

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In The Matter of:

**Berwick Area Joint Sewer
Authority
1108 Freas Avenue
Berwick, PA 18603-1710**

Respondent

Proceeding to Assess Class I
Administrative Penalty Under
Section 309(g) of the Clean
Water Act

Docket No. CWA-03-2010-0273

**ADMINISTRATIVE PENALTY COMPLAINT
And NOTICE OF OPPORTUNITY
TO REQUEST HEARING**

I. STATUTORY AUTHORITY

1. This Administrative Penalty Complaint is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA" or "Complainant") by Section 309(g)(2)(A) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(A) ("CWA" or the "Act"). The Administrator has delegated this authority to the Regional Administrator of EPA Region III who in turn has delegated it to the Director of the Water Protection Division.
2. Pursuant to Section 309 of the Act, 33 U.S.C. § 1319, and in accordance with the enclosed *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* ("Consolidated Rules"), 40 C.F.R. Part 22, Complainant hereby proposes to assess a civil penalty in the amount of twenty-two thousand dollars (\$22,000) against Berwick Area Joint Sewer Authority ("Respondent") for violations of Section 301 of the CWA, 33 U.S.C. § 1311.
3. Pursuant to 40 C.F.R. § 22.14(a)(6), Respondent is hereby notified that the procedures set forth at 40 C.F.R. Subpart I (40 C.F.R. §§ 22.50-.52) apply to this proceeding.
4. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System

("NPDES") program under Section 402 of the Act, 33 U.S.C. § 1342, and 40 C.F.R. Part 122, or other specific authorization.

5. Section 502(5) of the Act, 33 U.S.C. § 1362(5), defines "person" as "an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body."
6. Section 502(6) of the Act, 33 U.S.C. § 1362(6), defines "pollutant" to include, *inter alia*, sewage, sewage sludge, biological materials, and industrial, municipal and agricultural waste.
7. Section 502(12) of the Act, 33 U.S.C. § 1362(12) defines "discharge of a pollutant" to include any addition of any pollutant to navigable waters of the United States from any point source.
8. Section 502(14) of the Act, 33 U.S.C. § 1362(14) defines "point source" as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well [or] discrete fissure..."

II. FINDINGS OF FACT

9. Respondent is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
10. Respondent owns and operates a wastewater treatment plant ("WWTP") located at 1108 Freas Avenue, Berwick, Columbia County, Pennsylvania, which discharges pollutants into the Susquehanna River.
11. The Susquehanna River is a navigable water, and hence a "water of the United States" as set forth in Section 502(7) of the Act, 33 U.S.C. § 1362(7).
12. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Pennsylvania Department of Environmental Protection ("PADEP" or "DEP") issued to Respondent NPDES Permit No. PA0023248 (the "Permit"), on January 11, 2008, for the discharge of pollutants from the WWTP into the Susquehanna River.
13. The Permit is set to expire on January 31, 2013.

III. FINDINGS OF VIOLATION

Count I – Failure To Submit Sampling Plan Timely

14. Part C, Section V(E) of the Permit requires the Respondent to, in pertinent part, to submit PADEP and EPA within three months of permit issuance “a sampling plan for collection of necessary data” (hereinafter, “sampling plan.”)
15. Because the Permit was issued on January 11, 2008, Respondent’s sampling plan for collection of necessary data was due April 11, 2008.
16. Respondent failed to submit to PADEP and EPA the required sampling plan by April 11, 2008.
17. Respondent’s failure to submit the required sampling plan to PADEP and EPA within three months of permit issuance is a violation of Part C, Section VII (d) of the Permit, and Section 301 of the Act, 33 U.S.C. § 1311.
18. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, violations of the Act, such as these, which occurred between March 15, 2004 and January 12, 2009 subject the violator to civil penalties in an amount not to exceed \$11,000 per violation.
19. On November 26, 2008, EPA sent a letter in which it reminded Berwick of its requirement to submit the overdue sampling plan and stated that it had not yet received the sampling plan.
20. On January 20, 2009, EPA received Berwick’s sampling plan more than 10 months after its due date.
21. On February 25, 2009, EPA provided comments to Berwick on its sampling plan identifying particular areas of concern with the sampling plan.

