



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

AUG 24 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5951 8687

Joseph DiMura, P.E., Director
Bureau of Water Compliance Programs
Division of Water
NYSDEC
625 Broadway
Albany, New York 12233-3506

RE: Notice of Proposed Assessment of a Civil Penalty Class I
Otsego Auto Crushers, LLC
Docket No. CWA-02-2012-3310

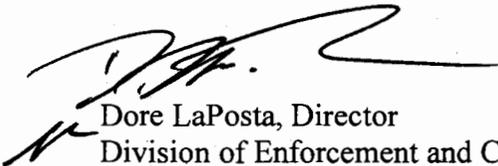
Dear Mr. DiMura:

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 Otsego Auto Crushers, LLC pursuant to §309(g) of the Clean Water Act (Act), 33 U.S.C. §1319(g). EPA has issued the Complaint to begin the process to administratively assess a civil penalty of **\$15,000** 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

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
2012 AUG 27 A 10 48
REGIONAL HEARING
CLERK

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

AUG 24 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5954 5676

Wayne Hymers, Owner
Otsego Auto Crushers
6071 State Highway 23
Oneonta, New York 13820

Re: Notice of Proposed Assessment of a Civil Penalty Class I
Otsego Auto Crushers, LLC
Docket No. CWA-02-2012-3310

Dear Mr. Hymers:

Enclosed is a Complaint which the U.S. Environmental Protection Agency ("EPA" or "Agency") is issuing to you as a result of our determination that Otsego Auto Crushers, LLC ("Respondent"), located at 5057 State Highway 12 In Norwich, New York has violated Sections 301 and 402 of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §§1311 and 1342. This Complaint is filed pursuant to Section 309(g) of the Act, 33 U.S.C. §1319(g). Upon consideration of the factors in Section 309(g), the Complaint proposes that a penalty of **\$15,000** be assessed against Otsego Auto Crushers, LLC for these violations.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or they are found to be true after you have had an opportunity for a hearing on them, you have the right to contest the penalty proposed in the Complaint. I have enclosed a copy of Consolidated Rules of Practice ("CROP"), found at 40 Code of Federal Regulations Part 22, which the EPA follows in cases of this kind. Please note the requirements for an Answer at Section 22.15 of the CROP. **If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file an Answer within thirty (30) days of your receipt of the enclosed Complaint to the EPA Regional Hearing Clerk at the following address:**

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint, you may be judged to have defaulted (See, §22.17 of the CROP). If a default order is entered, the entire proposed penalty may be assessed without further proceedings.

Regardless of whether or not you request a formal hearing, EPA encourages you to pursue the possibility of settlement by requesting an informal conference with the Agency concerning the alleged violations and the amount of the proposed penalty. Please note that a request for an

informal conference does not substitute for a written Answer, or affect what you may choose to say in an Answer, nor does it extend the thirty (30) day deadline by which you must file an Answer.

The Agency also encourages Respondents to propose and perform Supplemental Environmental Projects ("SEPs"), where appropriate, as part of any settlement. Enclosed is a copy of the Final EPA Supplemental Environmental Projects Policy (May 1, 1998) for your consideration.

You may represent yourself or be represented by an attorney at any stage of the proceedings, including any informal discussions and/or a formal hearing, whether in person or by telephone. Any hearing held in this matter will be conducted in accordance with the CROP.

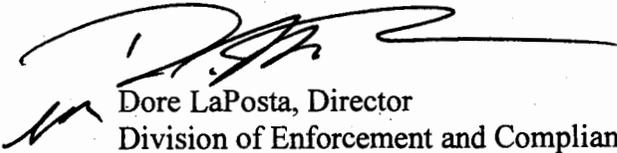
If you have any questions or wish to discuss a settlement of this matter with the EPA by an informal conference, please immediately contact:

Tim Murphy, Esq.
Water & General Law Branch
Office of Regional Counsel
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency
290 Broadway - 16th Floor
New York, New York 10007-1866
(212) 637-3236

For your information, I am enclosing an Information Sheet which may be helpful if you are a small business as defined at 13 C.F.R. §121.201, in obtaining compliance assistance or if you wish to comment on this action to the Small Business and Agriculture Regulatory Enforcement Ombudsman and Regional Fairness Board.

