

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Binghamton Burial Vault Co. Inc.
1114 Porter Avenue
Binghamton, NY 13901

SPDES Permit No. NYR00B377

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-02-2017-3303

U.S. Environmental
Protection Agency
2016 NOV -9 PM 10:02
REGIONAL HEARING
CLERK

**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 (“Administrator” or “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, a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against Binghamton Burial Vault Co., Inc. (“Respondent”), as a result of Complainant’s determination that the Respondent is in violation of Section 301 of the Act, 33 U.S.C. § 1311, for failing to comply with the terms of the New York State Department of Environmental Conservation’s (“NYSDEC”) State Pollutant Discharge Elimination System (“SPDES”) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (“MSGP”), issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, at a facility that the Respondent operates.

II. APPLICABLE LEGAL REQUIREMENTS

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into navigable waters, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342.
2. “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.
3. “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 and agricultural waste discharged into water.
4. “Person” is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include, among other things, an individual, corporation, partnership, association or municipality.
5. “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.
6. “Navigable waters” is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), as the waters of the United States, including the territorial seas, and, at the time of the violations at issue here, “waters of the United States” was defined by 40 C.F.R. § 122.2, to include: all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; all interstate waters, including interstate “wetlands;” all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, “wetlands,” sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce, including tributaries thereto.
7. “Owner or operator” is defined by 40 C.F.R. § 122.2 as the owner or operator of any “facility or activity” subject to regulation under Section 402 of the CWA, 33 U.S.C. § 1342(a).
8. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), authorizes the Administrator to issue a National Pollutant Discharge Elimination System (“NPDES”) permit for the discharge of any pollutant, or combination of pollutants, notwithstanding the prohibition in Section 301(a) of the CWA, upon the condition that any such discharges will meet the requirements of the CWA and its implementing regulations.
9. The Administrator of EPA has promulgated regulations, 40 C.F.R. § 122.26(a)(1)(ii) and § 122.26(b)(14), which require operators to obtain a NPDES permit for stormwater discharges associated with industrial activity. The regulations at 40 C.F.R. § 122.26(b)(14) establish requirements for stormwater discharges associated with industrial activity.

10. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), allows any State, upon application to and approval by EPA, to directly administer the NPDES permitting program. EPA has authorized NYSDEC to directly administer the NPDES program in the State of New York. Accordingly, any person who will discharge pollutants from a point source to waters of the United States within New York State must first obtain a SPDES permit, and must comply with all of its terms.
11. Pursuant to Section 402(b) of the CWA, NYSDEC issued the SPDES MSGP, as defined by the present general permit number GP-0-12-001, which became effective on October 1, 2012, and expires on September 30, 2017. GP-0-12-001 replaced interim general permit number GP-0-11-009, which became effective on March 28, 2012, and expired on September 30, 2012. GP-0-11-009 replaced GP-0-06-002, which became effective on March 28, 2007, and expired on March 27, 2012.
12. Pursuant to 40 C.F.R. § 122.41(a), NPDES permittees must comply with all conditions of their permit, and any permit noncompliance constitutes a violation of the CWA.
13. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes the Administrator, upon a finding that any person has violated, among other things, Section 301(a) of the Act, or has violated any permit condition or limitation implementing such section in a permit issued under Section 402 of the Act, to assess a civil penalty, and Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), as adjusted by 40 C.F.R. § 19.4, authorizes the assessment of a penalty of up to \$16,000 per day of violation, and not exceeding \$187,500.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Respondent Binghamton Burial Vault Co. Inc. is a corporation, formed under the laws of New York State, and is, therefore, a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
2. The Respondent operates the Binghamton Burial Vault Co. Inc. facility (“Site” or “Facility”), which is located at 1114 Porter Avenue, Binghamton, New York 13901. Therefore, the Respondent is an owner or operator within the meaning of 40 C.F.R. § 122.2.
3. Stormwater discharges from the Facility to the Town of Fenton Municipal Separate Storm Sewer System (“MS4”), via outfall pipes and drainage structures which discharge to the Chenango River. The Chenango River is a traditionally navigable water of the United States, as that term is defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.
4. The Respondent’s operations at the Facility are classified by Standard Industrial Classification (“SIC”) Code 3271 (Concrete Block and Brick).
5. Respondent submitted a Notice of Intent (“NOI”) to the NYSDEC in December 2012. The NYSDEC received the NOI on December 27, 2012, and coverage for the Facility under GP-0-12-001 went into effect thirty (30) days later, on January 26, 2013. Prior to GP-0-12-001, the Facility had coverage under previous versions of the NYSDEC MSGP, including GP-0-11-009, GP-0-06-002 and GP-98-03.
6. On August 24, 2015, EPA conducted a Compliance Evaluation Inspection (“CEI” or “the Inspection”) at the Facility and EPA identified the following violations of the Facility’s MSGP:

