

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

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Office of Regional Hearing Clerk

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In the Matter of:)

Revane Development Company, Inc.)
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Docket No. CWA-01-2008-0027

**Administrative Complaint
Proposing to Assess a Civil
Penalty Under Section 309(g)
of the Clean Water Act**

I. STATUTORY AND REGULATORY AUTHORITY

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

2. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice, Complainant hereby provides notice of a proposal to assess a civil penalty against the Revane Development Company, Inc. ("Revane Development" or Respondent") for discharging pollutants into navigable waters of the United States in violation of Section 301(a) of the CWA, 33 U.S.C. §1311(a) and failing to apply for a National Pollution Discharge Elimination System ("NPDES") permit in violation of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

3. The CWA is designed to restore and maintain the chemical, physical and biological integrity of the nation's waters. Section 101(a) of the CWA, 33 U.S.C. § 1251(a).

4. To accomplish the objectives of the CWA, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person except in certain circumstances, including in compliance with a permit issued pursuant to Section 402 or 404 of the CWA, 33 U.S.C. § 1342 or 1344.

5. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source."

6. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines "pollutant" to include, *inter alia*, dredged spoil, garbage, rock, sand and cellar dirt.

7. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as "the waters of the United States, including the territorial seas."

8. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines "point source" to include "any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged."

9. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines "person" to include "an individual, corporation, [or] partnership."

10. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires any storm water discharges "associated with industrial activity" to be authorized by a NPDES permit.

11. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes EPA to require the owner or operator of any point source to provide such information as EPA may

reasonably require to carry out the objectives of the CWA, including the issuance of NPDES permits pursuant to CWA section 402, 33 U.S.C. § 1342.

12. Pursuant to Sections 308 and 402, 33 U.S.C. §§ 1318 and 1342, EPA promulgated storm water discharge regulations at 40 C.F.R. § 122.26.

13. Forty C.F.R. 122.26(c) requires dischargers of storm water associated with “industrial activity” to apply for an individual permit or to seek coverage under a promulgated general permit.

14. Forty C.F.R. § 122.26(b)(14)(x) defines “storm water discharge associated with industrial activity” to include storm water discharges from construction activities, including clearing, grading, and excavation activities, that result in a disturbance of five or more acres of total land area.

15. Forty C.F.R. § 122.26(b)(13) defines “storm water” to include storm water runoff, snow melt runoff, and surface runoff and drainage.

Construction General Permit

16. In February 1998, EPA issued the NPDES General Permit for Storm Water Discharges From Construction Activities (“1998 CGP”) 63 Fed. Reg. 7858 (Feb. 17, 1998). The 1998 CGP was effective February 17, 1998 and expired February 17, 2003. EPA re-issued the 1998 CGP in July 2003 (“CGP”), 68 Fed. Reg. 45817 (July 1, 2003) (Massachusetts Permit Number: MAR100000). The re-issued CGP was effective July 1, 2003 and expires July 1, 2008¹. The CGP authorizes, subject to conditions contained therein, the discharge of pollutants in storm water runoff associated with construction activities, including construction activities within the Commonwealth of Massachusetts.

¹ The 2003 CGP was modified on December 22, 2004, effective on January 21, 2005. See 69 Fed. Reg. 76743 (Dec. 24, 2004).

17. To obtain coverage under the CGP, Part 2 of the CGP requires “operators” to submit a notice of intent (“NOI”). The CGP defines “operator” as “any party associated with a construction project” that has either “operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications” or “day-to-day operational control of those activities at a project which are necessary to ensure compliance with a storm water pollution prevention plan for the site or other permit conditions.”

18. Part 2.3.A of the CGP requires operators of new projects to submit a complete and accurate NOI prior to commencement of construction activities.

19. Part 3 of the CGP requires operators to prepare an adequate storm water pollution prevention plan (“SWPPP”) addressing the portions of the project for which they are operators. The SWPPP must meet specific requirements and include certain information, such as the soil type, a description of the drainage patterns at the site, an identification of sensitive resources such as endangered species and historic buildings, and which person is responsible for implementing each portion of the plan. Part 3.12 of the 2003 CGP requires the SWPPP to be signed and certified.

20. At the heart of the SWPPP is the selection of best management practices (“BMPs”) designed to eliminate, to the extent feasible, the migration of pollution from construction sites into the nation’s waters. These practices include measures to prevent erosion (such as the scheduling of the project to minimize the amount of land that is being graded at any particular time) and measures to capture sediment before it leaves the site (such as silt fences and sedimentation basins). The permits impose additional requirements, including those for inspection of the site during construction, maintenance

of the SWPPP and sometimes other records at the site, and final stabilization of the site followed by termination of permit coverage.