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

Sincerely,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

1. Complaint
2. CROP
3. EPA Supplemental Environmental Projects Policy and SEP Brochure
4. Information for Small Business

cc: Joe DiMura, NYSDEC

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Otsego Auto Crushers, LLC
5057 State Highway 12
Norwich, NY 13815

SPDES Permit No. NYR00D445

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-02-2012-3310

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
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REGIONAL HEARING
CLERK

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

I. STATUTORY AND REGULATORY AUTHORITIES

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing ("Complaint") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 309(g)(2)(A) of the Clean Water Act ("Act" or "CWA"), 33 U.S.C. §1319(g)(2)(A). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Division of Enforcement and Compliance Assistance ("DECA") of EPA, Region 2 ("Complainant").
2. Pursuant to Section 309(g)(2)(A) of the Act, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("CROP"), 40 C.F.R. Part 22 (2001), a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against Otsego Auto Crushers, LLC ("Respondent"), as a result of Complainant's determination that the Respondent is in violation of Sections 301 and 402 of the Act, 33 U.S.C. §1311 and §1342, respectively, by failing to comply with the terms of the New York State Department of Environmental Conservation ("NYSDEC") State Pollutant Discharge Elimination System ("SPDES") Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity ("MSGP" or "Permit") at a facility it 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(a)(1) of the CWA, 33 U.S.C. §1342(a)(1), provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to that Section.
3. 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 New York State Department of Environmental Conservation ("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 State Pollutant Discharge Elimination System ("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.
4. Section 308 of the CWA, 33 U.S.C. § 1318, provides, in relevant part, that the Administrator of EPA may require the owner or operator of any point source to, among other things: maintain such records; make such reports; install, use and monitor such equipment; sample such effluents; and provide such other information as may reasonably be required in order to carry out Section 402 of the CWA, 33 U.S.C. § 1342.
5. "Person" is defined by Section 502(5) of the CWA, 33 U.S.C. §1362(5), to include an individual, corporation, partnership, association or municipality.
6. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. §1362(6), to include among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water.
7. "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.
8. "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.
9. "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.

10. Section 402(p) of the CWA, 33 U.S.C. §1342(p), sets forth the requirements for municipal and industrial stormwater discharges.
11. The Administrator of EPA has promulgated regulations, 40 CFR §122.26(a)(1)(ii) and §122.26(b)(14), which require operators to obtain a NPDES permit for stormwater discharges associated with industrial activity. The regulations at 40 CFR §122.26(b)(14) establish requirements for stormwater discharges associated with industrial activity.
12. The terms “Industrial Stormwater Permit,” “Multi-Sector General Permit,” “MSGP” or “Permit” mean the NYSDEC SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, as defined by the present interim general permit number GP-0-11-009, which became effective on March 28, 2012 and expires on September 30, 2012. GP-0-11-009 replaced GP-0-06-002, which became effective on March 28, 2007 and expired on March 27, 2012.
13. The term “SWPPP” means Stormwater Pollution Prevention Plan, as defined in the Permit.
14. The term “BMPs” means Best Management Practices, as defined in the Permit.
15. Part I.E.3 of the MSGP states that a discharger of stormwater associated with industrial activity may be authorized under the MSGP only if the owner or operator has submitted a complete Notice of Intent or Termination (“NOIT”) form to the NYSDEC. Furthermore, authorization to discharge stormwater under the terms and conditions of the Permit is granted 30 calendar days after the date that the NOIT is received (Part I.E.3.a).
16. Part III.A of the MSGP requires that facilities implement the provisions of the SWPPP required under [Part III – Stormwater Pollution Prevention Plans] as a condition of the Permit.
17. Part III.C.2.c.(4) of the MSGP requires that the SWPPP include a site map that identifies locations of potential pollutant sources identified under Part III.C.3 (Summary of Potential Pollutant Sources) and where significant materials are exposed to precipitation.
18. Part III.C.6.b.(1).(e) of the MSGP requires the facility to conduct and document routine facility inspections of all areas of the facility where industrial activities are exposed to stormwater. The inspections must include an evaluation of the existing stormwater BMPs.
19. Part III.D of the MSGP requires that all BMPs identified in the SWPPP be maintained in effective operating condition.
20. Part III.F of the MSGP requires that the SWPPP include documentation supporting the determination of permit eligibility with regard to endangered species.
21. Part III.G of the MSGP requires that the SWPPP include documentation supporting the determination of permit eligibility with regard to historic places.