Count II – Failure To Submit Reevaluation of Local Limits

22. Part C, Section VIII(D) of the Permit requires the Respondent to, in pertinent part, to “submit to the Department and EPA a reevaluation of its local limits based on a headworks analysis of its treatment plant within 1 year of permit issuance.”
23. Because the Permit was issued on January 11, 2008, Respondent’s sampling plan for collection of necessary data was due January 11, 2009.

24. Respondent failed to submit to EPA and PADEP a reevaluation of its local limits based on a headworks analysis of its WWTP within one year of permit issuance, which was due January 11, 2009.
25. Respondent has therefore violated Part C, Section VIII(D) of the Permit, and Section 301 of the Act, 33 U.S.C. § 1311.
26. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, violations of the Act, such as these, which occurred between March 15, 2004 and January 12, 2009 subject the violator to civil penalties in an amount not to exceed \$11,000 per violation.
27. On November 26, 2009, EPA contacted Respondent in writing and reminded Respondent that its reevaluation of local limits was due January 11, 2009.
28. As of the date of this Complaint, Respondent has not submitted the required reevaluation of its local limits.

IV. PROPOSED CIVIL PENALTY

29. Based upon the foregoing allegations, and pursuant to the authority of Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), Complainant hereby proposes to issue a Final Order Assessing Administrative Penalties to the Respondent in the amount of \$22,000. This does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.
30. The proposed penalty was determined after taking into account the nature, circumstances, extent and gravity of the violation, Respondent's prior compliance history, Respondent's ability to pay, the degree of culpability for the cited violations, and any economic benefit or savings to Respondent because of the violations, all of which are factors identified at Section 309(g)(3) of the Clean Water Act, 33 U.S.C. § 1319(g)(3). In addition, to the extent that facts or circumstances unknown to Complainant at the time of issuance of this Complaint become known after issuance of this Complaint, such facts or circumstances may also be considered as a basis for adjusting the proposed administrative penalty.
31. The Regional Administrator or his delegatee may issue a Final Order Assessing Administrative Penalties after thirty (30) days and without further proceedings following Respondent's receipt of this Complaint, unless Respondent, within that time, either pays

the penalty or responds to the allegations in the Complaint according to the terms of Section V, below.

32. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309 of the Act, 33 U.S.C. § 1319, shall affect Respondent's continuing obligation to comply with the Clean Water Act, any other Federal or State laws, 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.

V. ANSWER TO COMPLAINT AND OPPORTUNITY TO REQUEST HEARING

33. Respondent must file an Answer to this Complaint; failure to file an Answer may result in entry of a Default Judgment against Respondent.
34. Upon issuance of a Default Judgment, the civil penalty proposed herein shall become due and payable.
35. Respondent's failure to fully pay the entire penalty, assessed by the Default Order, by the due date may result in a civil action to collect the assessed penalty, plus interest, attorneys' fees, costs, and an additional quarterly nonpayment penalty pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9).
36. In addition, the default penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.
37. Any Answer must clearly and directly admit, deny, and/or explain each of the factual allegations contained in the Complaint with respect to which the Respondent has any knowledge, or clearly and directly state that the Respondent has no knowledge as to particular factual allegations in the Complaint.
38. The Answer shall also state the following:
 - a. the specific factual and legal circumstances or arguments which are alleged to constitute any grounds of defense;
 - b. the specific facts that Respondent disputes;
 - c. Respondent's basis for opposing the proposed penalty; and
 - d. whether Respondent requests a hearing.

Failure to admit, deny or explain any of the factual allegations in the Complaint constitutes admission of the undenied allegations.

