not performing and documenting monthly inspections at maintenance yards or ancillary operations.
    - ii. Attachment E identifies specific BMPs for *Fueling Operations* and *Vehicle Maintenance*. Specifically, Attachment E specifies measures to be implemented by the City to minimize leaks and spills and prevent exposure of pollutants to runoff. During a site visit to the City’s Recycling Center, the EPA Audit Team observed a fluid leak from a garbage truck that had not been contained or otherwise remediated. The EPA Audit Team observed oily sheen in several other areas of the Recycling Center, including immediately adjacent to a used oil container (see Section 3.0 of this report). The EPA Audit Team also observed oily sheen on the impervious surface of the parking lot on the west side of the Central Garage, as well as adjacent to the Central Garage fueling station.
    - iii. Attachment E identifies specific BMPs for *Equipment and Vehicle Washing and Wash Wastewater Containment*. Specifically, the City is to manage any equipment and vehicle washing in a manner to prevent unpermitted discharges to the storm sewer. City representatives stated that City vehicles are supposed to be washed at local commercial car washes; however, a firefighter present during the site visit to Fire Station 5 stated

- that fire trucks were occasionally washed outside in front of the firehouse, upgradient of storm drain inlets on Chosin Few Way. The surrounding area had newer infrastructure, likely with separated sewers.
- iv. Attachment E identifies specific BMPs for *Salt and De-icing Material Storage and Handling*. Specifically, Attachment E specifies prevention and minimization of spillage. The EPA Audit Team observed excess de-icing salt accumulated in the parking lot on the west side of the Central Garage. In addition, it's unclear if the metal plate and haybales, which were located beyond the roof of the salt shed, were effective at preventing stormwater from carrying salt observed beyond the roof of the enclosure into the adjacent catch basin at the City's Recycling Center.
  - v. Attachment E identifies specific BMPs for *Street Aggregate Material and Construction Debris Storage*. Control measures were not implemented to prevent material runoff from stone aggregate and sand stockpiles at the City's Recycling Center.
  - vi. Attachment E identifies specific BMPs for *Yard Trimmings and Wood Waste Management Sites*. During the site visit to the City's Recycling Center, the EPA Audit Team observed waste piles of yard trimmings, wood waste, and leaf litter stored beyond the limits of the containment structures. The EPA Audit Team also observed trackout from these areas onto the surrounding impervious surface.
- b. Part IV.B.5.d of the Permit requires Tier A Municipalities to develop, update, and implement an employee training program to address Tier A MS4 NJPDES Permit components and SPPP requirements. City representatives stated that City has not developed and implemented stormwater training for any of the Permit-required topics. The City's SPPP describes training and who should administer different training elements; however, a training program had not been established at the time of the audit. Suez employees receive some stormwater training; however, their training does not cover critical program elements essential to their role in the City's MS4 program, including: illicit connection elimination and outfall pipe mapping, outfall pipe stream scouring detection and control, stormwater facility maintenance, or the SPPP. Therefore, Respondent violated Part IV.B.5.d of the Permit.
- c. Part IV.B.6.a of the Permit requires Tier A Municipalities to develop, update, and maintain an outfall pipe map showing the location of the end of all MS4 outfall pipes (tidal and non-tidal) owned or operated by the Tier A Municipality which discharge to a surface water body. At the time of the audit, the City had not identified and mapped all MS4 outfalls. The MS4 map presented to the EPA Audit Team at the time of the audit showed a very limited amount of MS4 infrastructure, including three (3) potential MS4 outfalls. The EPA Audit Team conducted several site visits to areas suspected to be serviced by the MS4 and observed the following related to mapping, in violation of Part IV.B.6.a of the Permit:
- i. **Hook Road and Commerce Street:** Stormwater infrastructure along Hook Road and Commerce Street, an area that includes two municipal maintenance yards and several private industrial facilities, had not been mapped, including a potential MS4 outfall at the south end of Commerce Street. It was unclear whether the area drained to the MS4 or combined sewer system.
  - ii. **Fire Station 5:** The storm sewer infrastructure was not mapped in the vicinity of the facility. There were several storm drain inlets on the facility property and along Chosin Few Way. The station is located in an area that City representatives referred to as Marine

Ocean Terminal (“MOT”); no storm sewers were depicted on the provided map for the MOT area.

- iii. **Goldsborough Drive (Harbor Pointe project):** This site is also located in the MOT area. Stormwater infrastructure was not shown on the City’s map. The EPA Audit Team observed four apparent stormwater outfalls along Goldsborough Drive as well as inlets and underground post construction stormwater management facilities.
- iv. **Collins Park:** A limited amount of stormwater infrastructure is mapped at this site. One outfall observed by the EPA Audit Team at the site appeared to be depicted on the map; however, at least three other observed potential MS4 outfall locations and several storm drain inlets were not shown on the map.
- v. **Veterans Park and the Bayonne Housing Authority building:** None of the stormwater infrastructure in these areas were depicted on the City’s map. The EPA Audit Team observed multiple storm drain inlets in the area as well as two potential MS4 outfalls just south of Veterans Park, and one potential outfall at the south end of the Housing Authority complex.

