



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

Suite 1100, 1 Congress Street
Boston, MA 02114-2203

RECEIVED

2009 APR -7 P 3:22

BY HAND

April 7, 2009

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region I
One Congress Street
Suite 1100, Mail Code RAA
Boston, MA 02114-2023

EPA ORC
OFFICE OF
REGIONAL HEARING CLERK

Re: In the Matter of: Bailin & Associates, Inc.
CWA-01-2009-0046

Dear Ms. Santiago:

For the above-referenced matter, please file the enclosed Administrative Complaint and Notice of Opportunity for a Hearing and the Certificate of Service. I have included the original and one copy of these documents. I have also included a copy of the letter notifying the Commonwealth of Massachusetts of the filing of this Complaint.

Thank you for your attention to this matter. Should you have any questions, please contact me at (617) 918-1780.

Sincerely,

A handwritten signature in blue ink that reads "Kathleen E. Woodward".

Kathleen E. Woodward
Senior Enforcement Counsel

Enclosure

In the Matter of: Bailin & Associates, Inc.
Docket No. CWA 01-2009-0046

CERTIFICATE OF SERVICE

I certify that the foregoing administrative complaint was sent to the following persons, in the manner specified on the date below:

Copy hand-delivered:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I
One Congress Street
Suite 1100, Mail Code RAA
Boston, Massachusetts 02114-2023

Copy by certified mail, return

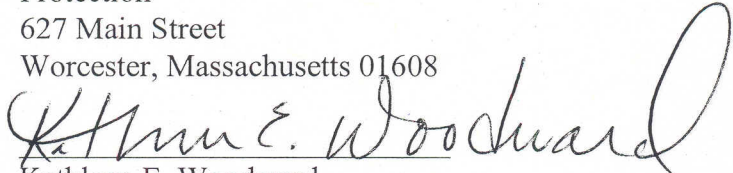
Peter T. Karassik, President
Bailin & Associates, Inc.
727 Salisbury Drive
Worcester, Massachusetts 01609

Peter T. Karassik, President,
Bailin & Associates, Inc.
c/o Eligius Homes Company, Inc.
329 Boston Post Road
Sudbury, MA 01776-3001

John L. MacKoul
Registered Agent
3 Blackthorn Dr.
Worcester, Massachusetts 01609-1187

Martin Suuberg, Regional Director
Central Region
Massachusetts Department of Environmental
Protection
627 Main Street
Worcester, Massachusetts 01608

Dated: April 7, 2009


Kathleen E. Woodward
Senior Enforcement Counsel
Office of Environmental Stewardship (SEL)
U.S. Environmental Protection Agency
Region I
One Congress Street
Boston, MA 02114-2023
(617) 918-1780



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1

1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

April 7, 2009

Martin Suuberg, Regional Director
Central Region
Massachusetts Department of Environmental
Protection
627 Main Street
Worcester, Massachusetts 01608

Re: In the Matter of Bailin & Associates, Inc.
Administrative Penalty Complaint
Docket Nos. CWA-01-2009-0046

Dear Mr. Suuberg:

Enclosed please find a copy of the Administrative Complaint referenced above. The Complaint involves a subdivision development know as Salisbury Hill located at 727 Salisbury Street in Worcester, Massachusetts. The Complaint alleges violations of the Clean Water Act including discharge without a permit; failure to apply for a permit; and violation of the Construction General Permit for Storm Water Discharges from Construction Activities. On May 28, 2008, Joseph Bellino of your staff accompanied Lisa Thuot, Environmental Scientist at EPA, in a site inspection at the subject construction site. Should you wish to consult further on this matter, please call me at (617) 918-1780.

Sincerely,

A handwritten signature in black ink that reads "Kathleen E. Woodward".