22. III.J.2 of the MSGP requires that the permittee keep a copy of the SWPPP on-site or locally available to the Department for review at the time of an on-site inspection.
23. Part IV.A.1.a.(4) of the MSGP requires that the permittee document the results of quarterly visual monitoring and retains such documentation onsite with the SWPPP, in accordance with Part IV.C of the Permit.
24. Part IV.A.1.b.(4) of the MSGP requires that the permittee document results of dry weather flow monitoring and retains such documentation onsite with the SWPPP, in accordance with Part IV.C of the Permit.
25. Part IV.C of the MSGP sets forth the requirements for retention of records of monitoring information, copies of all reports required by the Permit, and records of all data used to complete the NOI for coverage under the Permit.
26. VIII.N of the MSGP sets forth additional requirements for Scrap Metal Recycling Facilities.
27. Sections 309(a) of the CWA, 33 U.S.C. §1319(a), authorizes the Administrator to commence an administrative action 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. Otsego Auto Crushers, LLC (“Respondent”) is a “person” pursuant to Section 502(5) of the CWA, 33 U.S.C. §1362(5).
2. Respondent operates the waste recycling facility located at 5057 State Highway 12, south of Grotsinger Road and north of Halfway House Road in Norwich, New York (the “Site” or “Facility”) and conducts industrial activity under SIC Code 5093 (Scrap and Waste Materials).
3. At all relevant times, Respondent was the owner and operator of the Facility.
4. On August 3, 2011, EPA conducted a Compliance Evaluation Inspection (“CEI”) at the Facility. Based on EPA findings, areas of the Site, including the northeast corner of the scrap yard and the low-lying area near the facility garage, drain downhill to a ditch that runs along State Highway 12. The ditch outlets at a 30” culvert pipe, which drains east under State Highway 12 to the Chenango River, a navigable water of the United States pursuant to Section 502(7) of the Act, 33 U.S.C. § 1362(7). During the CEI, EPA identified evidence of erosion, as well as distinct flow paths down a vegetated hillside to the ditch, indicative of stormwater discharges from the Site.
5. Respondent discharges stormwater associated with industrial activity, a “pollutant” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6), via the above mentioned drainage ditch and culvert pipe, “point sources” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to a navigable water of the United States, and as such, discharges pollutants pursuant to Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

6. Pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, EPA issued a Request for Information Letter (“RFI”) Docket No. CWA-IR-02-12-003 to Respondent on December 8, 2011.
7. Respondent responded to the RFI on January 7, 2012.
8. Respondent’s response to the RFI states that scrap metal processing has been conducted at the Site from 2010 to the present.
9. Based on records available to EPA, Respondent submitted a Notice of Intent (“NOI”) on February 10, 2011 and obtained Permit coverage 30 days later on March 12, 2011 (Permit No. NYR00D445). Respondent is regulated under Sector N (Scrap Recycling Facilities) of the MSGP.
10. Precipitation data provided to EPA by the Northeast Regional Climate Center indicates that a 1.01 inch rain event occurred in Norwich, New York on January 26, 2010.
11. Based on the above information, Respondent failed to submit a timely NOI per the requirements in Part I.E.3 of the MSGP and gain coverage under the Permit prior to the start of industrial activity and discharged without a Permit, in violation of Sections 301 and 402(p) of the Clean Water Act.
12. Part III.J.2 of the MSGP requires that the SWPPP be kept on-site and available for review. The SWPPP was not available for review at the time of the CEI, in violation of the Permit.
13. An electronic copy of the SWPPP was sent to EPA following the inspection. The SWPPP provided to EPA was dated July 2009 and did not include signatures or attachments. The 2011 annual review and updates to the SWPPP were also provided to EPA. EPA reviewed the components of the provided SWPPP and identified the following deficiencies:
 - a. The site map does not identify the location of all pollutant sources identified under Part III.C.3 (Summary of Potential Pollutant Sources) of the Permit, in violation of Part III.C.2.c.(4).
 - b. The SWPPP does not include documentation of Permit eligibility related to endangered species, in violation of Part III.F of the Permit.
 - c. The SWPPP does not include documentation of Permit eligibility related to historic places, in violation of Part III.G of the Permit.
14. During the August 3, 2011 CEI, EPA identified the following Best Management Practices (“BMPs”) specified in Respondent’s SWPPP had not been implemented and/or were in need of maintenance, in violation of Parts III.A and III.D of the MSGP:
 - a. The SWPPP states Respondent shall inspect regularly for leaks or spills and respond immediately if identified. In addition, the SWPPP requires the use of absorbent materials to capture liquids and that used absorbent be swept and properly disposed.

