

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. Environmental
Protection Agency-Reg 2

2015 DEC -9 PM 2: 54

REGIONAL HEARING
CLERK

IN THE MATTER OF:

Town of Rotterdam
1100 Sunrise Boulevard
Rotterdam, New York 12306

SPDES Permit No. NYR20A354

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-02-2016-3309

**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 York Department of Environmental Conservation's ("NYSDEC's") State Pollutant Discharge Elimination System ("SPDES") General Permit for Storm Water Discharges from Municipal Separate Storm Sewer Systems ("MS4s") for the 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 NYSDEC is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA. Additionally, under the authority granted to the NYSDEC by the EPA under Section 402(b) of the CWA, 33 U.S.C. § 1342(b), a SPDES permit is required to be issued to facilities by the NYSDEC for the discharge of pollutants from said facilities from a point source to a navigable water of the United States.
3. “Person” is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include 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. NYSDEC issued a SPDES General Permit for Storm Water Discharges from MS4s (GP-0-15-003) (“Permit”) on May 1, 2015 and it expires on April 30, 2017. The Permit supersedes the previous SPDES permit (GP-0-10-002), which became effective on May 1, 2010 and expired on April 30, 2015, and SPDES permit (GP-0-08-002), which became effective on May 1, 2008 and expired on April 30, 2010.
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 Town of Rotterdam (“Town” or “Respondent”) is a public body chartered under the laws of the State of New York, and as such, the Respondent 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 Town of Rotterdam, Schenectady County, New York and is an “owner or operator” within the meaning of 40 C.F.R. § 122.2.
3. The MS4 owned and operated by the Respondent 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 Town of Rotterdam is a point source within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
5. Respondent discharges stormwater, which is a pollutant within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to Poentic Kill, Mohawk River Tributaries, Normans Kill and Hudson River Tributaries, waters of the United States within the meaning of 40 C.F.R. § 122.2, via its MS4. As such, Respondent discharges pollutants within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).
6. The Town of Rotterdam submitted a Notice of Intent (“NOI”) to NYSDEC on March 4, 2003 and subsequently received authorization under the MS4 General Permit pursuant to permit

No. NYR20A354. Permit coverage was maintained under the subsequent, and current permit which became effective on May 1, 2015.

7. EPA, accompanied by NYSDEC, conducted a compliance Audit of the Town's MS4 on April 2, 2013 through April 4, 2013.
8. NYSDEC General Permit for Storm Water Discharges from Municipal Separate Storm Sewer Systems (GP-0-10-002), effective on May 1, 2010, was the effective permit at the time of the audit.
9. At the time of the Audit, EPA identified the following violations of the Permit:
 - a. Part IV.A of the Permit requires that all permittees under GP-0-08-002 must have prepared a Storm Water Management Program ("SWMP") Plan documenting modifications to their SWMP. In accordance with the 2003 permit, the Town was required to develop and have fully implemented its SWMP by January 8, 2008. Part IV.A of the Permit also requires that the SWMP Plan shall be made readily available to MS4 staff, to the public and to NYSDEC and EPA staff. The Town failed to provide EPA with a SWMP Plan, prior to the Audit in response to an information request, at the time of the Audit and subsequent to the Audit until a new and complete SWMP Plan was developed by the Town dated June 30, 2014.
 - b. Part IV.G of the Permit requires that all permittees must, through a signed certification statement, contract or agreement, provide adequate assurance that the third parties will comply with permit requirements applicable to the work performed by the third party. Third parties conducting SWMP-related work within the Town, including the third parties leasing Town ball fields that are tasked with trash pickup and restroom maintenance and Town Designated Engineers ("TDEs") who are tasked with implementing construction site inspections and Storm Water Pollution Prevention Plan ("SWPPP") review on behalf of the Town, have not signed the certification statement listed in the MS4 Permit, and the statement is not included in contracts with the Town. Therefore, Respondent failed to provide adequate assurance that third parties will comply with permit requirements applicable to the work performed by the third party, in violation of Part IV.G of the Permit.
 - c. Part V.A of the Permit requires all permittees to conduct an annual evaluation of its program compliance, the appropriateness of its identified Best Management Practices ("BMPs"), meeting new permit requirements, and progress toward achieving its identified measurable goals, which must include reducing the discharge of pollutants to the maximum extent practical. According to the Town's submitted Notice of Intent ("NOI"), the initial identified measurable goals included implementation of recommendations to reduce salt/sand use starting in 2006. According to Town representatives, the Town routinely applies salt to Town-maintained roads. The Town buys more salt as the salt pile gets low and does not track or document salt use as part of this process. The Town failed to meet its initial identified measurable goals to reduce the Town's use of salt applied to Town-maintained roads and to track or document salt use. Therefore, Respondent violated Part V.A of the Permit.

