

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

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In the Matter of: )  
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)  
**DUNHAM FARM, LLC** )  
80 First Street, P.O. Box 397 )  
Bridgewater, MA 02324 )  
)  
**CALLAHAN, INC.** )  
80 First Street )  
Bridgewater, MA 02324 )  
)  
**Respondents** )  
\_\_\_\_\_)

EPA Docket No. CWA-01-2008-0046

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

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**I. STATEMENT OF AUTHORITY**

1. The United States Environmental Protection Agency (“EPA”) issues this Complaint to Dunham Farm, LLC (“Dunham Farm”) and Callahan, Inc. (“Callahan”) (collectively, “Respondents”), pursuant to 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” (“Consolidated Rules”), 40 C.F.R. Part 22.

2. Pursuant to Section 309(g) of the CWA, 33 U.S.C. §1319(g), and in accordance with the Consolidated Rules, Complainant hereby notifies Respondents of EPA’s intention to assess a civil penalty for violations of the NPDES General Permit for Storm Water Discharges from Construction Activities, issued to Respondents under Section 402 of the CWA, 33 U.S.C. §1342.

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

4. In order 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 compliance with a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. §1342.

5. Section 502(12) of the CWA, 33 U.S.C. §1362(12), defines "discharge of pollutants" 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, 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 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 Section 402 of the CWA, 33 U.S.C. §1342.

11. Section 402(p)(2)(B) of the CWA, 33 U.S.C. §1342(p)(2)(B), requires any storm water discharge “associated with industrial activity” to be authorized by a NPDES permit.

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

13. According to 40 C.F.R. §122.26(c), dischargers of storm water associated with “industrial activity” must apply for an individual permit or seek coverage under a promulgated general permit.

14. According to 40 C.F.R. §122.26(b)(14)(x), the definition of “storm water discharge associated with industrial activities” includes storm water discharges from construction activities, including clearing, grading, and excavation, that result in a disturbance of five or more acres of total land area.

15. According to 40 C.F.R. §122.26(b)(13), the definition of “storm water” includes storm water runoff, snow melt runoff, and surface runoff and drainage.

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 became effective on February 17, 1998 and expired on February 17, 2003. EPA reissued the 1998 CGP in July 2003 (“CGP”), 68 Fed. Reg. 39087 (July 1, 2003). The reissued CGP became effective on July 1, 2003 and expires on July 1, 2008.<sup>1</sup> 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.

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<sup>1</sup> The reissued CGP did not become effective in Massachusetts until August 4, 2003. *See* 68 Fed. Reg. 45817 (Aug. 4, 2003). Additionally, the 2003 CGP was modified on December 22, 2004, effective on January 21, 2005. *See* 69 Fed. Reg. 76743 (Dec. 22, 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 maintains 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 at least two days 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, including endangered species and historic buildings; and which person maintains responsibility for implementing each portion of the plan. Part 3.12.D of the CGP requires that the SWPPP be signed and certified.

20. The central aspect of the SWPPP involves 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 being graded at any particular time, and measures to capture sediment before it leaves the site, such as silt fences and sedimentation basins. The CGP imposes

additional requirements, including those for inspection of the site during construction; maintenance of the SWPPP, and potentially other records, at the site; and final stabilization of the site, followed by termination of permit coverage.

21. Part 3.1.D of the CGP requires that operators implement the SWPPP as written from commencement of construction activity until completion of final stabilization.

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

## II. ALLEGATIONS

23. Dunham Farm Condominium constitutes a residential development, located at 902 Main Street, Hanson, Massachusetts (“the Site”).

24. The Site consists of approximately 11 acres.

25. Approximately eight acres have been disturbed during construction at the Site.

26. Dunham Farm, with its principal place of business located at 80 First Street, Bridgewater, Massachusetts, owns the Site and controls all development activity at the Site.

27. Dunham Farm is a “person,” as defined in Section 502(5) of the CWA, 33 U.S.C. §1362(5).

28. Dunham Farm maintains day-to-day operational control of activities necessary to ensure compliance with the SWPPP for the Site, rendering it an “operator” of the Site, as defined by 40 C.F.R. §122.2 and Appendix A of the CGP.

29. Callahan, with its principal place of business located at 80 First Street, Bridgewater, Massachusetts, constitutes the general contractor for the Site and controls all construction activity on the site.

30. Callahan is a “person,” as defined in Section 502(5) of the CWA, 33 U.S.C. §1362(5).

31. Callahan maintains operational control over the construction plans and specifications of the site, making it an “operator” of the Site, as defined by 40 C.F.R. §122.2 and Appendix A of the CGP.

