

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:

Harford County  
220 South Main Street  
Bel Air, MD 21014

Respondent.

Docket No. CWA-03-2010-0406

**Proceeding to Assess Class II  
Administrative Penalty Under  
Section 309(g) of the Clean Water Act**

**ADMINISTRATIVE PENALTY COMPLAINT  
AND NOTICE OF OPPORTUNITY TO  
REQUEST HEARING**

**I. STATUTORY AUTHORITY**

1. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency ("EPA") is authorized to assess administrative penalties against persons who violate Section 301(a) of the Act, 33 U.S.C. § 1311(a). The Administrator of EPA has delegated this authority to the Regional Administrator of EPA, Region III, who in turn has delegated this authority to the Water Protection Division Director ("Complainant").

**II. FACTUAL AND LEGAL ALLEGATIONS**

2. Upon information and belief, Harford County ("the County" or "Respondent") is a political subdivision of the State of Maryland, and therefore a "person" as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.

3. Respondent, at all times relevant to this Complaint, has owned and/or operated a municipal separate storm sewer system ("MS4"), located within the geographic boundaries of Harford County, Maryland.

4. On May 20 and 21, 2009, duly-authorized representatives of EPA conducted an audit of the Respondent's MS4 Program, including an on-site inspection (hereinafter referred to as "May 2009 Audit").

A copy of the July 10, 2009 Findings of Violation and Administrative Order is contained in Attachment 1 hereto.

6. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutants (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System ("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342.

7. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.

8. Pursuant to section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Maryland Department of the Environment ("MDE") to issue NPDES permits in 1989.

9. The CWA requires that MS4s serving a population of 250,000 or more individuals apply for and obtain an NPDES permit.

10. At all times relevant to this Complaint, Respondent has owned and operated an MS4 serving a population of 250,000 individuals or more.

11. MDE issued NPDES MS4 Discharge Permit No. MD0068268 to Respondent on November 1, 2004, hereinafter referred to as the "MS4 Permit." The MS4 Permit expired on November 1, 2009, and has been administratively extended since that date.

12. On June 16, 2010, Respondent submitted an application for a permit renewal to MDE.

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

#### **Count 1: Failure to Provide Relevant Information From Preventative Maintenance Inspections**

13. The MS4 Permit, Part III.E.1.a., requires the Respondent to, among other things, conduct preventative maintenance inspections of all stormwater management facilities on at least a triennial basis. The MS4 Permit further requires that documentation identifying the facilities inspected, the number of maintenance inspections, follow-up inspections, the enforcement action(s) used to ensure compliance, the maintenance inspection schedules, and any other relevant information shall be submitted in the County's annual reports.

14. The May 2009 Audit revealed that Respondent had failed to document relevant information gathered during preventative maintenance inspections by not identifying the current storage capacity of post-construction storm water management structures.

15. Respondent's failure to document relevant information on the storage capacity of post-construction storm water management structures during preventative maintenance inspections constitutes violations of the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

**Count 2: Failure to Properly Address Illicit Discharges, Illegal Dumping and Spills**

16. The MS4 Permit, Part III.E.3.d, requires the Respondent to implement an inspection and enforcement program, or other alternative methods approved by MDE, to ensure that all discharges to and from the municipal separate storm sewer system that are not composed entirely of stormwater are either permitted by MDE or eliminated. The MS4 Permit further requires that such a program shall include, *inter alia*, "appropriate enforcement procedures for investigating and eliminating illicit discharges, illegal dumping, and spills. Significant discharges shall be reported to MDE for enforcement and/or permitting."

17. The May 2009 Audit revealed that Respondent had failed to implement a program providing for appropriate enforcement procedures for investigating and eliminating illicit discharges, illegal dumping, and spills by not:

- a. Having a central phone number for receiving complaints from citizens in order to investigate and eliminate illicit discharges, illegal dumping, and spills;
- b. Having formal or informal procedures for directing reports of illicit discharges, illegal dumping, and spills to the appropriate County department;
- c. Providing a log of illicit discharges, illegal dumping, and spills in annual reports;
- d. Failing to address the threat identified on February 6, 2008 to storm water quality from activities at the Ace Appliance Facility;
- e. Developing standard operating procedures for investigating and eliminating illicit discharges, illegal dumping, and spills; and
- f. Failing to provide County representatives with training or a specific direction to identify illicit discharges outside of their primary hotspot and dry weather field screening follow-up responsibilities.