- d. Part V.B of the Permit requires all permittees must keep records required by this SPDES general permit (records that document SWMP, records included in SWMP Plan, other records that verify reporting required by the permit, NOI, past annual reports, and comments from the public and the NYSDEC, etc.) for at least five (5) years after they are generated. Records, including the NOI and the SWMP Plan, must be available to the public at reasonable times during regular business hours. The Town failed to provide EPA with SWMP implementation documentation including catch basin cleaning, eliminating 2010 and 2011 identified illicit connections, street sweeping, post-construction inspection, annual report public meeting documentation, documentation of the 25 public events and 750 printed materials reported in its 2012 annual report, good housekeeping training documentation and post-construction maintenance records. Therefore, Respondent violated Part V.B of the Permit.
- e. Part V.C.1 of the Permit requires the Annual Report to be received by NYSDEC no later than June 1 of each reporting year. Two of the past five Annual Reports submitted by the Town were not received by NYSDEC by June 1 of the reporting year. The Town's 2008 and 2009 Annual Reports were received by NYSDEC on June 5, 2008 and August 28, 2009, respectively. Therefore, Respondent violated Part V.C.1 of the Permit.
- f. Part V.C.3.b of the Permit requires that the Annual Report must include, at a minimum, the appropriateness of the identified BMPs; progress towards achieving the statutory goal of reducing the discharge of pollutants to the maximum extent practical; and the identified measurable goals for each of the Minimum Control Measures ("MCMs"); and Part VII.A.6.c of the Permit requires, at a minimum, all covered entities to develop, record, periodically assess and modify as needed measurable goals as it relates to the Pollution Prevention/Good Housekeeping for Municipal Operations MCMs. Additionally, Part VII.A.6.f.iv of the Permit requires the covered entity to report on effectiveness of program, BMP and measurable goal assessment. The 2010, 2011 and 2012 Annual Reports submitted by the Town did not list a measurable goal for the Town's Pollution Prevention and Good Housekeeping for Municipal Operations program. Therefore, Respondent violated Part V.C.3.b of the Permit.
- g. Part V.C.3.f of the Permit requires all permittees to include any change in identified BMPs or measurable goals and justification for those changes in the Annual Report. The Town's 2010 and 2011 Annual Reports listed the Public Education and Outreach program measurable goal as "education and participation by town employees and private contractors" and the Illicit Discharge Detection and Elimination program measurable goal as "basin marking scheduled to continue through 2013," while the measurable goal spaces were left blank on the Town's 2012 Annual Report with no justification. Therefore, Respondent violated Part V.C.3.f of the Permit.
- h. Part VII.A.1.a of the Permit requires permittees to identify Pollutants of Concern ("POCs"), waterbodies of concern, geographic areas of concern and target audiences. At the time of the Audit, the Town had not identified POCs, waterbodies of concern, geographic areas of concern and target audiences. Additional Permit requirements not met by the Town of Rotterdam due to the lack of identified POCs include Parts III.B.1, VII.A.1.b.ii, VII.A.1.d, VII.A.3.f, VII.A.3.k, VII.A.4.a.xiv, VII.A.5.d and VII.A.6.d of

the Permit. Therefore, Respondent violated Parts VII.A.1.a, III.B.1, VII.A.1.b.ii, VII.A.1.d, VII.A.3.f, VII.A.3.k, VII.A.4.a.xiv, VII.A.5.d and VII.A.6.d of the Permit.