Kathleen Woodward
Senior Enforcement Counsel
U.S. Environmental Protection Agency
One Congress Street
Suite 1100 (SEL)
Boston, MA 02114-2023

Enclosure

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I**

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2009 APR -7 P 3: 22

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OFFICE OF
HEARING CLERK

In the Matter of)	Docket No. CWA-01-2009-0046
)	
)	
)	
BAILIN & ASSOCIATES, Inc.)	ADMINISTRATIVE COMPLAINT
727 Salisbury St.)	Proposing to Assess a Civil Penalty
Worcester, Massachusetts 01609)	Under Section 309(g) of the
)	Clean Water Act
)	
)	
Respondent)	
)	
)	

STATUTORY AND REGULATORY AUTHORITY

1. This Administrative Complaint (“Complaint”) is issued under the authority vested in the U.S. Environmental Protection Agency (“EPA”) by Section 309(g) of the Clean Water Act (“the Act”), 33 U.S.C. § 1319(g), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” 40 C.F.R. §§ 22.1-22.52 (“the Consolidated Rules of Practice”).

2. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice, Complainant hereby provides notice of a proposal to assess a civil penalty against Bailin & Associates, Inc. (“Respondent”) for discharging pollutants into navigable waters of the United States without a permit in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), and failing to apply for a National

Pollution Discharge Elimination System (“NPDES”) permit in violation of Section 308(a) of the Act, 33 U.S.C. § 1318(a). Complainant also provides notice of a proposal to seek a civil penalty from Respondent for failing to comply with the NPDES General Permit for Storm Water Discharges from Construction Activities (“CGP”).

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into the navigable waters of the United States except in compliance with, among other things, a NPDES permit issued under Section 402 of the Act, 33 U.S.C. § 1342.
4. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines “discharge of pollutants” to include “any addition of any pollutant to navigable waters from any point source.” Section 502(14) of the Act, 33 U.S.C. § 1362(14), defines a “point source” as “any discernible, confined and discrete conveyance ... from which pollutants are or may be discharged.”
5. Section 402(p)(2)(B) of the Act, 33 U.S.C. § 1342(p)(2)(B), requires any storm water discharge associated with “industrial activity” to be authorized by a NPDES permit. Section 402(p)(6) of the Act, 33 U.S.C. § 1342(p)(6), requires the regulation of storm water discharges, other than those associated with industrial activity, necessary to protect water quality.
6. Section 308(a) of the Act, 33 U.S.C. § 1318(a), authorizes EPA to require the owner or operator of any point source to provide such information as EPA may reasonably require to carry out the objectives of the Act, including the issuance of NPDES permits pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

7. Pursuant to Sections 308 and 402 of the Act, EPA promulgated storm water discharge regulations at 40 C.F.R. § 122.26. 40 C.F.R. § 122.26(c) requires dischargers of storm water associated with “industrial activity” and with “small construction activity” to apply for an individual permit or to seek coverage under a promulgated general permit. 40 C.F.R. § 122.26(b)(14)(x) and (15) defines industrial and small construction activities to include the clearing, grading, and excavation of land resulting in the disturbance of equal to or greater than one acre of land or the disturbance of less than once acre of land that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre of land. 40 C.F.R. § 122.26(b)(13) defines storm water to include storm water runoff, snow melt runoff, and surface runoff and drainage.
8. In February 1998, EPA issued the NPDES General Permit for Storm Water Discharges From Construction Activities, 63 Fed. Reg. 7858 (Feb. 17, 1998). The 1998 CGP was effective February 17, 1998 and expired February 17, 2003. EPA re-issued the CGP in July 2003, 68 Fed. Reg. 45817 (July 1, 2003), and was effective July 1, 2003 (“2003 CGP”). The 2003 CGP was modified effective January 21, 2005. The 2003 CGP, as modified, expired July 1, 2008. EPA re-issued the CGP in July of 2008, 73 Fed. Reg. 40338 (July 14, 2008) (“2008 CGP”). The 2008 CGP was effective June 30, 2008. Owners and operators of construction projects that were previously authorized to discharge under the 2003 CGP are automatically authorized to discharge under the 2008 CGP. The 2003 and the 2008 CGP authorize, subject to conditions contained therein, the discharge of pollutants in storm water runoff associated with construction activities,

including construction activities within the Commonwealth of Massachusetts.