18. Respondent's failure to implement a program providing for appropriate enforcement procedures for investigating and eliminating illicit discharges, illegal dumping, and spills constitutes violations of the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

**Count 3: Failure to Submit a Notice of Intent for all County-Owned Facilities that Require NPDES Stormwater General Permit Coverage**

19. The MS4 Permit, Part III.E.4, requires the Respondent to, among other things, to "identify all County-owned and municipal facilities requiring NPDES stormwater general permit coverage and submit Notices of Intent to MDE for each".

20. The May 2009 Audit revealed that Respondent had failed to identify the County-owned Board of Education Headquarters facility, which requires NPDES stormwater general permit coverage.

21. Respondent's failure to identify all County-owned and municipal facilities requiring NPDES stormwater general permit coverage constitutes violations of the MS4 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

#### **IV. CONCLUSION OF LAW**

22. By failing to comply with its Permit, Respondent discharged pollutants contained in stormwater associated with an MS4, in violation of the Permit and Section 301 of the CWA, 33 U.S.C. § 1311.

#### **V. PROPOSED CIVIL PENALTY**

23. Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), provides that any person who has violated any NPDES permit condition or limitation is liable for an administrative penalty not to exceed \$10,000 per day for each such violation, up to a total penalty amount of \$125,000.

24. Pursuant to the Debt Collection Improvement Act of 1996 (28 U.S.C. § 2461), any person who has violated any NPDES permit condition or limitation after January 30, 1997 is liable for an administrative penalty not to exceed \$11,000 per day for each such violation occurring between January 30, 1997 and March 15, 2004 up to a total penalty amount of \$137,500.

25. Pursuant to the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective March 15, 2004), any person who has violated any NPDES permit condition or limitation after March 15, 2004 is liable for an administrative penalty not to exceed \$11,000 per day for each such violation occurring after March 15, 2004 up to a total penalty amount of \$157,500.

26. Pursuant to the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective January 12, 2009), any person who has violated any NPDES permit condition or limitation after January 12, 2009 is liable for an administrative penalty not to exceed \$16,000 per day for each such violation occurring after January 12, 2009 up to a total penalty amount of \$177,500.

27. Based upon the foregoing allegations, and pursuant to the authority of section 309(g)(2)(B) of the CWA, and in accordance with the enclosed "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; Final Rule", 40 C.F.R. Part 22), Complainant hereby proposes to issue a Final Order Assessing Administrative Penalties to the Respondent in the amount of **seventy five thousand dollars (\$75,000)** for the violations alleged herein. This does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

28. The proposed penalty was determined after taking into account factors listed in 33 U.S.C. § 1319(g)(3): the nature, circumstances, extent and gravity of the violation, Respondent's prior compliance history, ability to pay the penalty, the degree of culpability for the cited violations, and any economic benefit or savings to Respondent because of the violations. In addition to the extent that facts or circumstances unknown to Complainant at the time of issuance of this Complaint become known after issuance of this Complaint, such facts or circumstances may also be considered as a basis for adjusting the proposed administrative penalty.

29. The Regional Administrator may issue the Final Order Assessing Administrative Penalties after the thirty (30) day comment period unless Respondent either responds to the allegations in the Complaint and requests a hearing according to the terms of Section VI, below, or pays the civil penalty in accordance with Paragraph 48, below.

30. Subject to the limitations contained in 40 C.F.R. § § 22.18(a) and 22.45, Respondent may conclude this proceeding at any time by paying the penalty proposed in the Complaint in the manner described in Paragraph 45.

31. If warranted, EPA may adjust the proposed civil penalty assessed in this Complaint. In so doing, the Agency will consider any number of factors in making this adjustment, including Respondent's ability to pay. However, the burden of raising the issue of an inability to pay and demonstrating this fact rests with the Respondent.

#### **VI. ANSWER TO COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

32. Pursuant to Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), Respondent may request a hearing on the proposed civil penalty within thirty (30) days of receiving this Complaint in accordance with the procedures contained in 40 C.F.R. Part 22.