- i. Part VII.A.1.b of the Permit requires all permittees to develop and implement an ongoing Public Education and Outreach program designed to describe to the general public and target audiences: the impacts of stormwater discharges on waterbodies, POCs and their sources, and steps that contributors of these pollutants can take to reduce pollutants in stormwater runoff. At the time of the Audit, the Town had not developed and implemented a public education and outreach program designed to describe to target audiences POCs and their sources. Therefore, Respondent violated Part VII.A.1.b of the Permit.
- j. Part VII.A.2.b of the Permit requires all permittees to develop and implement a Public Involvement/Participation program that identifies key individuals and groups, public and private, who are interested in or affected by the SWMP and to provide the opportunity for the public to participate in the development, implementation, review and revision of the SWMP. At the time of the Audit, the Town had not developed and implemented a public involvement/participation program that identifies key individuals and groups who are interested in or affected by the SWMP or the opportunity for the public to participate in the SWMP. Therefore, Respondent violated Part VII.A.2.b of the Permit.
- k. Part VII.A.2.d of the Permit requires that prior to submitting the final annual report to the NYSDEC all permittees are required to present the draft annual report in a format that is open to the public. The Town's 2012 Annual Report, signed by Patrick Carroll of the Town on May 5, 2012, states that the Annual Report was made available to the public, however no date was included and at the time of the Audit, the Town was unable to provide any further details regarding the 2012 Annual Report being made available to the public. Therefore, Respondent violated Part VII.A.2.d of the Permit.
- l. Part VII.A.3.a of the Permit requires all permittees to develop, implement and enforce a program to detect and eliminate illicit discharges into the MS4. According to Town representatives, the Town Highway Department conducts outfall inspections and Illicit Discharge Detection and Elimination ("IDDE") investigations in response to complaints and abnormal observations such as discoloration of the pipes. The Town's Highway Department does not conduct routine outfall inspections, does not have standard written procedures for the IDDE program and does not document inspections. Therefore, Respondent violated Part VII.A.3.a of the Permit.
- m. Part VII.A.3.b.i of the Permit requires all permittees to develop and maintain a map, at a minimum within the permittees' jurisdiction in the urbanized area and additionally designated area showing the location of all outfalls. At the time of the Audit, EPA identified at least three (3) unmapped MS4 outfalls at locations listed in Table 1 of the enclosed Audit Report, which includes one (1) located at the Town's Water and Sewer Plant. Therefore, Respondent violated Part VII.A.3.b.i of the Permit.
- n. Part VII.A.3.b.ii of the Permit requires all permittees to, by March 9, 2010, develop and maintain a map showing the preliminary boundaries of the permittees' storm sewersheds that have been determined using GIS or other tools, even if they extend outside of the

urbanized area (to facilitate track down), as well as additionally designated area within the permittees' jurisdiction. According to Town representatives and the 2012 submitted Annual Report, the Town has not developed a map showing the preliminary boundaries of the storm sewershed. Therefore, Respondent violated Part VII.A.3.b.ii of the Permit.