9. To obtain coverage under the 2003 CGP, Part 2 of the 2003 CGP requires “operators” to submit a notice of intent (“NOI”). The 2003 CGP Appendix A defines “operator” as “any party associated with a construction project” that has either “operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications” or “has day-to-day operational control of those activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions).”
10. Part 2.3.C of the 2003 CGP requires operators of unpermitted projects ongoing as of July 1, 2003, to submit an NOI within 90 days of that date.
11. Part 3.1 of the 2003 CGP requires operators to prepare a storm water pollution prevention plan (“SWPPP”) addressing each construction project covered by the permit. Part 3.1 of the 2003 CGP requires that the SWPPP be prepared prior to submission of an NOI. Part 3.3 of the 2003 set forth required contents of SWPPPs.
12. Part 3.12.D of the 2003 CGP requires the SWPPP to be signed and certified.
13. Part 3.1.D of the 2003 CGP requires that operators implement the SWPPP as written from commencement of construction activity until final stabilization is complete.
14. Part 3.1 of the 2003 CGP requires operators to implement the SWPPP as a condition of the permit.

ALLEGATIONS

15. Respondent is a domestic for profit corporation organized under the laws of the Commonwealth of Massachusetts and its principal office is located at 727 Salisbury Street, Worcester, Massachusetts, 01609.
16. Respondent is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
17. Respondent has developed a portion of a planned 280 unit residential development of town homes. The project is known as Salisbury Hill (hereinafter, the “Development” or the “Construction Site”).
18. The Development is located on a 72.2 acre parcel located at 727 Salisbury Street in Worcester, Massachusetts. Construction of the Development will result in a disturbed area of approximately 59 acres.
19. Land disturbing activity including, but not limited to, clearing and grading commenced in 2003.
20. In November of 2007, when approximately 72 of the planned 280 units had been completed, construction activities were halted.
21. Respondent is the owner of the Development.
22. Respondent is in charge of the construction and post-construction activity for the Development.
23. Respondent submitted a NOI to be covered under the 2003 CGP on April 23, 2008 for the “Salisbury Hill” project. Bailin & Associates, Inc. is listed as the “operator” on the NOI form. The NOI states that the estimated area to be disturbed is 58.8 acres; that the

estimated project start date is October 30, 2002; that the estimated project completion date is June 30, 2012; and that drainage from the Construction Site is to “unnamed tributary to Beaver B[roo]k (Blackstone River Watershed)”. Respondent stated that the SWPPP required by the CGP had not been prepared in advance of the filing of the NOI.

24. By letter to Respondent dated May 1, 2008, EPA acknowledged that it had received Respondent’s NOI but that EPA could not process the form because Respondent had not prepared the SWPPP in advance of submittal of the NOI.
25. On May 19, 2008, Respondent’s president certified to EPA that the SWPPP had been prepared. On May 29, 2008 EPA granted coverage under the CGP to Respondent.
26. Respondent has operational control over construction plans and specifications for the Construction Site and day-to-day operational control of activities necessary to ensure compliance with permit conditions. Thus, Respondent is an “operator” within the meaning of the 2003 CGP.
27. Commencement of on-site construction of the Subdivision in 2003 included clearing, grading and excavation activities.
28. When Respondent commenced clearing, grading, and excavating at the Construction Site, Respondent engaged in the “commencement of construction activities” as defined in Part Appendix A of the 2003 CGP.
29. The on-site construction is “industrial activity” within the meaning of 40 C.F.R. § 122.26(b)(14)(x) because at the completion of the Subdivision approximately 58.8 acres will have been disturbed using clearing, grading, and excavation activities.

30. Salisbury Hill Boulevard, the main road running west-northwest through the Construction Site, is approximately 75 % paved. The paved portion (to the southeast) corresponds with completed residential buildings. Construction on Summerland Way, a fully-paved road located off Salisbury Hill Boulevard and running northwest to southeast, is complete.
31. Based on topography, runoff from the southeasterly portion of Salisbury Boulevard and from Summerland Way flows south/southeast toward wetlands and an unnamed stream.
32. Two detention ponds are located on the south and southeast portions of the Construction Site. The pond located at the entrance of the Construction Site ("Detention Pond #1") receives runoff from four sets of catch basins on the paved lower section of Salisbury Hill Boulevard and two catch basins on Summerland Way. Detention Pond #1 discharges from an outfall pipe to a wetland along Salisbury Street which drains to the unnamed tributary. The unnamed tributary flows through a wetland and then flows into and unnamed pond north of Whisper Drive. The pond flows into an unnamed stream then into an unnamed pond south of Whisper Drive. The stream then flows out of the pond south of Whisper Drive in a southerly direction for approximately ½ of a mile then flows into an unnamed pond. The pond is drained by culverts into Beaver Brook located approximately two miles to the south. Beaver Brook is tributary to the Middle River which is a tributary to the Blackstone River.
33. Detention Pond #2 receives runoff from four catch basins on Summerland Way and from the paved upper tier of Salisbury Hill Boulevard. A manually-activated submersible pump is used to drain Detention Pond #2. Detention Pond #2 discharges are pumped into

