

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

The Village of Kiryas Joel
PO Box 566
Monroe, New York 10949

SPDES Permit No. NYR20A496

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-02-2016-3315

REGIONAL HEARINGS
CLERK

2016 JUL -6 PM 12:30

U.S. Environmental
Protection Agency/Reg 2

**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 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”) State Pollutant Discharge Elimination System (“SPDES”) General Permit for Storm Water Discharges from Municipal Separate Storm Sewer Systems (“MS4s”) for the MS4 that 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 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, and SPDES permit GP-0-02-02, which became effective on January 8, 2003, and expired on January 8, 2008.
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 Village of Kiryas Joel (“Village” 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 Village of Kiryas Joel, 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 Village of Kiryas Joel 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 Palm Brook, Forest Brook, Tributary No. 25, Highland Brook and Coronet Brook, which are all tributaries of the Ramapo River, a water of the United States within the meaning of 40 C.F.R. § 122.2, via its MS4. As such, Respondent discharges pollutants to navigable waters within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

6. The Village of Kiryas Joel submitted a Notice of Intent (“NOI”) to NYSDEC on March 14, 2004 and subsequently received authorization under the MS4 General Permit pursuant to permit identification No. NYR20A496.
7. EPA, accompanied by NYSDEC, conducted a compliance audit of the Village’s MS4 on March 20-21, 2013 (“the Audit”).
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.D of the Permit requires all permittees to fully develop and implement their Stormwater Management Program (“SWMP”). At the time of the Audit, the Village failed to update their SWMP to incorporate the 2010 MS4 Permit (GP-0-10-002) changes in violation of Part IV.D of the Permit.
 - b. Part VII.A.2.d of the Permit requires that permittees, *prior* to submitting the final annual report to the NYSDEC by June 1 of each reporting year, present the draft Annual Report in a format that is open to the public, where the public can ask questions about and make comments on the report. This can be done at a public meeting or on the internet, per the requirements listed in Part VII.A.2.d.i of the Permit. According to Village representatives, the draft Annual Report is not made available to the public prior to submitting the final Annual Report in violation of Part VII.A.2.d of the Permit.
 - c. Part VII.A.3.b.ii of the Permit requires that “by March 9, 2010, all covered entities must develop (for newly authorized MS4s) and maintain a map showing the preliminary boundaries of the covered entity’s storm sewersheds as determined using GIS or other tools, even if they extend outside of the urbanized area (to facilitate track down), and additionally designated area within the covered entity’s jurisdiction.” At the time of the Audit, the Village had not mapped the preliminary boundaries of its storm sewersheds in violation of Part VII.A.3.b.ii of the Permit.
 - d. Part VII.A.3.f of the Permit requires permittees to prohibit, through a law, ordinance, or other regulatory mechanism, *illicit discharges* into the MS4 and implement appropriate enforcement procedures and actions. At the time of Audit, Village representatives provided Local Law 1 of the year 2008 Chapter 125-13 through Chapter 125-32 entitled “Prohibition of Illicit Discharges, Activities and Connections to Separate Storm Sewer Systems,” as its local illicit discharge ordinance. Upon further review, it was determined that Chapters 125-13 through 125-32 were never properly filed with the Village and are not a part of the Village Code. Therefore, at the time of the Audit, the Village did not have a local ordinance for illicit discharges as required by the Permit in violation of Part VII.A.3.f of the Permit.