- o. Part VII.A.3.c of the Permit requires all permittees to field verify outfall locations. The Town has access to the Schenectady Internet Mapping System ("SIMS") program which includes Town water and sewer mains, topography, waterbodies, roads and MS4 outfall locations and photographs. EPA observed that at least five (5) of the mapped "outfalls" in the SIMS program were actually catch basins that did not discharge stormwater to an adjacent MS4 or to an associated outfall (outfalls 185, 109, 110, 111, and 112). Therefore, Respondent violated Part VII.A.3.c of the Permit.
- p. Part VII.A.3.d of the Permit requires all permittees to conduct an outfall reconnaissance inventory, as described in the EPA publication entitled "Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessment," addressing every outfall within the urbanized area and additionally designated area within the permittee's jurisdiction at least once every five years, with reasonable progress each year. The NYSDEC SPDES MS4 General Permit GP-0-08-002 with the effective date of May 1, 2008, includes this requirement, therefore, the five year deadline was May 1, 2013. At the time of the Audit, the Town of Rotterdam had not conducted outfall reconnaissance inventory at any outfalls, as described in the EPA publication, including but not limited to, dry weather outfall screening. According to the Annual Reports submitted by the Town, in 2010, 50 outfalls were screened for dry weather discharges, 25 were screened in 2011 and 9 were screened in 2012; however, Town representatives were unable to provide EPA with documentation including what outfalls were screened, what observations and procedures were used and the weather conditions at the time of the screening. Therefore, Respondent violated Part VII.A.3.d of the Permit.
- q. Part VII.A.3.f of the Permit requires all permittees to prohibit, through a law, ordinance or other regulatory mechanism, illicit discharges into the small MS4 and implement appropriate enforcement procedures and actions. This mechanism must be equivalent to the State's model IDDE local law "NYSDEC Model Local Law to Prohibit Illicit Discharges, Activities and Connections to Separate Storm Sewer Systems". The mechanism must be certified by the attorney representing the small MS4 as being equivalent to the State's model illicit discharge local law. According to the Town's 2012 submitted Annual Report and Town representatives, an attorney representing the Town of Rotterdam has not certified the Town's IDDE ordinance, Chapter 270-225 Prohibit Illicit Discharges, Activities and Connections to Separate Storm Sewer System, as being equivalent to the State's model illicit discharge local law. Therefore, Respondent violated Part VII.A.3.f of the Permit.
- r. Part VII.A.3.g of the Permit requires permittees to develop and implement a program to detect and address non-stormwater discharges to the small MS4. The program must include: available equipment; procedures for identifying and locating illicit discharges (track down); procedures for eliminating illicit discharges; and procedures for documenting actions. The Town has not developed a written IDDE program that includes available equipment; procedures for identifying and locating illicit discharges

(track down); procedures for eliminating illicit discharges; and procedures for documenting actions. Therefore, Respondent violated Part VII.A.3.g of the Permit.

- s. Part VII.A.4.a.i of the Permit requires that all permittees develop, implement and enforce a program that provides equivalent protection to the NYSDEC SPDES Construction General Permit (“CGP”). The following deficiencies identified by EPA at the Campbell Road Warehouse, Helderberg Meadows and Planet Fitness construction sites on April 3, 2013 are violations of the NYSDEC SPDES CGP and at the time of the Audit the Town had not implemented follow up enforcement actions regarding the observed deficiencies, in violation of Part VII.A.4.a.i of the Permit:
 - i. EPA observed perimeter silt fencing down at the Campbell Road Warehouse construction site (NYR10Q919), not maintained in accordance with the SWPPP;
 - ii. EPA observed erosion channels on the banks of the constructed detention basin lacking vegetation at the Helderberg Meadows (NYR10S414), not vegetated in accordance with the SWPPP; and
 - iii. EPA observed perimeter silt fencing with holes downhill from a stockpile and adjacent to a wetland at the Planet Fitness construction site (NYR10V848), not maintained in accordance with the SWPPP.
- t. Part VII.A.4.a.vii of the Permit requires all permittees to develop, implement and enforce a construction site stormwater runoff control program that describes procedures for Storm Water Pollution Prevention Plan (“SWPPP”) review. The Town of Rotterdam did not have written procedures for SWPPP review at the time of the Audit. Therefore, Respondent violated Part VII.A.4.a.vii of the Permit.
- u. Part VII.A.4.a.viii of the Permit requires all permittees to develop, implement and enforce a construction site stormwater runoff control program that describes procedures for receipt and follow up on complaints or other information submitted by the public regarding construction site stormwater runoff. At the time of the Audit, the Town of Rotterdam failed to have written procedures for receipt and follow up on complaints by the public regarding construction site stormwater runoff. Therefore, Respondent violated Part VII.A.4.a.viii of the Permit.
- v. Part VII.A.4.a.ix of the Permit requires all permittees to develop, implement and enforce a construction site stormwater runoff control program that describes procedures for site inspections and enforcement of erosion and sediment control measures, including steps to identify priority sites for inspection and enforcement based on the nature of the construction activity, topography, and the characteristics of soils and receiving waters and permittees shall sign the MS4 Acceptance statement on the Notice of Termination (“NOT”) to document that it is acceptable for the owner or operator of a construction project to submit a NOT. At the time of the Audit, the Town of Rotterdam failed to develop and implement procedures for construction site inspections, enforcement, identifying priority sites for inspection and NOT procedures that include signing the MS4 acceptance statement on the NOT. According to Town representatives, TDEs inspect sites on a weekly basis on behalf of the Town. However, according to the TDE representative and the Town’s Project Tracking History database, one (1) of the

construction sites that EPA visited in the field had not been inspected since March 6, 2013. Therefore, Respondent violated Part VII.A.4.a.ix of the Permit.