39. Pursuant to Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), Respondent may request a hearing on the proposed civil penalty within thirty (30) days of receiving this Complaint.
40. The procedures for hearings are governed by the *Consolidated Rules*.
41. At the hearing, Respondent may contest any material fact contained in the Findings listed in Sections II and III, above, and the appropriateness of the amount of the proposed civil penalty in Section IV, above.
42. Any Request for Hearing and Answer to this Complaint that Respondent wishes to file must be filed within thirty (30) days of receiving this Complaint with the following:

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

43. Copies of the Answer and Request for Hearing, along with any and all other documents filed in this action, shall also be sent to the following:

Ms. Pamela Lazos
Senior Assistant Regional Counsel (3RC20)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

VI. SETTLEMENT CONFERENCE

44. EPA encourages settlement of proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the Act.
45. Whether or not a hearing is requested, Respondent may request a settlement conference with Complainant to discuss the allegations of the Complaint and the amount of the proposed civil penalty. **However, a request for a settlement conference does not relieve the Respondent of the responsibility of filing an Answer within thirty (30) days following Respondent's receipt of this Complaint.**
46. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his delegatee.

47. The execution of such a Consent Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint or to appeal the Final Order accompanying the Consent Agreement.
48. If you wish to arrange a settlement conference, or if you have any questions related to this proceeding, please contact Pamela Lazos, Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, Region III, at (215) 814-2658 before the expiration of the thirty (30) day period following your receipt of this Complaint.
49. If you are represented by legal counsel, you must have your counsel contact Ms. Lazos on your behalf.

VII. QUICK RESOLUTION

50. In accordance with 40 C.F.R. § 22.18(a), and subject to the limitations in 40 C.F.R. § 22.45, Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint.
51. If Respondent pays the specific penalty proposed in this Complaint within thirty (30) days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1), no Answer need be filed.
52. If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but needs additional time (more than the allotted thirty (30) days) to pay the penalty, then pursuant to 40 C.F.R. § 22.18(a)(2), Respondent may file a written statement with the Regional Hearing Clerk within thirty (30) days of receiving this Complaint stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1) but needs additional time in which to do so.
53. Such written statement need not contain any response to, or admission of, the allegations in the Complaint.
54. Such statement shall be filed with the following:

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

and a copy shall be provided to:

Ms. Pamela Lazos (3RC20)
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street,

Philadelphia, PA 19103-2029.

55. Upon filing such a written statement, Respondent will receive an additional thirty (30) days, for a total of sixty (60) days from the date of receiving this Complaint, in which to pay the full amount of the proposed penalty.
56. **Failure to pay in full the proposed penalty within thirty (30) days of receipt of this Complaint, or within sixty (60) days of receipt of this Complaint should Respondent file a written statement with the Regional Hearing Clerk pursuant to 40 C.F.R. § 22.18(a)(2), may subject the Respondent to default pursuant to 40 C.F.R. § 22.17.**
57. Payment of the penalty shall be made by one of the following methods and shall reference Respondent's name and address and the Docket Number of this action (EPA Docket No. CWA-03-2010-0273):
- a. Via certified check or cashier's check drawn on a bank with branches in the United States, made payable to "United States Treasury."
 - i. If sent via first-class mail, to:
 - U.S. Environmental Protection Agency
 - Fines & Penalties
 - Cincinnati Finance Center
 - P. O. Box 979077
 - St. Louis, MO 63197-9000
 - Contact: Eric Volck 513-487-2105
 - ii. If sent via UPS, Federal Express, or Overnight Mail, to:
 - U.S. Bank
 - Government Lockbox 979077
 - U.S. EPA, Fines & Penalties
 - 1005 Convention Plaza
 - Mail Station SL-MO-C2-GL
 - St. Louis, MO 63101
 - Contact: 314-418-1028
 - b. Via certified check or cashier's check in any currency drawn on a bank with no branches in the United States, made payable to "United States Treasury" and addressed for delivery to:
 - Cincinnati Finance
 - U.S. EPA, MS-NWD
 - 26 W. M.L. King Drive
 - Cincinnati, OH 45268-0001

c. Via wire transfer, sent to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 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"

d. Via electronic payment made through the ACH (Automated Clearing House), also known as Remittance Express (REX), directed to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Finance Center Contacts:
John Schmid: 202-874-7026, or
REX: 866-234-5681

e. Via online payment option:

<https://www.pay.gov/paygov>

Enter sfo 1.1 in the search field. Open and complete the form for the Cincinnati Finance Center.

f. These payment instructions are also available online
http://www.epa.gov/ocfo/finservices/make_a_payment.htm

58. At the same time payment is made, copies of the check and/or proof of payment via wire transfer or ACH shall be mailed to:

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

and to:

Ms. Pamela Lazos (3RC20)
Senior Assistant Regional Counsel
U.S. EPA, Region III

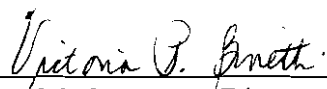
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029.

59. Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3), the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment of the penalty by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the final order.

VIII. PUBLIC PARTICIPATION

60. EPA is obligated, pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), to give members of the public notice of and an opportunity to comment on this proposed penalty assessment.
61. If Respondent requests a hearing on this proposed penalty assessment, members of the public who submitted timely comments on this proposed penalty assessment will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to not only be notified of the hearing but also to be heard and to present evidence at the hearing on the appropriateness of this proposed penalty assessment.
62. If Respondent does not request a hearing, EPA may issue a Final Order Assessing Administrative Penalties, in which case those members of the public who submitted timely comments on this proposed penalty assessment will have an additional thirty (30) days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon. 33 U.S.C. § 1319(g)(4)(C). EPA will grant the petition and will hold a hearing if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.

Date: 6/30/2010


for Jon M. Capacasa, Director
Water Protection Division

NOTICE OF INTENT TO ASSESS
ADMINISTRATIVE PENALTY
AND
OPPORTUNITY FOR PUBLIC COMMENT
U.S. ENVIRONMENTAL PROTECTION AGENCY--REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

Date of Notice: [] 6-30-10

Comment Period: Thirty (30) days from date of publication of notice

Action: Notice of Proposed Assessment of Clean Water Act Section 309(g) Class I Penalty and Opportunity to Comment

NOTICE. The U.S. Environmental Protection Agency, Region III ("EPA" or "Complainant") is hereby giving notice that it has issued an Administrative Penalty Complaint to Berwick Area Joint Sewer Authority ("Respondent") and notice of its intent to assess administrative penalties of \$22,000, under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g) for violation of Respondent's NPDES permit PA0023248 issued under the Clean Water Act. The following further identifies the case and should be included in any written comments submitted:

Name of Case: Berwick Area Joint Sewer Authority

Docket Number: CWA-03-2010-0273

Date Filed with Regional Hearing Clerk: [] 6-30-10

OPPORTUNITY FOR COMMENT. Section 309(g) of the Act, 33 U.S.C. § 1319(g) requires that interested persons be given notice of the proposed penalty and a reasonable opportunity to comment. Procedures by which the public may submit written comments or participate in the proceedings are described in 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*, (Consolidated Rules), 40 C.F.R. Part 22. The deadline for submission of written public comments is thirty (30) days after issuance of this public notice. Comments should be made to:

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

If Respondent requests a hearing within thirty (30) days of receiving the Administrative Complaint, those submitting written comments in response to this Notice will be advised of the time and date of the hearing and may appear to present evidence on the appropriateness of the proposed penalty.

If Respondent does not request a hearing within thirty (30) days of receiving the Administrative Complaint, should EPA issue a Final Order Assessing Administrative Penalties, those members of the public who submitted timely comments on this proposed penalty assessment will have an additional thirty (30) days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon.

FOR FURTHER INFORMATION. Interested parties may contact the following EPA representatives to learn more about this action:

Ms. Lisa Trakis (3WP42)
U.S. Environmental Protection
Agency--Region III
Environmental Engineer
1650 Arch Street
Philadelphia, PA 19103
215/814-5433

Ms. Pamela Lazos (3RC20)
U.S. Environmental Protection
Agency--Region III
Assistant Regional Counsel
1650 Arch Street
Philadelphia, PA 19103
215/814-2658

In the Matter of
EPA Docket No. CWA-03-2010-0273

CERTIFICATE OF SERVICE

I certify that the enclosed Administrative Penalty Complaint with Notice of Opportunity to Request Hearing was delivered to the following persons:

Delivery by Certified Mail Return Receipt Requested:

Ms. Gloria Bobersky
Authority Manager
Berwick Area Joint Sewer Authority
1108 Freas Avenue
Berwick, PA 18603-1710

and

Delivery by hand (original and one copy):

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Date:

6-30-10



Ms. Bettina Dunn
Paralegal, Office of Regional Counsel
US EPA Region III

Enclosure