a buried pipe under Summerland Way and into a manhole before discharging to an adjacent wooded wetland area through an outfall pipe. The Detention Pond #2 outfall area includes a rip-rap and hay-lined channel and four layers of hay and silt fencing. There is a drainage channel from the Detention Pond #2 outfall area, through the wooded wetland, and to the unnamed tributary into which discharge from Detention Pond #1 flows. The unnamed tributary flows through a wetland and then flows into an unnamed pond north of Whisper Drive. The pond flows into an unnamed stream then into an unnamed pond south of Whisper Drive. The stream then flows out of the pond south of Whisper Drive in a southerly direction for approximately ½ of a mile then flows into an unnamed pond. The pond is drained by culverts into Beaver Brook located approximately two miles to the south. Beaver Brook is tributary to the Middle River which is a tributary to the Blackstone River.

34. Not at any time before April 23, 2008 did the Respondent or any other person apply for an individual permit or submit an NOI to have industrial storm water discharges from the Construction Site authorized by the 2003 CGP.
35. During and shortly after storm events, the Construction Site's "industrial activities" have resulted in a "discharge of pollutants" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5), and the "discharge of storm water associated with industrial activities" as defined in 40 C.F.R. § 122.26(b)(14).
36. During and shortly after certain storm events beginning no later than April 13, 2004 and continuing through March 12, 2008, silt laden storm water from Detention Pond #2 discharged from the Construction Site into the unnamed stream transporting visible silt

into the ponds north and south of Whisper Drive.

37. The wetland along Salisbury Street, the unnamed tributary that flows through the wetland along Salisbury street, the ponds north and south of Whisper Drive, the pond approximately ½ mile from the pond south of Whisper Drive, Beaver Brook, the Middle River, and the Blackstone River are “waters of the United States,” as defined in 40 C.F.R. § 122.2, and, thereby, “navigable waters,” as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7).
38. The outlet pipe that drains Detention Pond #1 is a “point source” as defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14).
39. The outfall that drains Detention Pond #2 including the rip-rap and hay-lined channel and the drainage channel extending from the Detention Pond #2 outfall area through the wooded wetland and into the unnamed tributary are “point sources” as defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14).
40. The discharge of storm water associated with industrial activity from these point sources constitutes a “discharge of pollutants” within the meaning of Section 502(12) of the Act, 33 U.S.C. § 1362(12).

**COUNT 1: UNAUTHORIZED DISCHARGE OF STORM WATER
ASSOCIATED WITH INDUSTRIAL ACTIVITY**

41. The Complaint incorporates Paragraphs 1 through 40 by reference.
42. During and shortly after storm events from April 13, 2004 through May 29, 2008, Respondent discharged without authorization under any NPDES permit “stormwater associated with industrial activities” as defined by 40 C.F.R. § 122.26 from “point source[s]” to “waters of the United States” as defined in 40 C.F.R. § 122.2.

43. The discharge of storm water associated with industrial activity from these point sources to “waters of the United States” without authorization under any NPDES permit violates Section 301(a) of the Act, 33 U.S.C. § 1311(a).
44. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, *et seq.*, the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, *et seq.*, and the rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.1-19.4 (61 Fed. Reg. 69360, 69 (Dec. 31, 1996); 69 Fed. Reg 7121, 7 (Feb. 13, 2004)), Respondent is subject to civil penalties of up to eleven thousand dollars (\$11,000) per day for each day during which the violation continued, up to a maximum of one hundred fifty-seven thousand five hundred dollars (\$157,500).