- w. Part VII.A.4.a.xi of the Permit requires all permittees to develop, implement and enforce a construction site stormwater runoff control program that ensures that construction site operators have received erosion and sediment control training before they do work within the covered entity's jurisdiction and maintain records of that training. At the time of the Audit, the Town failed to develop, implement and enforce a program that ensures that construction site operators have received erosion and sediment control training prior to conducting work within the MS4's jurisdiction and maintain records of that training. Therefore, Respondent violated Part VII.A.4.a.xi of the Permit.
- x. Part VII.A.5.a.vi of the Permit requires all permittees to develop implement and enforce a post-construction stormwater management program that maintains an inventory of post-construction stormwater management practices within the MS4's jurisdiction. At a minimum, it must include practices discharging to the small MS4 that have been installed since March 10, 2003, all practices owned by the small MS4, and those practices found to cause or contribute to water quality standard violations. According to Town representatives, the Town does not maintain an inventory of all post-construction stormwater management practices discharging to the small MS4 that have been installed since March 10, 2003, all practices owned by the small MS4, and those practices found to cause or contribute to water quality standard violations. Therefore, Respondent violated Part VII.A.5.a.vi of the Permit.
- y. Part VII.A.5.a.vii of the Permit requires all permittees to develop implement and enforce a program that ensures adequate long-term operation and maintenance of management practices identified in Part VII.5.a.vi by trained staff, including inspections to ensure that practices are performing properly. The Town does not routinely inspect and does not have a long-term operation and maintenance plan for post-construction stormwater management practices within the MS4's jurisdiction. According to Town representatives, the Town inspects post-construction stormwater management practices in response to a complaint or identified problem but does not document these inspections and does not conduct routine inspection or maintenance. Therefore, Respondent violated Part VII.A.5.a.vii of the Permit.
- z. Part VII.A.6.a.i of the Permit requires all permittees to develop and implement a pollution prevention/good housekeeping program for municipal operations and facilities that addresses municipal operations and facilities that contribute or potentially contribute POCs to the small MS4 system. The operations and facilities may include, but are not limited to: street and bridge maintenance; winter road maintenance; stormwater system maintenance; vehicle and fleet maintenance; park and open space maintenance; municipal building maintenance; solid waste management; new construction and land disturbances; right-of-way maintenance; marine operations; hydrologic habitat modification; or other. According to Town representatives, the Town Parks and Highway Departments do not have a BMP Plan or manual that addresses potential pollutant sources from Town facilities. EPA inspectors observed inadequate pollution prevention/good housekeeping at the following locations operated by the Town that

contribute or potentially contribute POCs to the small MS4 system, in violation of Part VII.A.6.a.i of the Permit:

- i. At the Highway Garage:
 1. Uncovered salt pile on-site, exposed to stormwater and located uphill from an unprotected catch basin;
 2. Street sweeper interior rinsing conducted outside on-site uphill from an unprotected catch basin; and
 3. Uncovered fueling station on-site, exposed to stormwater and located uphill from an unprotected catch basin.
- ii. At the Water/Sewer Garage:
 1. Floor drains in vehicle maintenance garage where dark oil stains were observed appears to discharge to the storm sewer system and MS4 outfall located on-site;
 2. Vehicle washing is conducted on-site adjacent to unprotected catch basins; and
 3. Dumpster and Wastewater Treatment Plant (“WWTP”) residuals stored adjacent to an unprotected catch basin.