21. Part 8 of the 2003 CGP requires operators to implement a SWPPP as a condition of the permit.

II. ALLEGATIONS

22. Bryn Mawr Estates is a residential development located along Regis Drive and an extension of Briarcliff Drive in Auburn, Massachusetts (“the Site”). The Site is approximately 18 acres. Approximately seven acres have been disturbed during construction of the site.

23. Development of the Site began on or about August 22, 2004.

24. The Site is owned by Bryn Mawr Estates, LLC, a Massachusetts corporation located at 342 Greenwood Street in Worcester, Massachusetts.

25. Revane Development is a Massachusetts company with its principal place of business located at 342 Greenwood Street, Worcester, Massachusetts, and is a “person” as defined at Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

26. Revane Development is the general contractor for the Site and is responsible for development of the Site, including clearing, grading and excavating the Site as well as installing drainage systems, utilities, and sub-grade pads.

27. Revane Development controls the plans and specifications for the construction of the Site, and otherwise meets the definition of “operator” of the Site as defined at 40 C.F.R. § 122.2 and Appendix A of the CGP.

28. On August 25, 2006, EPA conducted an inspection of the Site and observed significant turbidity in the storm water from the Site entering catch basins on the Site

along the extension to Briarcliff Drive², as well as discharges entering catch basins on Briarcliff and Regis Drives.

29. The catch basins on Briarcliff and Regis Drives convey storm water to an open-air channel east of Bryn Mawr Avenue and south of the intersection of Bryn Mawr Avenue and Oxford Street (the "open-air channel").

30. On August 25, 2006, the EPA inspector also observed storm water with significant turbidity in the open-air channel.

31. The open-air channel is approximately 20 yards long and discharges storm water into a culvert at the intersection of Bryn Mawr Avenue and Oxford Street. The culvert connects to another section of the Town's storm water collection system that discharges to Dunns Brook (also known as Dark Brook). Dunns Brook flows into Kettle Brook. Kettle Brook flows into Leesville Pond which drains into Curtis Ponds. Curtis Ponds drains to the Middle River, which becomes the Blackstone River. The Blackstone River flows into the Seekonk River. The Seekonk River flows into the Providence River. The Providence River flows into Narraganset Bay, which is an embayment of the Atlantic Ocean.

32. Dunns Brook, Kettle Brook, Leesville Pond, Curtis Ponds, the Middle River, the Blackstone River, the Seekonk River, the Providence River, Narraganset Bay and the Atlantic Ocean are all "waters of the United States," as defined at 40 C.F.R. § 122.2, and thereby are "navigable waters," as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

² The catch basins on the extension to Briarcliff Drive drain into the Town of Auburn, Massachusetts ("Town")-owned storm water collection system at Briarcliff Drive.

33. The storm water discharges from the Site result in the “discharge of pollutants,” as defined at Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

34. The storm water discharges from the Site are “storm water discharges from an industrial activity,” as defined at 40 C.F.R. § 122.26(b)(14)(x).

35. Since at least August 22, 2004, Revane Development has either directed or participated directly in construction activities at the Site including grubbing, clearing, grading, filling, and excavation activities that have resulted in the disturbance of greater than five acres of total land area.

36. These construction activities have resulted in the discharge of “storm water associated with industrial activity” to waters of the U.S. This storm water has been conveyed through ditches, culverts, swales, gullies, and channels through disturbed areas of the sites and through the Town’s storm water collection system, and has been contaminated with sand, dirt, sediment, suspended solids, residues of construction material, and turbidity.

37. The sand, dirt, sediment, suspended solids, residues of construction material, and turbidity discharged into waters of the U.S. constitute “pollutant[s]” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

38. The ditches, culverts, swales, gullies, channels and the storm water collection system discharging pollutants constitute “point source[s]” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

39. As “operator” of the Site, Revane Development was required to obtain NPDES permit coverage for the construction activities and then comply with all requirements and conditions for operation under the CWA, its regulations and the applicable permit.

40. Revane Development has not applied for an individual permit and has not submitted an NOI to have storm water discharges from the Site authorized by the CGP.

41. Revane Development has not prepared nor implemented a SWPPP for the Site.

**COUNT 1: UNAUTHORIZED DISCHARGE OF STORMWATER
ASSOCIATED WITH INDUSTRIAL ACTIVITY**

42. The Complaint incorporates Paragraphs 1-41 above by reference.

43. By discharging stormwater associated with industrial activity at the Site during storm events from August 22, 2004 to present without authorization under any NPDES permit, Respondent was, and continues to be, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311.