COUNT 2: FAILURE TO APPLY FOR A NPDES PERMIT

45. The Complaint incorporates Paragraphs 1 through 44 by reference.
46. By failing to timely apply for an individual permit or submit a NOI for coverage under a general storm water permit, Respondent was in violation of Section 308(a) of the Act, 33 U.S.C. § 1318(a), from at least April 13, 2004 through April 22, 2008.
47. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, *et seq.*, the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, *et seq.*, and the rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.1-19.4 (61 Fed. Reg. 69360, 69 (Dec. 31, 1996); 69 Fed. Reg 7121, 7 (Feb. 13, 2004)), Respondent is subject to civil penalties of up to eleven thousand dollars (\$11,000) per day for each day during which the

violation continued, up to a maximum of one hundred fifty-seven thousand five hundred dollars (\$157,500).

**COUNT 3: FAILURE TO COMPLY WITH THE
CONSTRUCTION GENERAL PERMIT**

48. The Complaint incorporates Paragraphs 1 through 47 by reference.
49. On June 18, 2008, Respondent's consultant EcoTec, Inc. submitted to EPA a document dated June 10, 2008 entitled "NPDES Construction Stormwater Pollution Prevention Plan" ("SWPPP"). Respondent had previously submitted to EPA a document dated October 15, 2001 and entitled "Salisbury Hill ... Erosion Sediment and Control Program" ("Erosion Sediment and Control Program").
50. The 2003 CGP contains a variety of terms and conditions designed to ensure the implementation of practices to reduce the pollutants in storm water discharges associated with construction activities. Respondent has failed to comply with the following requirements of the 2003 CGP.
 - A. Respondent has Failed to Implement and Maintain Best Management Practices ("BMPs") as Required by the CGP
51. Section 3.1.D of the 2003 CGP requires that the SWPPP must be implemented as written from commencement of construction activity until final stabilization is complete.
52. Section 3.6 of the 2003 CGP requires that all erosion and sediment controls and other protective measures identified in the SWPPP must be maintained in effective operating condition.
53. The SWPPP in Section 1.8 ("General Construction Process") and the Erosion Sediment

and Control Plan (“Construction Process” section) identify the following BMPs:

Sedimentation control barriers, consisting of silt fencing attached to posts and installed in back-filled trenches, will be placed along the paths of water flow, at the perimeter of the work area, and downhill from work areas which lead to wetland areas, before earthwork begins.

54. The SWPPP in section 1.9 “General Construction Sequencing” identifies the following BMPs:

Perimeter Sediment Controls: Prior to the start of earth-moving activities, a sediment control barrier consisting of properly installed siltation fence (i.e., the bottom few inches of the siltation fence installed in a narrow, trench and the trench filled with soil around the siltation fence) and double staked hay bales will be installed along the proposed limit of work as shown on the site plans.

Similarly, the Erosion and Sediment Control Program (“Construction Process” section) identifies the following BMPs:

Sedimentation control barriers, consisting of silt fencing attached to posts and installed in back-filled trenches, will be placed along the paths of water flow, at the perimeter of the work area, and downhill from work areas which lead to wetland areas, before earthwork begins.

55. The SWPPP in section 1.9 “General Construction Sequencing” identifies the following BMPs:

Land Clearing and Grading: Slopes between 1:1 and 2:1 steepness shall be stabilized with mirafi fabric and rip rap hard-armoring. Slopes between 2:1 and 3:1 shall be stabilized with a bonded fiber matrix (BFM) hydroseed or seed and erosion control blanketing (North American Green SC-150 or equivalent). Slopes which are 3:1 or flatter shall be stabilized with hydroseed with tackifier or loam and seed.

Similarly, the Erosion and Sediment Control Program (“Erosion Control Devices Used” section) identifies the following BMPs:

Slope Stabilization[:] Slopes that are created due to excavation or filling along the work areas will be temporarily stabilized with one or more of the Erosion and Sediment Control measures. Permanent stabilization of slopes will employ one or more of the

following:

- Loam and grass or acceptable legume, or
- Grass sod, or
- Rip-rap, or
- A combination of grasses, rip-rap and/or plants and shrubbery.

56. The SWPPP in section 1.9 “General Construction Sequencing” identifies the following

BMPs:

Stockpiling: Soil stockpiling shall take place in designated areas, outside of the Buffer Zone. Any stockpiles within the Buffer Zone must be covered and/or contained with sediment control barriers. Any stockpiling that will remain idle for more than 15 days shall be hydroseeded or covered with tarpaulins.