aa. Part VII.A.6.a.ii of the Permit requires that all permittees must at a minimum frequency of once every three years, perform a self-assessment of all municipal operations addressed by the SWMP to: determine the sources of pollutants potentially generated by the permittee’s operations and facilities and identify the municipal operations and facilities that will be addressed by the pollution prevention and good housekeeping program, if it is not done already. At the time of the Audit, the Town provided EPA with a “Self Audit” form completed by James Longo of the Town’s Highway Department on February 19, 2013, at the Highway Garage. The “Self Audit” form states “Not Applicable” to the question of “Are salt piles stored in a salt storage building or under a roof.” At the time of the Audit, EPA observed salt piles at the Highway Garage uncovered, exposed to stormwater and adjacent to a Town catch basin. Additionally, the Town failed to provide EPA with “Self Audit” forms completed for any other Town Facility at the time of the Audit. Therefore, Respondent violated Part VII.A.6.a.ii of the Permit.

bb. Part VII.A.6.a.vi of the Permit requires that all permittees develop and implement a pollution prevention / good housekeeping program for municipal operations and facilities that includes an employee pollution prevention and good housekeeping training program and ensures that staff receive and utilize training. Annual Reports submitted by the Town in 2010, 2011 and 2012 list employee pollution prevention and good housekeeping training was held on 5/15/2010, 5/1/2011 and 5/20/2012. However, at the time of the Audit, Town employees were unable to provide EPA with details and documentation regarding training content and attendance for training held within the past five (5) years. According to Town representatives, there is no formal routine training for Parks or Highway Department employees. Therefore, Respondent violated Part VII.A.6.a.vi of the Permit.

10. On August 9, 2013, EPA issued an Administrative Compliance Order (“AO” or “Order”) (CWA-02-2013-3047). The AO directed the Respondent to comply with the requirements of the Permit in accordance with a compliance schedule.
11. Based on the Findings cited in paragraphs 1-10 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 **\$37,500**. EPA determined the proposed penalty after taking into account the applicable factors identified at Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). EPA has taken account of the nature, circumstances, extent, and gravity of the 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 twenty-eight (28) violations of the Act, one of which has continued for at least seven hundred and fifty seven (757) 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:

Melva J. Hayden, Esquire
Water and General Law Branch
Office of Regional Counsel
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone (212) 637-3230
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 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 **\$37,500** 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-02-2016-3309

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

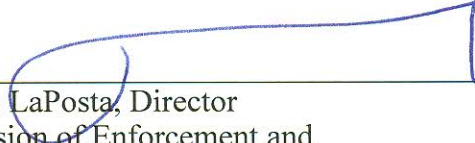
A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Melva J. Hayden, Esquire
Water and General Law Branch
Office of Regional Counsel
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone (212) 637-3230

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 4th DAY OF DECEMBER, 2015.



Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U. S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007-1866

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Town of Rotterdam
1100 Sunrise Boulevard
Rotterdam, New York 12306

SPDES Permit No. NYR20A3047

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-02-2016-3309

CERTIFICATE OF SERVICE

I certify that on DEC 08 2015, 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:

Mr. Harry Buffardi, Town Supervisor
Town of Rotterdam
1100 Sunrise Boulevard
Rotterdam, New York 12306

Copy by Certified Mail
Return Receipt Requested

Mr. Joseph DiMura, Director
Bureau of Water Compliance Programs
Division of Water
New York State Department of Environmental Conservation
625 Broadway – 4th Floor
Albany, New York 12233-3506

Dated: 12/08/15



NAME OF SECRETARY
New York, NY



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

DEC - 4 2015

U.S. Environmental
Protection Agency-Reg 2

2015 DEC -9 PM 2: 54

REGIONAL HEARING
CLERK

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7015 0640 0001 0675 9409

Mr. Joseph DiMura, Director
Bureau of Water Compliance Programs
Division of Water
New York State Department of Environmental Conservation
625 Broadway - 4th Floor
Albany, New York 12233-3506

**RE: Notice of Proceeding to Assess a Class I Civil Penalty
Town of Rotterdam Municipal Separate Storm Sewer System
Docket No. CWA-02-2016-3309**


Dear Mr. DiMura:

Enclosed is a copy of the Complaint and Proposed Assessment of a Civil Penalty, which the United States Environmental Protection Agency ("EPA") has issued to the Town of Rotterdam 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 \$37,500 against Respondent for violations of the Act.

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

A copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (40 C.F.R. Part 22), is enclosed for your reference.

Sincerely,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

1. Complaint
2. CROP