- a) As required by Part III.A of the Permit, a Stormwater Pollution Prevention Plan (“SWPPP”) shall be developed and implemented by the owner or operator for each facility covered by the Permit. At a minimum, the SWPPP is required to include the items identified in Part III.C and Part VIII (Sector-Specific Requirements – Sector E) of the Permit. Based on review of the SWPPP available at the time of the CEI, as well as observations made during records review and the Facility walk-through, the Respondent failed to develop and/or implement the following SWPPP elements, in violation of Part III.C of the Permit:
- i. Part III.C.7.f requires that the Facility eliminate all non-stormwater discharges not authorized by this general permit or another SPDES permit. An unpermitted connection was observed at the time of the CEI. EPA inspectors observed direct discharge of the process wastewater generated from cement mixing activities via a channel inside the garage to a constructed trough approximately 20 feet in length that leads directly to the stormwater catch basin that discharges to the Town of Fenton MS4. Non-stormwater discharges that are not listed in Part I.C.3 to surface waters of the State and which are not authorized by a SPDES permit are unlawful and must be terminated.
 - ii. At the time of the CEI, cement waste, mixing materials and metal parts were stored in piles on the hill on top of the site located near the railroad tracks. This area was not covered or contained and was exposed to stormwater. Best Management Practices to minimize exposure of material storage areas to stormwater must be implemented, in accordance with the Part III.C.7.1 and Part I.B.1.a.(2)(a) of the Permit.
 - iii. Part III.C.7 of the Permit requires that the SWPPP document the location and type of Best Management Practices (“BMPs”) installed and implemented at the facility to achieve the non-numeric effluent limits stipulated in Part I.B.1.a.(2) of the Permit, as well as additional non-numeric effluent limits found in Part VIII of the Permit (Sector-Specific Requirements). BMPs required per Parts III.C.7 and VIII of the Permit that were not adequately implemented or described in the SWPPP are identified, below. At the time of the CEI, all stormwater catch basins located on the site were filled with sediment/gravel and are in need of maintenance. Preventative maintenance of stormwater management devices, such as cleaning catch basins, must be implemented at the Facility, in accordance with the Facility’s SWPPP and Part III.C.7.c of the Permit.
 - 1. At the time of the CEI, all stormwater catch basins located on the site were filled with sediment/gravel and were in need of maintenance. Preventative maintenance of stormwater management devices, such as cleaning catch basins, must be implemented at the Facility, in accordance with the Facility’s SWPPP and Part III.C.7.c of the Permit.
- b) As required by Part III.C.7.a of the Permit, the owner/operator must develop and implement good housekeeping practices to keep exposed areas clean. The SWPPP must describe good housekeeping practices to ensure that all exposed areas that are potential sources of pollutants are kept clean, using such measures as sweeping at regular intervals, keeping materials orderly and labeled, and storing materials in appropriate containers.
- i. At the time of the CEI, at least eight (8) fifty-five (55) gallon drums were left outside the facility and exposed to stormwater. These materials should be moved indoors to limit

exposure to stormwater. If moving the materials inside is not feasible, they should be transported to an area with a permanent overhead structure.

- c) As required by Part III.C.7.d. of the Permit, the owner/operator must minimize the potential for leaks, spills and other releases that may be exposed to stormwater and develop plans for effective response to such spills if or when they occur.
 - i. At the time of the CEI, uncovered, opened paint products were left near the garage entrance. These materials should be stored properly according to the Facility's SWPPP to ensure spills do not occur.
 - ii. In addition, at the time of the CEI, inspectors observed the outside fueling station in an uncovered area outside the maintenance garage. The fuel tank did not have secondary containment and there was no spill-kit on site at the time of the inspection. In order to minimize the potential for a leak or spill, the fuel tank should be stored in secondary containment.
- d) As required by Part IV.B.1.c of the Permit, the permittee must perform and document annual benchmark monitoring of a stormwater outfall. The owner or operator must refer to the tables found in the individual sectors in Part VIII for benchmark monitoring cut-off concentrations. The facility operates under Sector E, Glass, Clay, Cement and Gypsum products. The numeric effluent limitations for Sector E are: 100mg/L for Total Suspended Solids ("TSS"), 6.0 to 9.0 for pH, and 1mg/L for Total Recoverable Iron. At the time of the inspection, EPA inspectors reviewed annual benchmark monitoring for the facility and found that there were exceedances each year beginning in 2008. They are as follows:

154 mg/L TSS, 9.57 pH, on October 29, 2008
701 mg/L TSS, 11.63 pH, 2.14 mg/L Iron on December 28, 2009
323 mg/L TSS, 11.89 pH, 1.91 mg/L Iron on August 17, 2010
112 mg/L TSS, 11.09 pH on December 9, 2011
150 mg/L TSS, 9.59 pH on October 26, 2012
165 mg/L TSS, on August 16, 2013

In addition, if there are any exceedances, the owner/operator must identify the cause of the exceedance of the effluent limitation(s); remedy the problems identified by implementation of non-structural and/or structural BMPs to prevent recurrence; revise the facility's SWPPP; and collect an additional sample to determine the effectiveness of corrective actions within the first six (6) months of the following calendar year. Based on the records available on-site at the time of the inspection, the facility only collected an additional corrective sample for the exceedance on August 16, 2013. Based on records provided to the EPA, there was no additional sample taken for the years 2009, 2010, 2011, and 2012. An additional sample and corrective follow-up actions should be implemented for each benchmark exceedance as required by Part IB.V.1.e.(5) of the MSGP.

