

In the Matter of:	*	Docket No. CWA-03-2010-0406
Harford County, Maryland	*	Proceeding to Assess Class II
220 South Main Street	*	Administrative Penalty Under
Bel Air, Maryland 21014	*	Section 309(g) of the Clean Water Act
Respondent	*	
* * * * *		

ANSWER AND REQUEST FOR HEARING

Now comes Respondent, Harford County, Maryland (hereinafter "County"), by and through its undersigned attorney, and in Answer to the Complaint states:

DEFENSES

1. Counts 1 and 2 allege that the County has failed to fulfill terms of its permit that are broad and vague, and, for the interpretation of which, the County did not receive any specific guidance from the State or the EPA or notice of deficiency prior to the May 2009 Audit.

2. The County has addressed and corrected each of the violations enumerated in Administrative Order CWA-03-2010-0120 DN and provided evidence thereof to the Environmental Protection Agency in its Response to Administrative Order dated May 19, 2010 (attached as Exhibit 1 and incorporated herein, hereinafter "Response"); therefore, the corrective action order and penalty are inappropriate.

3. A Notice of Intent for the Board of Education headquarters facility (which is owned by the Harford County Board of Education, a State agency) was filed on April 16, 2008; therefore, the County is entitled to judgment as a matter of law as to Count 3.

SPECIFIC ADMISSIONS OR DENIALS

As to the numbered paragraphs included in the Complaint, the County responds to each as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. The County admits that the audit was conducted and that the Findings of Violation and Administrative Order were sent to the County on March 23, 2010 but denies that a copy of the Findings of Violation and Administrative Order was attached to the Complaint.
5. Missing.
6. Admitted.
7. Admitted.
8. Admitted.
9. Admitted.
10. Denied. The population of Harford County that is served by its MS4 is currently and has at all times since the inception of the program been less than 250,000.
11. Admitted.
12. Admitted.
13. Admitted.
14. The County admits that it did not include the current capacity of post-construction storm water management structures in its annual report. The County denies that this is a violation of its NPDES Discharge Permit.
15. Denied.
16. Admitted.
17. The County admits that the items listed as 17.a through 17.f were identified during the Audit; however, in light of the fact that the County had not been previously advised

by MDE or EPA that those specific items were required under the permit by a date certain, the County denies that these issues constituted a failure “to implement a program providing for appropriate enforcement procedures for investigating and eliminating illicit discharges, illegal dumping, and spills”. Moreover, the facility described in 17.d does not discharge into the Harford County storm water system – it discharges into an inlet and storm drain owned by the State of Maryland, State Highway Administration.

18. Denied.

19. Admitted.

20. The County admits the audit stated that the County had failed to identify “the County-owned Board of Education Headquarters facility”; however, the County denies that the facility is owned by the County and, in any event, provided the EPA with a copy of a Notice of Intent for the facility which was filed on April 16, 2008.

21. Denied.

BASIS FOR OPPOSING PROPOSED RELIEF

The County is entitled to judgment as a matter of law as to Count 3 since the Count is based on incorrect information. The County does not own the facility cited by EPA (*see* Deed - Liber 740, Folio 149, Attached as Exhibit 2) and, in any event, a Notice of Intent for the facility was filed on April 16, 2008. A copy of the Notice of Intent was provided to Chuck Schadel on May 21, 2010; a second copy was provided to Mark Bolender, Esquire on October 20, 2010; and a third copy is attached as Exhibit 3 and incorporated herein.

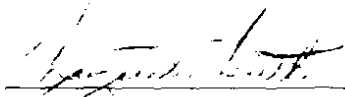
The May 2009 Audit was the very first audit conducted by EPA on the County's MS4 Program during the program's 16 year existence. Throughout those years, the County has timely submitted all required reports to MDE. The County's annual reports have been reviewed by

MDE. While these reviews have provided comments and suggestions on how to improve the County's program, they have never indicated that the conditions identified constituted serious deficiencies or violations of the permit. The review dated March 27, 2009, in fact, stated that, "As in previous years, the County continues to do a good job with public outreach efforts" and "[s]ignificant improvement has been made to address illicit discharge detection and elimination requirements. Other than some minor reporting problems, the County's management program implementation efforts are considered to be exemplary." The County has received no prior guidance regarding how the EPA wished to see the terms of the permit interpreted with regard to the items for which it was cited, and prior to the May 2009 Audit, the County received no notice that any regulatory agency considered its program to be in violation of the permit. The language cited by the EPA in Counts 1 and 2 is vague and open to broadly different interpretations; therefore, it is fundamentally unfair and inappropriate to seek penalties amounting to tens of thousands of taxpayer dollars for these alleged violations.

REQUEST FOR HEARING

The County hereby requests a hearing on the issues raised in the Complaint and this Answer.

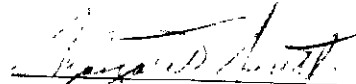
Respectfully submitted,


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Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ^{21st} 1st day of November, 2010, a copy of Respondent's Answer and Request for Hearing was mailed via first-class mail, postage prepaid, to:

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


Margaret Hartka