EPA identified approximately eighteen (18) 55-gallon drums containing fluids including oil and antifreeze that were stored in truck beds in an area exposed to stormwater. The drums were leaking, as evidenced by an oily fluid identified in one of the truck beds and staining to the soil. Evidence of spills was also observed by EPA under a crushed car and at the base of the tin and white goods pile. Respondent failed to immediately respond to leaking drums and spills at the facility, in violation of the SWPPP.

- b. The SWPPP states that used oil is stored in two (2) 1,000 gallon tanks, under cover with secondary containment. At the time of the CEI, used oil was identified in 55-gallon drums situated on native soil and also in an open truck bed; oil staining was observed in the soil in front of the truck bed. Respondent failed to store used oil in accordance with the practice identified in the SWPPP. Respondent also failed to immediately address spills to the soil, in violation of the SWPPP.
 - c. The SWPPP states that a gas buggy is used to safely and efficiently remove gasoline from vehicles. At the time of the CEI, EPA observed the facility draining vehicles using a 10-gallon bucket. The surface beneath the bucket was stained with fuel. Respondent failed to safely and efficiently remove gasoline from vehicles in accordance with the practice identified in the SWPPP. Respondent also failed to immediately address spills, in violation of the SWPPP.
 - d. The SWPPP states that labeled spill kits must be placed where any spill is likely to occur. Labeled spill kits were not identified by EPA at the time of the CEI, in violation of the SWPPP.
 - e. The SWPPP states that good housekeeping measures must include measures to eliminate or reduce exposure of garbage and refuse materials to precipitation and runoff prior to disposal. Furthermore, the SWPPP states that the facility must ensure work areas are cleaned up at the end of the day. At the time of the CEI, various drums, buckets and containers containing oil and other fluids were stored outside where they were fully exposed to stormwater. Respondent failed to clean up these materials and store them in areas with minimal exposure to stormwater, in violation of the SWPPP.
 - f. The SWPPP states that batteries are stored indoors. At the time of the CEI, batteries were observed outside, in violation of the SWPPP.
15. The SWPPP states that assigned personnel will inspect each incoming vehicle for leaking fluids and that the inspector will document all findings and corrective actions on the checklist provided at the back of the plan or on an existing material inventory form used by the Facility. According to Respondent's January 7, 2012 response to the RFI, there are no written vehicle inspection reports. Respondent failed to document incoming vehicle inspections, in violation of the SWPPP.
16. Part III.C.6.b.(1).(e) of the MSGP requires the permittee to conduct and document routine facility inspections of all areas of the Facility where industrial activities are exposed to stormwater. The results of the inspections must be documented in the SWPPP, along with any corrective actions that were taken in response to inspection findings. Respondent's SWPPP states that documentation of quarterly inspections and actions taken is to be kept

on forms shown at the back of the plan. Respondent is required to implement the SWPPP pursuant to Part III.A of the MSGP. According to Respondent's January 7, 2012 response to the RFI, written reports were not prepared for quarterly inspections. Respondent failed to document routine quarterly inspections, in violation of the Permit.

17. Part IV.A.1.a.(4) of the MSGP requires the permittee to document the results of quarterly visual monitoring and maintain such documentation with the SWPPP, in accordance with Part IV.C of the Permit. According to Respondent's response to the RFI, written reports were not prepared for quarterly visual monitoring. Respondent failed to document the results of quarterly visual monitoring, in violation of the Permit.
18. Part IV.A.1.b.(4) of the MSGP requires the permittee to document the results of dry weather flow monitoring and retain such documentation onsite with the SWPPP, in accordance with Part IV.C of the Permit. According to Respondent's response to the RFI, written reports were not prepared for dry weather flow monitoring. Respondent failed to document the results of dry weather flow monitoring, in violation of the Permit.
19. On December 7, 2011, pursuant to Section 309 of the CWA, EPA issued an Administrative Order ("AO" or "Order") (CWA-02-2012-3007), which directed Respondent to address SWPPP deficiencies and BMP violations identified by EPA at the time of the August 3, 2011 CEI.
20. Respondent submitted responses to EPA dated February 28, 2012 and March 7, 2012, that addressed the Ordered Provisions in the AO.
21. Based on the Findings above, Respondent violated Sections 301 and 402 of the Act, 33 U.S.C. §§1311 and 1342.