On March 1, 2021, City representatives provided EPA with an updated MS4 outfall inventory and map depicting over ninety (90) MS4 outfalls within the City of Bayonne.

- d. Part IV.B.6.b of the Permit requires Tier A Municipalities to develop, update, and implement a program to detect, investigate, and control any localized stream scouring from stormwater outfall pipes owned or operated by the municipality. At the time of the audit, the City had not implemented a program to detect, investigate, and control stream scouring. Representatives from Suez stated that they may observe stormwater outfalls as part of their Combined Sewer Overflow (“CSO”) outfall inspection program; however, there was no formal or targeted effort to inspect MS4 outfalls for stream scouring. Therefore, Respondent violated Part IV.B.6.b of the Permit.
- e. Part IV.B.6.c of the Permit requires Tier A Municipalities to conduct visual dry weather inspections of all outfall pipes owned or operated by the municipality at least once every five years to determine if dry weather flow or other evidence of illicit discharge is present. The Permit also states that dry weather flow is flow occurring 72 hours after a rain event. The City did not have a formal program for conducting dry weather inspections. Representatives from Suez stated that they may observe stormwater outfalls as part of their CSO outfall inspection program, but historically, there has been no formal and targeted effort to conduct dry weather screening at stormwater outfalls. Therefore, Respondent violated Part IV.B.6.c of the Permit.

- 10. On January 22, 2020, EPA issued an Administrative Compliance Order (“AO” or “Order”) (CWA-02-2020-3022). The AO directed the Respondent to comply with the requirements of the Permit in accordance with a compliance schedule.
- 11. On March 19, 2020, June 8, 2020, August 25, 2020 and June 30, 2021, EPA agreed to extend certain AO compliance schedule deadlines at the request of the City due to ongoing impacts of the COVID-19 pandemic and other unanticipated delays.
- 12. Respondent repeatedly failed to comply with the extended deadlines set forth and EPA sent Overdue Notices to the Respondent via email on at least April 30, 2020, May 20, 2020,



November 18, 2020, December 10, 2020, January 12, 2021, February 12, 2021, March 3, 2021, March 12, 2021, May 5, 2021, May 17, 2021, July 28, 2021, and August 9, 2021.

13. On February 25, 2020, April 30, 2020, August 25, 2020, January 8, 2021, March 12, 2021 and June 29, 2021, Respondent submitted documentation addressing most of the violations identified in the AO.
14. On February 1, 2021, EPA received and forwarded to Respondent a citizen complaint regarding possible dry weather sewage discharges from Respondent's MS4 outfall pipe (Outfall 078) to Upper New York Harbor.
15. On March 11, 2021, City representatives identified a sanitary line from a new development connected to the MS4 upstream of Outfall 078.
16. On July 8, 2021, the NJDEP notified Respondent that the City was in violation of its Permit for failure to properly document, investigate and eliminate illicit connections to the MS4, as required by the Permit, as identified by NJDEP during a June 24, 2021 routine MS4 inspection.
17. On August 17, 2021, City representatives confirmed to EPA that the illicit sanitary connection to Outfall 078 had been corrected and confirmed eliminated by televising the sewer segment.
18. As of September 15, 2021, Respondent has not completed the municipal training required by Part IV.B.5.d of the Permit and Ordered Provision 2.c of the AO. The original AO deadline was March 1, 2020 but had been extended by EPA until May 1, 2020, August 15, 2020 and then until June 30, 2021.
19. Based on the Findings cited in paragraphs 1-18 above, Respondent violated Section 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 **\$18,000**. 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 five (5) distinct violations of the Act, one of which had continued for at least seven hundred and ninety (790) 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:

**Karen Maples**  
**Regional Hearing Clerk**  
**U.S. Environmental Protection Agency, Region 2**  
**290 Broadway, 16th Floor**  
**New York, NY 10007-1866**  
[maples.karen@epa.gov](mailto:maples.karen@epa.gov)

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:

Tim Murphy, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
Telephone (212) 637-3236  
[Murphy.Tim@epa.gov](mailto:Murphy.Tim@epa.gov)

The parties may engage in settlement discussions regardless of whether Respondent has requested a Hearing. 40 C.F.R. § 22.18(b)(1). Respondent's 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 waive 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 (**\$18,000**) 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 addresses:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
Docket No. CWA-02-2022-3303

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:

Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16th Floor  
New York, NY 10007-1866  
[maples.karen@epa.gov](mailto:maples.karen@epa.gov)

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

Tim Murphy, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
Telephone (212) 637-3236  
[Murphy.Tim@epa.gov](mailto:Murphy.Tim@epa.gov)

and

Kimberly McEathron  
Water Compliance Branch  
U.S. Environmental Protection Agency, Region 2  
[McEathron.Kimberly@epa.gov](mailto:McEathron.Kimberly@epa.gov)

### **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 19th DAY OF October, 2021.

*For* \_\_\_\_\_  
Dore LaPosta, Director  
Enforcement and Compliance Assurance Division  
U. S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, New York 10007-1866