32. Dunham Farm submitted to EPA a NOI, dated April 10, 2005 and postmarked June 30, 2005, for coverage under the CGP for construction at the Site.

33. Construction commenced on the Site in June 2005.

34. When Respondents commenced clearing, grading, and excavation at the Site, Respondents engaged in the “commencement of construction activities,” as defined by Appendix A of the CGP.

35. During certain storm events that occurred in the summer of 2006, silty storm water from an unfinished detention basin on the Site overflowed the siltation barrier and discharged into the bordering vegetated wetland.

36. A forested wetland borders the southeastern edge of the Site. A flowing perennial stream forms in the wetland and flows until it reaches Robinson Road, where it reaches a culvert. The culvert resurfaces on the opposite side of Robinson Road and, joined by additional water flow, continues towards and under Main Street, through wetlands, and into the Great Cedar Swamp. Burrage Pond forms out of the Great Cedar Swamp. Weir devices regulate water flow from Burrage Pond. Released water from

Burrage Pond flows through cranberry bogs, through wetlands, and into Stump Brook. Stump Brook flows into Stump Pond, which empties into a stream that runs through a series of cranberry bogs and wetlands to the Winnetuxett River. The Winnetuxett River then drains into the Taunton River, which flows into Mount Hope Bay. Mount Hope Bay is part of Narragansett Bay, an embayment of the Atlantic Ocean.

37. At a minimum, the wetland bordering the southeastern edge of the Site, the perennial stream flowing from such wetland, the wetlands flowing into the Great Cedar Swamp, the Great Cedar Swamp, Burrage Pond, the cranberry bogs into which Burrage Pond flows, the wetlands flowing into Stump Brook, Stump Brook, Stump Pond, the stream into which Stump Pond empties, the cranberry bogs and wetlands through which such stream flows, the Winnetuxett River, the Taunton River, Mount Hope Bay, Narragansett Bay, and the Atlantic Ocean constitute “waters of the United States,” as defined by 40 C.F.R. §122.2, and, thereby, “navigable waters,” as defined by Section 502(7) of the CWA, 33 U.S.C. §1362(7).

38. The storm water discharges from the Site constitute “storm water discharges associated with industrial activity,” as defined by 40 C.F.R. §122.26(b)(14)(x), to waters of the United States.

39. Respondents directed or participated directly in construction activities, including clearing, grading, and excavation, at the Site, which resulted in the disturbance of greater than five acres of total land area, making it an “industrial activity” within the meaning of 40 C.F.R. §122.26(b)(14)(x).

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

41. The silt discharged into waters of the United States is a “pollutant” within the meaning of Section 502(6) of the CWA, 33 U.S.C. §1362(6).

42. The detention basin that discharged pollutants is a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. §1362(14).

**COUNT 1: FAILURE TO COMPLY WITH THE CONSTRUCTION GENERAL PERMIT**

43. The Complaint incorporates Paragraphs 1 through 42 above by reference.

44. Dunham Farm submitted to EPA a SWPPP for the Site, prepared by P.M.P. Associates, LLC, dated June 29, 2005, and Callahan submitted to EPA a SWPPP for the Site, prepared by Webby Engineering Associates, Inc., dated March 1, 2007 (collectively, “Site SWPPP”).

45. The CGP contains a variety of terms and conditions designed to ensure implementation of practices to reduce the pollutants in storm water discharges associated with construction activities.

46. Respondents failed to comply with the following CGP requirements.

**A. Respondents Failed to Document Routine Facility Inspections**

47. Section 3.10 of the CGP requires that qualified personnel conduct routine inspections of all areas of the site disturbed by construction activity and that an inspection report be completed for each required inspection. A record of each inspection, as well as of any actions taken in accordance with Section 3.10 of the CGP, must be retained as part of the SWPPP for at least three years from the date that permit coverage expires or becomes terminated.

48. The Site SWPPP requires qualified personnel to conduct routine inspections of all areas of the site disturbed by construction activities.

49. The Site SWPPP provides that a maintenance inspection report shall be prepared after each inspection, using forms included within the Site SWPPP.

50. From July 1, 2005 until October 1, 2007, Respondents failed to complete inspection reports and maintain records of the inspections, in violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. §1342, and, therefore, in violation of Section 301(a) of the CWA, 33 U.S.C. §1311(a).