- i. As previously mentioned, Part IV.B.1.c of the Permit requires that if a facility falls within a sector required to conduct benchmark monitoring, monitoring must be performed annually during the calendar year. At the time of the inspection, EPA found that the benchmark monitoring results for the 2014 calendar year were missing.

7. On December 24, 2015, EPA issued the Respondent an Administrative Order, Docket No. CWA-02-2016-3015, which was mailed to the Respondent along with a copy of the CEI Report, and which ordered the Respondent to correct the above violations and come into compliance with the Act.
8. Based on the foregoing Findings of Fact and Conclusions of Law, the Respondent is liable for seven hundred sixty-six (766) days of violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a), for violating the permit issued to the Respondent under Section 402 of the Act, 33 U.S.C. § 1342.

IV. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

Based on the foregoing findings, 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 the Respondent assessing a penalty of **\$25,000**. 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 violations, and the Respondent’s prior compliance history, degree of culpability, economic benefit or savings accruing to the Respondent by virtue of the violations, and the Respondent’s ability to pay the proposed penalty. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after the Respondent’s receipt of this Notice, unless the Respondent files an Answer to this 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 the 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 the Respondent is entitled to judgment as a matter of law, the 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). The 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 the Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where the 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 the Respondent disputes (and thus intends to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether the Respondent requests a Hearing. 40 C.F.R. § 22.15(b).

Respondent's failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of a defense may preclude the 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 the 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, the 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 the CROP, at 40 C.F.R. §§ 22.21-22.26.

Should the Respondent request a Hearing, 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)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), to be heard and to present evidence on the appropriateness of the penalty assessment. Should the 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 the 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 the 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)], the Respondent may be found in default upon motion by Complainant. 40 C.F.R. § 22.17(a). Default by the Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of the Respondent's rights to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by the 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 the 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 the Respondent, and to collect the assessed penalty amount, in federal court.

VI. INFORMAL SETTLEMENT CONFERENCE

Regardless of whether the 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, the Respondent may comment on the charges made in this Complaint and the Respondent may also provide whatever additional information it believes to be relevant to the disposition of this matter, including: (1) actions the Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to the amount of the proposed penalty, (3) the effect the proposed penalty would have on the Respondent's ability to continue in business and/or (4) any other special facts or circumstances the Respondent wishes to raise. Note that no penalty reduction will be made simply because an informal settlement conference is held.

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. The Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that the Respondent may have regarding this Complaint should be directed to:

Tim Murphy, Esq.
Assistant Regional Counsel
Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone: (212) 637-3236
Fax: (212) 637-3202

The parties may engage in settlement discussions regardless of whether the Respondent has requested a Hearing. 40 C.F.R. § 22.18(b)(1). The Respondent's request for a formal Hearing does not prevent the 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 the Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15.

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 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). In accepting the Consent Agreement, the Respondent waives any right to contest the allegations in the Complaint and waive any right to appeal the Final Order. 40 C.F.R. § 22.18(b)(2).

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 would terminate this administrative litigation and these civil proceedings against the Respondent. Entering into a settlement agreement would not extinguish, waive, satisfy or otherwise affect the Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance, and EPA would retain authority to initiate a new enforcement action based on evidence of new or continued violations.

VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, the Respondent may choose to pay the total amount of the proposed penalty, **\$25,000**, within thirty (30) days after receipt of the Complaint, provided that the Respondent files 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-02-2017-3303

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 the 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 pursuant to 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. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by the Respondent shall constitute a waiver of the Respondent's rights 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 the

Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance, and EPA may initiate a new enforcement action based on evidence of new or continued violations.

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:

Tim Murphy, Esq.
Assistant Regional Counsel
Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone: (212) 637-3236
Fax: (212) 637-3202

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 the 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 _____ DAY OF NOV - 3, 2016.



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance
U. S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Binghamton Burial Vault Co. Inc.
1114 Porter Avenue
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SPDES Permit No. NYR00B377

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-02-2017-3303

CERTIFICATION OF SERVICE

NOV 07 2016

I certify that on _____, 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. Brian Abbey, Owner
Binghamton Burial Vault Co. Inc.
1114 Porter Avenue
Binghamton, New York 13901

Copy by Certified Mail
Return Receipt Requested

Mr. Joseph DiMura, P.E., Director
Bureau of Water Compliance Programs
NYSDEC
625 Broadway
Albany, New York 12233-4500

Dated: **NOV 07 2016**


Marie St. Germain, Branch Secretary
New York, New York