



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
ONE CONGRESS STREET SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

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BY HAND

June 5, 2009

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
One Congress Street, Suite 1100 (RAA)
Boston, Massachusetts 02114-2023

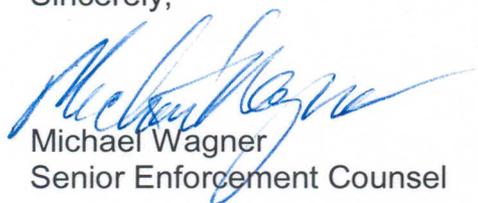
Re: In the Matter the Town of Leicester, Massachusetts,
Docket Number CWA-01-2008-0084

Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of the Administrative Complaint.

Thank you for your attention to this matter.

Sincerely,


Michael Wagner
Senior Enforcement Counsel

Enclosure

cc: Joseph C. Cove

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

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2009 JUN -5 P 4: 12

PRC
OFFICE OF
REGIONAL HEARING CLERK

_____)
IN THE MATTER OF:)
)
Town of Leicester, Massachusetts,)
)
)
)
Respondent.)
_____)

Docket No. CWA 01-2008-0084

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

I. STATUTORY AUTHORITY

The following Findings are made and Notices given 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). The Complainant is the Director of the Office of Environmental Stewardship, EPA, Region 1.

II. FINDINGS OF VIOLATION

1. The Respondent is a municipality, as defined in Section 502(4) of the Act, 33 U.S.C. § 1362(4).
2. The Respondent is a person under Section 502(5) of the Act, 33 U.S.C. § 1362(5).
3. The Respondent is the owner and operator of a regulated small municipal separate

storm sewer system ("Regulated Small MS4") as defined at 40 C.F.R. §§ 122.26(b)(16) and 122.32(a)(1).

4. The Respondent discharges, from its Regulated Small MS4, storm water containing pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), from catch basins through one or more outfalls constituting "point sources" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14), to "waters of the United States" as defined in 40 C.F.R. § 122.2 and "navigable waters" as defined by Section 502(7) of the CWA, 33 U.S.C. §1362(7).

5. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person from a point source into waters of the United States except in compliance with, among other things, a National Pollutant Discharge Elimination System ("NPDES") permit issued under Section 402 of the Act, 33 U.S.C. § 1342.

6. Pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p), and the Storm Water Regulations set forth at 40 C.F.R. §§ 122.26(a)(9), 122.32, and 122.33, Regulated Small MS4s must have permit coverage to discharge storm water to waters of the United States.

7. On April 18, 2003, the Director of the Office of Ecosystem Protection of EPA, Region I (the "Director of OEP"), issued a NPDES General Permit for Storm Water Discharges from Regulated Small MS4s (the "Permit") pursuant to the authority given to the Administrator of EPA by Section 402 of the Act, 33 U.S.C. § 1342. The Permit authorizes Regulated Small MS4s to discharge storm water to the waters of the United States when certain conditions are met.

8. On July 30, 2003, the Respondent submitted to EPA its Notice of Intent that the discharges from its MS4 would be covered by the Permit. On October 1, 2003, EPA granted the

Respondent authorization to discharge storm water from its MS4 subject to the terms and conditions of its Permit (Permit No. MAR041084).

9. Pursuant to 40 C.F.R. § 122.34(g)(3) and the Permit, Part II, F.1., the Respondent was required to submit annual reports by May 1 each year, commencing May 1, 2004 ("Annual Reports").

10. The Respondent failed to submit in a timely manner the Annual Reports due on May 1, 2007, and May 1, 2008, in violation of the Permit.

11. By violating the terms and conditions of the Permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, as set forth above, the Town violated Section 301(a) of the Act, 33 U.S.C. § 1311(a), for 492 days between May 1, 2007 and September 4, 2008.

12. On August 3, 2007, EPA, Region I issued a letter informing the Town that EPA had not received the May 1, 2007 Report and reminding the Town that an additional annual report would be required on May 1, 2008.

III. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

13. 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 40 C.F.R. Part 19, EPA hereby proposes to issue a Final Order Assessing Administrative Penalties to Respondent for up to the maximum Class I administrative penalty amount allowed under the Act (\$37,500) for the violations alleged in Section II for the period of noncompliance commencing on May 1, 2007 through September 4, 2008.