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 penalty of **\$15,000**. EPA determined the proposed penalty after taking into account the applicable factors identified at Section 309(g)(3) of the Act, 33 U.S.C. §1319(g)(3). EPA has taken account of the nature, circumstances, extent and gravity of the violation (or violations), and Respondent's prior compliance history, degree of culpability, economic benefit or savings accruing to Respondent by virtue of the violations, and Respondent's ability to pay the proposed penalty. Based on the Findings set forth above, **Respondent is liable for violations of the Act, one of which continued for at least four hundred and ten (410) 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 Respondent disputes (and thus intend to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether Respondent requests a Hearing. 40 C.F.R. §22.15(b).

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

B. Opportunity To Request A Hearing

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

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

Should Respondent request a Hearing on this proposed penalty assessment, members of the public to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. §1319(g)(4)(B), to be heard and to present evidence

on the appropriateness of the penalty assessment. Should Respondent not request a Hearing, EPA will issue a Final Order, and only members of the public who submit timely comment on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a Hearing thereon. EPA will grant the petition and will hold a Hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

C. Failure To Answer

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

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

VI. INFORMAL SETTLEMENT CONFERENCE

Regardless of whether Respondent requests a formal Hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. §22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint and Respondent may also provide whatever additional information is believed to be relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, in response to any relevant information previously not known to Complainant that demonstrates that any of the findings herein are without merit, or that the proposed penalty is not warranted. Respondent is referred to 40 C.F.R. §22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Tim Murphy, Esq.
Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone (212) 637-3236

The parties may engage in settlement discussions regardless of whether Respondent has requested a Hearing. 40 C.F.R. §22.18(b)(1). Respondent's requesting a formal Hearing does not prevent Respondent from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint.

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. §22.15. Note that no penalty reduction will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. §22.18(b)(2). In accepting the Consent Agreement, Respondent waives any right to contest the allegations in the Complaint and waives any right to appeal the Final Order that is to accompany the Consent Agreement. 40 C.F.R. §22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. §22.18(b)(3).

Entering into a settlement through the signing of such Consent Agreement and complying with the terms and conditions set forth in such Consent Agreement and Final Order terminates this administrative litigation and these civil proceedings against Respondent (note that a new enforcement action may be initiated based on continued non-compliance). Entering into a settlement agreement does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty **\$15,000** within 30 days after receipt of the Complaint, provided that Respondent files 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-02-2012-3310

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

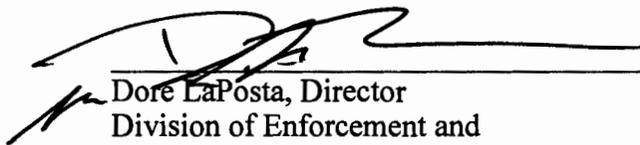
A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Tim Murphy, Esq.
Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone (212) 637-3236
Fax: (212) 637-3199

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 24th DAY OF August, 2012.



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

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Otsego Auto Crushers, LLC
5057 State Highway 12
Norwich, NY 13815

SPDES Permit No. NYR00D445

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-02-2012-3310

I certify that on _____, I served the foregoing fully executed Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing, bearing the above referenced docket number, on the persons listed below, in the following manner:

Original and One Copy
By Hand:

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

Copy by Certified Mail
Return Receipt Requested:

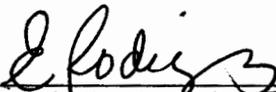
Wayne Hymers, Owner
Otsego Auto Crushers, LLC
6071 State Highway 12
Norwich, NY 13820

Copy by Certified Mail
Return Receipt Requested:

Joseph DiMura, P.E., Director
Bureau of Water Compliance Programs
Division of Water
NYSDEC
625 Broadway
Albany, New York 12233-3506

AUG 24 2012

Dated: _____



Marie St. Germain, Secretary
New York, NY