COUNT 2: FAILURE TO APPLY FOR A NPDES PERMIT

44. The Complaint incorporates Paragraphs 1-43 above by reference.

45. By failing to timely apply for an individual permit or submit an NOI for coverage under the CGP, Respondent was, and continues to be, in violation of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), from August 22, 2004 to present.

III. NOTICE OF PROPOSED ASSESSMENT OF CIVIL PENALTY

46. Based on the foregoing allegations and pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, et seq., the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, et seq., and the rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.1-19.4 (61 Fed. Reg. 69360, 69 (Dec. 31, 1996); 69 Fed. Reg 7121, 7 (Feb. 13, 2004)), Complainant proposes that a Final Order assessing civil penalties be issued against Respondents of up to eleven thousand dollars (\$11,000) per day for each

day during which the violations continued, up to a maximum of one hundred and fifty-seven thousand and five hundred dollars (\$157,500), taking into account the nature, circumstances, extent and gravity of the violation, or violations, and the Respondent's prior compliance history, the degree of culpability for the cited violations, any economic benefit or savings accruing to the Respondent resulting from the violations, the Respondent's ability to pay the proposed penalty, and such other matters as justice may require.

47. The violations alleged represent significant violations of the CWA because of the extent and duration of the violations and because compliance with the federal stormwater program is important to ensuring that stormwater runoff does not contribute to the impairment of water quality.

48. Based on a threshold of 0.5 inches of rain for a discharge, there were at least 91 individual days from September 2004 to present during which a discharge of storm water from the Site occurred in violation of the CWA. In addition Respondent has failed to apply for an individual permit or submit an NOI for coverage under the CGP from August 22, 2004 to present, in violation of the CWA.

49. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty for the CWA violations and explaining how the proposed penalty was calculated, as required by the Consolidated Rules of Practice.

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

50. Respondent has the right to request a hearing to contest the issues raised in this Complaint. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice. Any request for a hearing must be included in Respondent's written

Answer to this Complaint and filed with the Regional Hearing Clerk at the address listed below within 30 days of receipt of this Complaint.

51. In its Answer, Respondent may also: (1) dispute any material fact in the Complaint; (2) contend that the proposed penalty is inappropriate; or (3) contend that it is entitled to judgment as a matter of law. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. If Respondent has no knowledge of a particular factual allegation and so states, the allegation is considered denied. The failure to deny an allegation constitutes an admission of that allegation. The Answer must also include the grounds for any defense and the facts Respondent intends to place at issue.

52. The original and one copy of the Answer, as well as a copy of all other documents which Respondent files in this action, must be sent to:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
One Congress Street
Suite 1100 (RAA)
Boston, Massachusetts 02114-2023

53. Respondent should also send a copy of the Answer, as well as a copy of all other documents that Respondent files in this action, to Jeffrey Kopf, the attorney assigned to represent EPA and who is designated to receive service in this matter, at:

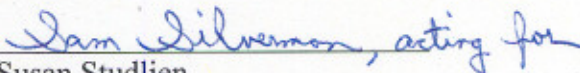
Jeffrey Kopf, Senior Enforcement Counsel
U.S. EPA, Region 1
One Congress Street
Suite 1100 (SEL)
Boston, Massachusetts 02114-2023
Tel: (617) 918-1796
Kopf.jeff@epa.gov

54. If Respondent fails to file a timely Answer to this Complaint, it may be found to be in default, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing.

V. CONTINUED COMPLIANCE OBLIGATION

55. Neither assessment nor payment of a civil penalty pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), shall affect any Respondent's continuing obligation to comply with the CWA, the regulations promulgated thereunder, or any other applicable Federal, State or local law.

Date: 12-21-07


Susan Studlien
Director, Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region I

In the Matter of: Revane Development Company, Inc.
Docket Nos. CWA-01-2008-0027, 08-004

CERTIFICATE OF SERVICE

I certify that the foregoing ADMINISTRATIVE COMPLAINT (Docket No. CWA-01-2008-0027) and FINDINGS OF VIOLATION AND ORDER FOR COMPLIANCE (Docket No. 08-004) was sent to the following persons, in the manner specified on the date below:

Original and one copy
hand delivered:

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

Copy, via Federal Express
and a copy of 40 C.F.R.
Part 22

Thomas Revane, President
Revane Development Company, Inc.
342 Greenwood Street
Worcester, MA 01607

Copy, via Federal Express
and a copy of 40 C.F.R.
Part 22

Thomas Revane, President
Revane Development Company, Inc.
120 Stafford St
Worcester, MA 01603

Date: _____

12/31/07



Jeffrey Kopf, Senior Enforcement Counsel
Office of Environmental Stewardship (SEL)
U.S. Environmental Protection Agency
Region I
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