- e. Part VII.A.3.g of the Permit requires permittees to “develop (for newly authorized MS4s) and implement a program to detect and address non-stormwater discharges to the small MS4. The program must include, but is not limited to, the following: available equipment; procedures for identifying and locating illicit discharges (track down); procedures for eliminating illicit discharges; and, procedures for documenting actions.” Although the Village’s SWMP Plan does include the required information, based on the Audit and information provided, EPA has determined that the Village has not adequately implemented its program in violation of Part VII.A.3.g of the Permit.
- f. Part VII.A.3.1 of the Permit requires permittees who have been covered for at least three years or more to report on the following: number and percent of outfalls mapped, percent of outfalls for which an outfall reconnaissance inventory has been performed, status of system mapping, etc. During the Audit, Village representatives stated that no formal tracking program exists and that no inventory is taken of outfall inspections in violation of Part VII.A.3.1 of the Permit.
- g. Part VII.A.4.a.i of the Permit requires permittees to develop (for newly authorized MS4s), implement and enforce a program that provides equivalent protection to the NYSDEC Construction General Permit (“CGP”). At the time of the Audit, the Village’s MS4 program did have a Local law for stormwater management that required sites to obtain CGP coverage, submit an NOI, and receive acknowledgement from the NYSDEC verifying coverage prior to the start of construction activity. Although this ordinance was in place, based on the Audit and information provided, EPA has determined that it was not being implemented or enforced. Therefore, Respondent is in violation of Part VII.A.4.a.i of the Permit.
- h. Part VII.A.4.a.ix of the Permit requires permittees to develop (for newly authorized MS4s), implement and enforce a program that describes procedures for site inspections and enforcement of erosion and sediment control measures, which includes determining that it is acceptable for the owner or operator of a construction project to submit the Notice of Termination (“NOT”) to the NYSDEC by performing a final site inspection themselves or by accepting the Qualified Inspector’s final inspection certification(s) required by the NYSDEC CGP. The principal executive officer, ranking elected official, or duly authorized representative shall document their determination by signing the “MS4 Acceptance” statement on the NOT. At the time of the Audit, the Village’s MS4 program did not contain a mechanism that ensured that the “MS4 Acceptance” statement was signed by a qualified individual on the NOT. As evidenced by the inaccurate list of active construction sites, the Village has not been diligent in implementing the NOT procedures. Therefore, Respondent is in violation of Part VII.A.4.a.ix of the Permit.
- i. Part VII.A.4.a.vii of the Permit requires permittees implement and enforce procedures for Stormwater Pollution Prevention Plan (“SWPPP”) review with consideration of potential water quality impacts and review of individual SWPPPs to ensure consistency with State and local sediment and erosion control requirements. At the time of the Audit, the Village did not have any procedures in place for SWPPP review in violation of Part VII.A.4.a.vii of the Permit.

- j. Part VII.A.4.a.xii of the Permit requires permittees to develop (for newly authorized MS4s), implement and enforce a program that establishes and maintains an inventory of active construction sites, including the location of the site and owner/ operator contact information. At the time of the Audit, it was clear that the list of active construction sites was not properly maintained due to the abundant discrepancies of active and closed construction sites on the list. The NYSDEC construction stormwater database for Orange County/Kiryas Joel contained several construction sites that were said to have been completed, but no NOT was filed including, but not limited to, the following sites:
- i. Village of Kiryas Joel Business Center
 - ii. Kiryas Joel Union Free School
 - iii. Kiryas Joel School
 - iv. Kiryas Joel Sidewalks Phase 7
 - v. Kiryas Joel Sidewalks Phase 6

Therefore in violation of Part VII.A.4.a.xii of the Permit.

- k. Parts VII.A.4.a.xiii and VII.A.4.a.xiv of the Permit requires permittees to develop (for newly authorized MS4's) record, periodically assess and modify as needed measurable goals; and select appropriate construction stormwater BMPs [sic] and measurable goals to ensure the reduction of all pollutants of concern ("POCs") in stormwater discharges to the Maximum Extent Practicable ("MEP"). At the time of the Audit, the Village's SWMP Plan had all measurable goals identified as being completed in 2008. Upon review onsite, EPA representatives concluded that not all of the expired measurable goals were completed and the SWMP Plan had not been assessed and/or modified in recent years in violation of Parts VII.4.a.xiii and VII.4.a.xiv of the Permit.
- l. Part VII.A.4.b.ii of the Permit requires permittees to report on the number and type of enforcement actions at construction sites. Based on review of Annual Reports from 2011 and 2012, which indicated that two (2) stop-work orders had been issued, the annual reports did not accurately reflect the enforcement activity of the Village. It was determined that no stop-work orders were actually issued during 2011 & 2012 in violation of Part VII.A.4.b.ii of the Permit.
- m. Part VII.A.5.a.vi of the Permit requires permittees to maintain an inventory of post-construction stormwater management practices within the covered entities jurisdiction. Based on review of the Annual Reports and discussion with Village representatives during the Audit, the number of post-construction controls inspected and maintained has not been accurate in violation of Part VII.A.5.a.vi of the Permit.
- n. Part VII.A.6.a.ii of the Permit requires that all permittees must at a minimum frequency of once every three years, perform and document a self-assessment of all municipal operations addressed by the SWMP to: determine the source of pollutants potentially generated by the covered entity'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 Village had never performed a self-assessment of its operations or facilities in violation of Part VII.A.6.a.ii of the Permit.