33. If Respondent requests a hearing on this proposed penalty assessment, members of the public to whom EPA is obligated to give notice of this proposed action and a reasonable opportunity to comment pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), who have commented upon the proposed penalty assessment, will have an opportunity, pursuant to 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. If Respondent does not request a hearing, EPA will issue a Final Order Assessing Administrative Penalties, and only members of the public who submit timely comments on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon, pursuant to 33 U.S.C. § 1319(g)(4)(C). EPA will grant the petition and will hold a hearing if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.

34. Hearing procedures are described in the "*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits*," 40 C.F.R. Part 22, a copy of which is enclosed.

35. At the hearing, Respondent may contest any material fact contained in the violations listed in Section III, above, and the appropriateness of the penalty amount proposed in Section IV.

36. A Request for Hearing and the Answer to this Complaint must be filed within thirty (30) days of receiving this Complaint with the following:

Regional Hearing Clerk (3RC00)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Copies of the Request for Hearing and the Answer along with other documents filed in this action should also be sent to the following:

Mark Bolender  
Assistant Regional Counsel (Mail Code 3RC43)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(215) 814-2642

37. Failure to file an Answer may result in entry of a default judgment against Respondent. Upon issuance of a default judgment, the civil penalty proposed herein shall become due and payable. Respondent's failure to pay the entire penalty assessed by the Default Order by its due date will result in a civil action to collect the assessed penalty, plus interest, attorney's fees, costs, and an additional quarterly nonpayment penalty pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9). In addition, a default penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.

38. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with respect to which the Respondent has any knowledge, or clearly state the Respondent has no knowledge as to particular factual allegations in the Complaint. The Answer shall also state the following:

- a. The specific factual and legal circumstances or arguments which are alleged to constitute any grounds of defense;
- b. The facts which Respondent disputes;
- c. The basis for opposing any proposed relief; and,
- d. Whether a hearing is requested.

**Failure to admit, deny or explain any of the factual allegations in the Complaint constitutes admission of the undenied allegations.**

39. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. Failure to deny any of the factual allegations in this Complaint constitutes admission of the undenied allegations. The Answer and any subsequent documents filed in this action should be sent to:

Regional Hearing Clerk (3RC00)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

40. A copy of this Answer and any subsequent documents filed in this action should be sent to:

Mark Bolender  
Assistant Regional Counsel (Mail Code 3RC43)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(215) 814-2642

41. Neither assessment nor payment of an administrative civil penalty pursuant to the CWA shall affect Respondent's continuing obligation to comply with the statute, any other Federal or State laws, and/or with any separate Compliance Order issued under either statute, for the violations alleged herein.

**VII. SETTLEMENT CONFERENCE**

42. EPA encourages settlement of proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the Act. Whether or not a hearing is requested, Respondent may request a settlement conference with Complainant to discuss the allegations of the Complaint and the amount of the proposed civil penalty. **A request for a settlement conference does not relieve the Respondent of the responsibility to file a timely Answer to the Complaint.**

43. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his delegatee. The execution of such a Consent Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint or to appeal the Final Order accompanying the Consent Agreement.

44. If you wish to arrange a settlement conference, or if you have any questions related to this proceeding, please contact Mr. Charles Schadel at (215) 814-5761 before the expiration of the thirty (30) day period following your receipt of this Complaint. If you are represented by legal

counsel, you may have your counsel contact Mr. Mark Bolender, Assistant Regional Counsel, at (215) 814-2642, on your behalf. **Such a request for a settlement conference does not relieve Respondent of the responsibility to file an Answer within thirty (30) days following Respondent's receipt of this Complaint.**

### VIII. QUICK RESOLUTION

45. In accordance with 40 C.F.R. § 22.18(a), Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint or in Complainant's Prehearing Exchange. If Respondent pays the specific penalty proposed in this Complaint within thirty (30) days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1), no Answer need be filed.

46. If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2), Respondent may file a written statement with the Regional Hearing Clerk within 20 days after receiving this Complaint stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. Such statement shall be sent to:

Regional Hearing Clerk (3RC00)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

and a copy shall be provided to:

Mark Bolender  
Assistant Regional Counsel (Mail Code 3RC43)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(215) 814-2642

Within 60 days of receiving the Complaint, Respondent shall pay the full amount of the proposed penalty. Failure to make such payment within 60 days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17.

47. Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3), the Regional Administrator shall issue a final order. Payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the final order.

48. Payment of the civil penalty amount set forth in Paragraph 27, above, shall be



made by either cashier's check, certified check, or electronic wire transfer, in the following manner:

a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action: CWA-03-2010-0406;

b. All checks shall be made payable to: **United States Treasury**;

c. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Contact: Craig Steffen (513-487-2091), Eric Volck (513-487-2105)

d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA, Fines & Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

Contact: (314-418-1028)

e. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account No. = 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"

f. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

PNC Bank  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – Checking

808 17<sup>th</sup> Street, NW  
Washington, DC 20074

Contact: John Schmid (202-874-7026)  
REX (866-234-5681)

Physical location of US Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737

g. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

h. Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

49. Copies of the check shall be mailed at the same time payment is made to:

Regional Hearing Clerk (3RC00)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

and:

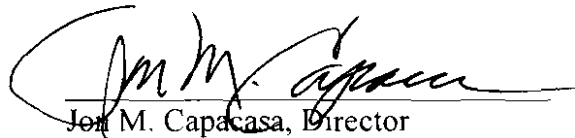
Mark Bolender  
Assistant Regional Counsel (Mail Code 3RC43)  
U.S. Environmental Protection Agency, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029  
(215) 814-2642

**IX. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS**

50. The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region III Office of Regional Counsel, the Region III Water Protection Division, the Office of the EPA Assistant Administrator for the Office of Water, and the EPA Assistant Administrator for Enforcement and Compliance Assurance. From the date of this Complaint until the final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice, 40 C.F.R. Part 22, prohibit any unilateral discussion or *ex parte* communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer after issuance of a Complaint.

SEP 29 2010

Date: \_\_\_\_\_



Jon M. Capacasa, Director  
Water Protection Division  
U.S. Environmental Protection  
Agency, Region III

CERTIFICATE OF SERVICE

I hereby certify that on the date listed below, I filed the original attached Administrative Penalty Complaint and Notice of Opportunity to Request Hearing with the Regional Hearing Clerk, and sent a copy thereof to the following person via certified mail, return receipt requested:

David R. Craig, County Executive  
Harford County  
220 South Main Street  
Bel Air, Maryland 21014

SEP 29 2010

Date: \_\_\_\_\_



Charles A. Schadel



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

SEP 29 2010

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

David R. Craig, County Executive  
Harford County  
220 South Main Street  
Bel Air, Maryland 21014

Re: Administrative Penalty Complaint  
Docket No. CWA-03-2010-0406

Dear Mr. Craig:

The U.S. Environmental Protection Agency (EPA or the Agency) has determined that Harford County, Maryland has violated provisions of its Clean Water Act NPDES Permit No. MD0068268 dealing with its Municipal Separate Storm Sewer System (MS4) program. As a result, EPA has issued the enclosed Administrative Penalty Complaint and Notice of Opportunity to Request a Hearing pursuant to Section 309(g) of the Clean Water Act.

This action is an important part of EPA's Chesapeake Bay Compliance Strategy to protect and improve the water quality of the Chesapeake Bay watershed. Consistent with Agency practice, EPA will be making the public aware of this enforcement action and other similar cases being taken at this time by EPA. EPA has worked closely with the Maryland Department of the Environment (MDE) on this and other cases in the state involving the MS4 program.

The Administrative Penalty Complaint and other documents enclosed with this letter contain important information concerning this legal proceeding, and I encourage you and other members of your office to review them closely. EPA will be happy to meet with you or your representatives to discuss this matter, and contact information is provided below.



*Printed on 100% recycled/recyclable paper with 100% post-consumer fiber and process chlorine free.  
Customer Service Hotline: 1-800-438-2474*

I urge you to address this matter as soon as possible. If you wish to discuss this matter, please contact Mr. Chuck Schadel at 215-814-5761, or have your counsel contact Mark Bolender, Esq., at 215-814-2642.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon M. Capacasa", written over a horizontal line.

Jon M. Capacasa, Director  
Water Protection Division

Enclosures

cc: Mr. Brian Clevenger  
Water Management Administration, Sediment, Stormwater, and Dam Safety Program  
Maryland Department of the Environment  
Ms. Christine Buckley, Harford County MS4 Program Manager