Surface Stabilization: Apply temporary or permanent stabilization measures immediately on all disturbed areas where work is completed or delayed greater than 15 days.

The SWPPP in section 2.0 “Erosion and Sediment Controls” identifies the following

BMPs:

2.1 Timing of Controls: Areas where construction will temporarily cease for more than 21 days will be hydro seeded or otherwise stabilized within 15 days from the last disturbance.

57. The SWPPP in section 2.0 “Erosion and Sediment Controls” identifies the following

BMPs:

2.2 General Construction Erosion and Sediment Control Program: Regular inspection and maintenance of these measures will occur throughout the construction phase of the project.

2.2.4 In such instances as inspections show that remedial action is necessary, the Contractor shall cause repairs to be made immediately.

Similarly, the Erosion and Sediment Control Program (“Inspection and Maintenance of

Erosion Controls” section) identifies the following BMPs:

The Contractor shall regularly inspect all erosion control systems, repairing deficiencies
...

In such instances as inspections show that remedial action is necessary, the Contractor shall cause repairs to be made immediately.

58. From May 29, 2008 through at least June 28, 2008, Respondent failed to fully implement the Erosion and Sediment Control Plan and the SWPPP. Among the components of the Erosion and Sediment Control Plan and the SWPPP that Respondent failed to fully implement and/or maintain were implementation and maintenance of adequate erosion and sedimentation controls including, but not limited to, hay bales and silt fences; implementation of BMPs on unstable slopes; surface stabilization; and stabilization of large stockpiles of soil.
 59. Respondent's failure to fully implement the Erosion and Sediment Control Plan and the SWPPP from May 29, 2009 through at least June 28, 2008 by failing to implement adequate BMPs violated the terms and conditions of a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
- B. Failure to Have a SWPPP.
60. Sections 3.1, 3.3 and 3.4 of the 2003 CGP sets forth SWPPP submittal requirements and required SWPPP contents.
 61. Section 3.1.A. of the CGP requires that the "SWPPP must be prepared prior to submission of an NOI"
 62. Respondent submitted its NOI on April 23, 2008 but failed to prepare a SWPPP until June 10, 2008.

63. From April 23, 2008 until June 10, 2008, Respondent's Erosion and Sedimentation Control Plan was insufficient in a number of material respects including: failure to identify operators for the construction site as required by the 2003 CGP, Section 3.3.A; failure to adequately describe the nature of the construction activity as required by the 2003 CGP, Section 3.3.B; failure to provide an adequate site map as required by the 2003 CGP, Section 3.3.C.; failure to describe the construction sequence process as required by the 2003 CGP, Section 3.4.A; failure to maintain required records as part of the SWPPP as required by the 2003 CGP, Section 3.4.C; and failure to describe construction and waste materials expected to be stored on site and a description of controls to minimize exposure to storm water, spill prevention and response practices as required by the 2003 CGP, Section 3.4.H.

64. From April 23, 2008 until June 10, 2008, Respondent failed to have a SWPPP in violation of the terms and conditions of a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

C. No SWPPP Retained at the Construction Site

65. Section 3.12.A. of the 2003 CGP requires that a copy of the SWPPP must be retained at the construction site or other location easily accessible during normal business hours.

66. During the EPA site inspection of May 28, 2008, Respondent did not have a SWPPP on site or easily accessible but stated that the SWPPP was being prepared. EPA did not receive a copy of the SWPPP dated June 10, 2008 until June 18, 2008.

67. Respondent's failure to have a SWPPP on site or at another easily accessible location from May 29, 2008 through at least June 10, 2008, is a violation of a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
68. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, *et seq.*, the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, *et seq.*, and the rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.1-19.4 (61 Fed. Reg. 69360, 69 (Dec. 31, 1996); 69 Fed. Reg 7121, 7 (Feb. 13, 2004)), Respondent is subject to civil penalties of up to eleven thousand dollars (\$11,000) per day for each day during which the violation continued, up to a maximum of one hundred fifty-seven thousand five hundred dollars (\$157,500).