- o. Part VII.A.6.a.vi of the Permit requires that all permittees develop (for newly authorized) and implement a pollution prevention/good housekeeping training program for municipal operations and facilities that include an employee pollution prevention and good housekeeping training program and ensure that staff receive and utilize training. At the time of the Audit, there was no training program in place at the Village to ensure staff received necessary training in violation of Part VII.A.6.a.vi of the Permit.
 - p. Part V.D of the Permit requires permittees to submit a Municipal Compliance Certification (“MCC”) form, which is provided by NYSDEC, on an annual basis. The MCC certifies that all applicable conditions of Parts IV, VII, VIII and IX of the Permit are being developed, implemented and observed. Furthermore, Part V.D states that if compliance with any requirement cannot be certified to on the MCC form, a complete explanation with a description of corrective measures must be included on the MCC form. Failure to submit a complete annual report, as required by Part V.C, and a complete MCC form shall constitute a permit violation. During the Audit, EPA representatives observed numerous discrepancies in the information reported in the 2011 and 2012 Annual Reports in violation of Part V.D of the Permit.
10. On November 22, 2013, EPA issued an Administrative Compliance Order (“AO” or “Order”) (CWA-02-2014-3014). The AO directed 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 Section 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 **\$30,000**. 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 sixteen (16) violations of the Act, one of which has continued for nine hundred and eighty four (984) 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 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 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:

Lauren B. Fischer, Esq.
Office of Regional Counsel
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone (212) 637-3231

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 **\$30,000** 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-02-2016-3315

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:

Lauren B. Fischer, Esq.
Water and General Law Branch
Office of Regional Counsel
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone (212) 637-3231

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 30th DAY OF June, 2016.

For Kathleen Mabe-Bojany

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:

Village of Kiryas Joel
PO Box 566
Monroe, New York 10949

SPDES Permit No. NYR20A496

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-02-2016-3315

CERTIFICATE OF SERVICE

I certify that on July 6, 2016, 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. Gedalye Szegedin, Village Administrator
Village of Kiryas Joel
PO Box 566
Monroe, New York 10949

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: July 6, 2016

Mary Cosgrove
Mary Cosgrove
New York, NY



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JUN 30 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7015 3010 0000 7504 0009

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

U.S. Environmental
Protection Agency-Reg
2016 JUL -6 PM 12:30
REGIONAL HEARING
CLERK

**RE: Notice of Proceeding to Assess a Class I Civil Penalty
Village of Kiryas Joel Municipal Separate Storm Sewer System
Docket No. CWA-02-2016-3315**

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 Village of Kiryas Joel 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 **\$30,000** 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,

for Kathleen Mahre - Bogusky

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

- 1. Complaint
- 2. CROP



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY

NEW YORK, NY 10007-1866

JUN 30 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7015 3010 0000 7503 8815

Mr. Gedalye Szegedin, Village Administrator
The Village of Kiryas Joel
PO Box 566
Monroe, New York 10949

Re: Notice of Proposed Assessment of a Civil Penalty Class I
Village of Kiryas Joel Municipal Separate Storm Sewer System ("MS4")
Docket No. CWA-02-2016-3315

Dear Administrator Szegedin:

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 the Village of Kiryas Joel ("Respondent") has violated Section 301 of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1311. 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 civil penalty of **\$30,000** be assessed against Respondent 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.

U.S. Environmental Protection Agency
2016 JUL -6 PM 12:30
REGIONAL HEARING CLERK

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 the use of Supplemental Environmental Projects ("SEPs"), where appropriate, as part of any settlement. Enclosed is a copy of the 2015 Update to the 1998 U.S. Environmental Protection Agency Supplemental Environmental Projects Policy (March 10, 2015) 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:

Lauren B. Fischer, Esq.
Water and General Law Branch
Office of Regional Counsel
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone (212) 637-3231
Fax: (212) 637-3202

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

Sincerely,

A handwritten signature in black ink that reads "Dore LaPosta" with a stylized flourish at the end.

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

1. Complaint
2. CROP
3. EPA Supplemental Environmental Projects Policy and SEP Brochure

cc: Joseph DiMura, Director, Bureau of Water Compliance Programs, NYSDEC