**B. Respondents Failed to Implement and Maintain Best Management Practices as Required by the Construction General Permit**

51. Section 3.1.D of the CGP requires that the SWPPP must be implemented as written from commencement of construction activity until completion of final stabilization.

52. Section 3.6 of the CGP requires that all erosion and sediment controls and other protective measures identified in the SWPPP must be maintained in effective operating condition.

53. The Site SWPPP requires the development and maintenance of BMPs for construction, including erosion and sediment controls, such as berms, silt barriers, hay bales, hydro-seeding, rip rap, vegetated surfaces, dikes, and drainage basins.

54. From July 1, 2005 until October 1, 2006, Respondents failed to fully implement the Site SWPPP by failing to implement and maintain effectively operating BMPs, in violation of the terms and conditions of a permit issued pursuant to Section 402

of the CWA, 33 U.S.C. §1342, and, therefore, in violation of Section 301(a) of the CWA, 33 U.S.C. §1311(a).

### **III. NOTICE OF PROPOSED ASSESSMENT OF CIVIL PENALTY**

55. 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 (Fed. 13, 2004)), Complainant proposes the issuance of a Final Order against Respondents assessing a civil penalty 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).

56. In determining the amount of the penalty to be assessed under Section 309(g)(2)(B) of the CAA, 33 U.S.C. §1319(g)(2)(B), EPA takes into account the statutory factors listed in Section 309(g)(3) of the CAA, 33 U.S.C. §1319(g)(3), including the nature, circumstances, extent and gravity of the violation, or violations; Respondents' prior compliance history; the degree of culpability for the cited violations; any economic benefit or savings accruing to Respondents resulting from the violations; Respondents' ability to pay the proposed penalty; and such other matters as justice may require.

57. EPA seeks a penalty from Respondents for the violations alleged under Count 1 of up to \$11,000 for each day of violation, amounting to at least 822 days, up to a maximum of \$157,500.

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

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

**IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

60. Pursuant to Section 309(g) of the CWA, 33 U.S.C. §1319(g), and 40 C.F.R. §22.14, the Complaint notifies each Respondent of its right to request a hearing on any material fact alleged in this Complaint and on the appropriateness of the proposed penalty. Any such hearing will be conducted in accordance with the Consolidated Rules, a copy of which is enclosed with this Complaint. Members of the public, to whom EPA must give notice of this proposed action, have a right, under Section 309(g)(4)(B) of the CWA, 33 U.S.C. §1319(g)(4)(B), to comment on any proposed penalty, as well as be heard and present evidence at the hearing. Respondents must include any request for a hearing in a written Answer to this Complaint.

61. Each Respondent's Answer must comply with 40 C.F.R. §22.15. The original and one copy of the Answers, as well as a copy of all other documents that Respondents file in this action, must be sent to:

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

62. Respondents should also send a copy of their Answers, as well as a copy of all other documents that Respondents file in this action, to Amanda J. Helwig, the attorney assigned to represent EPA, who is authorized to receive service in this matter, at:

Amanda J. Helwig  
Enforcement Counsel  
U.S. EPA, Region 1  
One Congress Street, Suite 1100 (RAA)  
Boston, MA 02114-2023

63. If any Respondent fails to file a timely Answer to this Complaint, it may be found 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**

64. 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: 04/23/08

Susan Studlien  
Susan Studlien  
Director, Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region 1

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity for Hearing has been sent to the following persons on the date noted below:

Original and one copy,  
by hand:

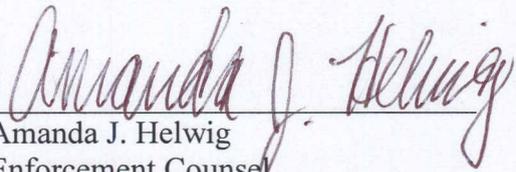
Wanda Santiago  
Regional Hearing Clerk  
U.S. EPA, Region I  
One Congress Street, Suite 1100 (RAA)  
Boston, MA 02114-2023

One copy of Complaint and  
40 C.F.R. Part 22, by certified mail,  
return receipt requested:

John T. Callahan III, Manager  
Dunham Farm, LLC  
80 First Street, P.O. Box 397  
Bridgewater, MA 02324

Patrick J. Callahan, President  
Callahan, Inc.  
80 First Street  
Bridgewater, MA 02324

Date: 4/24/08

  
Amanda J. Helwig  
Enforcement Counsel  
U.S. EPA, Region 1  
One Congress Street, Suite 1100 (RAA)  
Boston, MA 02114-2023  
Phone: (617) 918-1180  
Fax: (617) 918-0180