PROPOSED ASSESSMENT OF CIVIL PENALTY

69. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, *et seq.*, the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, *et seq.*, and the rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.1-19.4 (61 Fed. Reg. 69360, 69 (Dec. 31, 1996); 69 Fed. Reg 7121, 7 (Feb. 13, 2004)), Respondent is subject to civil penalties of up to eleven thousand dollars (\$11,000) per day for each day during which the violation continued up to a maximum of one hundred fifty-seven thousand five hundred dollars (\$157,500).

70. EPA is seeking a penalty under Counts 1, 2 and 3 from Respondent of up to \$11,000 for each day of violation for at least 1527 days up to a maximum of \$157,500.
71. In determining the amount of the penalty to be assessed under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), EPA will take into account the statutory factors listed in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). These factors include the nature, circumstances, extent and gravity of the violation, or violations, and the Respondent's prior compliance history, the degree of culpability for the cited violations, any economic benefit or savings accruing to the Respondent resulting from the violations, the Respondent's ability to pay the proposed penalty, and such other matters as justice may require.
72. The violations alleged are significant because Respondent's unpermitted silt-laden discharges and failure to implement and maintain the BMPs necessary to prevent the discharge of pollutants may result in stormwater runoff that contributes to the impairment of water quality.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

73. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.14, notice is hereby given that Respondent has the right to request a hearing on any material fact alleged in this Complaint and on the appropriateness of any proposed penalty. Any such hearing will be conducted in accordance with the Consolidated Rules of Practice, a copy of which is enclosed. Members of the public, to whom EPA is obliged to give notice of this proposed action, have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to comment on any proposed penalty and to be heard and to present

evidence at the hearing.

74. Respondent's Answer must comply with 40 C.F.R. § 22.15 and must be filed with the Regional Hearing Clerk at the following address within thirty (30) days of receipt of the Complaint:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region I
1 Congress Street, Suite 1100 RCA
Boston, Massachusetts 02114-2023

To be entitled to a hearing, Respondent must include its request for a hearing in its Answer to this Complaint.

75. Pursuant to Section 22.5(c)(4) of the enclosed Consolidated Rules of Practice, the following individual is authorized to receive service on behalf of EPA:

Kathleen E. Woodward
U.S. Environmental Protection Agency
Region I
1 Congress Street, Suite 1100 (SEL)
Boston, Massachusetts 02114-2023

76. If Respondent does not file a timely Answer to this Complaint, that Respondent may be found in default. Default constitutes, for purposes of this action only, an admission of all facts alleged in the Complaint and a waiver of the Respondent's right to a hearing on factual allegations contained therein.

CONTINUED COMPLIANCE OBLIGATION

77. Neither assessment nor payment of an administrative penalty shall affect the Respondent's continuing obligation to comply with the Act and implementing regulations and other applicable federal, state and local laws.

Date: 04/02/09

Susan Studlien
Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region I
1 Congress Street, Suite 1100 SAA
Boston, Massachusetts 02114-2023

In the Matter of: Bailin & Associates, Inc.
Docket No. CWA 01-2009-0046

CERTIFICATE OF SERVICE

I certify that the foregoing administrative complaint was sent to the following persons, in the manner specified on the date below:

Copy hand-delivered: Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I
One Congress Street
Suite 1100, Mail Code RAA
Boston, Massachusetts 02114-2023

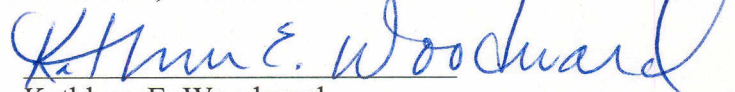
Copy by certified mail, return Peter T. Karassik, President
Bailin & Associates, Inc.
727 Salisbury Drive
Worcester, Massachusetts 01609

Peter T. Karassik, President,
Bailin & Associates, Inc.
c/o Eligius Homes Company, Inc.
329 Boston Post Road
Sudbury, MA 01776-3001

John L. MacKoul
Registered Agent
3 Blackthorn Dr.
Worcester, Massachusetts 01609-1187

Martin Suuberg, Regional Director
Central Region
Massachusetts Department of Environmental
Protection
627 Main Street
Worcester, Massachusetts 01608

Dated: April 7, 2009



Kathleen E. Woodward
Senior Enforcement Counsel
Office of Environmental Stewardship (SEL)
U.S. Environmental Protection Agency
Region I
One Congress Street
Boston, MA 02114-2023
(617) 918-1780