14. The proposed penalty amount was determined by EPA after taking into account the nature, circumstances, extent and gravity of the violations, the Respondent's prior compliance

history, degree of culpability for the cited violations, any economic benefit or savings accruing to the Respondent by virtue of the violations, and Respondent's ability to pay the proposed penalty, all of which are factors identified at Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3).

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

15. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), Respondent may request a hearing on the proposed penalty assessment and, at the hearing, may contest any material fact contained in the Findings of Violation set forth in Section II above and the appropriateness of the proposed penalty amount.

16. The requirements for requesting a hearing, and the procedures for the hearing, if one is requested, are set forth in the July 23, 1999 Consolidated Rules of Practice, found at 40 C.F.R. Part 22, a copy of which is enclosed herewith.

17. Any request for a hearing must be incorporated into the Respondent's Answer to this Complaint, which must be filed with the Regional Hearing Clerk at the following address within thirty (30) days of receipt of the Complaint:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
One Congress Street, Suite 1100 (RAA)
Boston, Massachusetts 02114-2023

18. The Answer must comply with Section 22.15 of the enclosed Consolidated Rules of Practice.

19. Members of the public, to whom the 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 comment on the proposal and to be heard and present evidence at the hearing.

20. Be advised that if the Respondent does not file a timely Answer to this Complaint, Respondent may be found in default. Default constitutes, for purposes of this action, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such factual allegations.

V. QUICK RESOLUTION

21. Under Section 22.18(a) of the Consolidated Rules of Practice, the Respondent has the option of resolving this matter at any time by paying the penalty proposed in this Complaint in full. Please be advised, however, that because this case requires public notice pursuant to Section 22.45, the Respondent must wait until ten (10) days after the period for public comment has closed before submitting a penalty payment under the Quick Resolution provisions of the Consolidated Rules of Practice.

22. Payment of the penalty must be made by submitting a bank, cashier's or certified check payable to the "Treasurer, United States of America," to:

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

Copies of the check must also be mailed to the Regional Hearing Clerk at the address above and to:

Michael Wagner
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region I
One Congress Street, Suite 1100 (SEL)
Boston, MA 02114-2023

The penalty payment check must reference the title of this proceeding ("In the Matter of Town of Leicester") and its Docket Number ("CWA-01-2008-0084").

23. If the Respondent pays the proposed penalty in full within thirty (30) days after receiving this Complaint, then the Respondent need not file an Answer to the Complaint. If the Respondent wishes to resolve this matter without having to file an Answer but needs additional time in which to do so, the Respondent may file a written statement with the Regional Hearing Clerk at the address above within thirty (30) days of receiving the Complaint. The written statement must specify that the Respondent agrees to pay the penalty within sixty (60) days of receipt of the Complaint. Failure to make such a payment within the sixty (60) days may subject the Respondent to a default action.

24. Neither assessment nor payment of an administrative penalty pursuant to this section of the Act shall affect the Respondent's continuing obligation to comply with the Act, State and local wastewater discharge permits and other requirements, and with any separate Compliance Order(s) issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a).

Date: _____

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

In the Matter of Town of Leicester, Massachusetts
Docket No. CWA-01-2008-0084

CERTIFICATE OF SERVICE

I certify that the foregoing Administrative Complaint was transmitted to the following persons, in the manner specified, on the date below:

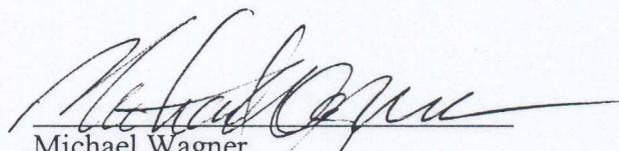
Original and one copy
hand-delivered:

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

Copy by certified mail,
return receipt requested:

Robert Reed, Administrator
Town of Leicester
Town Hall
3 Washburn Square
Leicester, MA 01524

Dated: 6-5-2009



Michael Wagner
Senior Enforcement Counsel
U.S. EPA, Region I
One Congress Street, Suite 1100 (SEL)
Boston, MA 02114-2023
Phone: (617) 918-1735
Fax: (617) 918-0735