

Verrill Dana_{LLP}

Attorneys at Law

HARLAN M. DOLINER
Counsel
hdoliner@verrilldana.com
Direct: 617-309-2617

ONE BOSTON PLACE, SUITE 1600
BOSTON, MASSACHUSETTS 02108-4407
Phone (617) 309-2600
Fax (617) 309-2601
www.verrilldana.com

June 11, 2015

By Hand Delivery

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1
5 Post Office Square, Suite 100
Mail Code ORA 18-1
Boston, Massachusetts 02109-3912



Re: In the Matter of Borrego Solar Systems, Inc., CWA-01-2015-0047

Dear Ms. Santiago:

Enclosed for docketing and filing in the referenced matter is an original and one copy of Respondent Borrego Solar Systems, Inc.'s *Answer to Administrative Complaint and Request for Hearing*, pursuant to 40 C.F.R. § 22.15(c).

Please feel free to contact me at the above address if you have questions concerning this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "H. Doliner".

Harlan M. Doliner

Enclosure

cc: Jeffrey Kopf and Margery Adams, Senior Enforcement Counsel
U.S. Environmental Protection Agency, by hand and with enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of:)	Docket No. CWA-01-2015-0047
Borrego Solar Systems, Inc.,)	ANSWER TO ADMINISTRATIVE COMPLAINT Proposing to Assess a Civil Penalty Under Section 309(g) of the Clean Water Act
Respondent)	

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 (“the Act”), 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”).

ANSWER: Paragraph 1 consists of legal conclusions and characterizations as to which no responsive pleading is required.

2. Pursuant to Section 309(g) of the Act, 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 again Borrego Solar Systems, Inc. (“Respondent”) for failing to comply with the NPDES General Permit for Storm Water Discharges from Construction Activities (“GOP”) in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

ANSWER: Paragraph 2 consists of legal conclusions and characterizations as to which no responsive pleading is required. Any factual allegations in Paragraph 2 are denied.

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Office of Regional Hearing Clerk

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into the navigable waters of the United States except in compliance with, among other things, a NPDES permit issued under Section 402 of the Act, 33 U.S.C. § 1342.

ANSWER: Paragraph 3 consists of legal conclusions and characterizations as to which no responsive pleading is required.

4. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines “discharge of pollutants” to include “any addition of any pollutant to navigable waters from any point source.”

ANSWER: Paragraph 4 consists of legal conclusions and characterizations as to which no responsive pleading is required.

5. Section 502(6) of the Act, 33 U.S.C. § 1362(6), defines “pollutant” to include, among other things, dredged spoil, garbage, rock, sand, and cellar dirt.

ANSWER: Paragraph 5 consists of legal conclusions and characterizations as to which no responsive pleading is required.

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

ANSWER: Paragraph 6 consists of legal conclusions and characterizations as to which no responsive pleading is required.

7. Section 502(4) of the Act, 33 U.S.C. § 1362(14), defines a “point source” as “any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.”

ANSWER: Paragraph 7 consists of legal conclusions and characterizations as to which no responsive pleading is required.

8. Section 502(5) of the Act, 33 U.S.C. § 1362(5), defines “person” to include “an individual, corporation, partnership, [or] association.”

ANSWER: Paragraph 8 consists of legal conclusions and characterizations as to which no responsive pleading is required.

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

ANSWER: Paragraph 9 consists of legal conclusions and characterizations as to which no responsive pleading is required.

10. Section 308(a) of the Act, 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 Act, including the issuance of NPDES permits pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

ANSWER: Paragraph 10 consists of legal conclusions and characterizations as to which no responsive pleading is required.

11. Pursuant to Sections 308 and 402 of the Act, EPA promulgated storm water discharge regulations at 40 U.S.C. § 122.26. Section 122.26(c) requires discharges of storm water associated with “industrial activity” to apply for an individual permit or seek coverage under a promulgated storm water general permit. Section 122.26(b)(14)(x) defines industrial activity to include construction activity including the clearing, grading, and excavation of land. Section 122.26(b)(13) defines storm water to include storm water runoff, snow melt runoff, and surface runoff and drainage.

ANSWER: Paragraph 11 consists of legal conclusions and characterizations as to which no responsive pleading is required.

12. In February 2012, EPA reissued the NPDES General Permit for Stormwater Discharges from Construction Activities, 77 Fed. Reg. 12,286 (Feb. 29, 2012) (“2012 CGP”). The 2012 CGP was issued for a term of 5 years and became effective on February 16, 2012. The 2012 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.

ANSWER: Paragraph 12 consists of legal conclusions and characterizations as to which no responsive pleading is required. Any factual allegations in Paragraph 12 are denied.

13. To obtain coverage under the 2012 CGP, Part 1 requires “operators” to submit a notice of intent (“NOI”). The 2012 CGP, Appendix A, defines “operator” as “any party associated with a construction project” that either “has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications” or “has day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the permit).”

ANSWER: Paragraph 13 consists of legal conclusions and characterizations as to which no responsive pleading is required.

14. Part 1.4.2 of the 2012 CGP provides that a NOI must be submitted at least 14 calendar days prior to commencing earth-disturbing activities.

ANSWER: Paragraph 14 consists of legal conclusions and characterizations as to which no responsive pleading is required.

15. Part 7.2 of the 2012 CGP requires an operator to develop a storm water pollution prevention plan (“SWPPP”) describing the nature of construction activities and

describing all stormwater control measures that are or will be installed and maintained at the construction project covered by the permit. Part 7.2.12 of the 2012 CGP requires that the SWPP describe the procedures for maintaining stormwater control measures, conducting site inspections, and taking corrective actions.

ANSWER: Paragraph 15 consists of legal conclusions and characterizations as to which no responsive pleading is required.

16. Parts 2 and 3 of the 2012 CGP set forth technology-based and water quality-based effluent limits. These limits include erosion and sediment controls, off-site sediment track-out, and erosion control and stabilization. Sediment controls include the use of sediment basins, silt fences, vegetative buffer strips or equivalent sediment controls.

ANSWER: Paragraph 16 consists of legal conclusions and characterizations as to which no responsive pleading is required. Any factual allegations in Paragraph 16 are denied.

17. Part 2.1 of the 2012 CGP requires that an operator “must design, install, and maintain erosion and sediment controls that minimize the discharge of pollutants from earth-disturbing activities.”

ANSWER: Paragraph 17 consists of legal conclusions and characterizations as to which no responsive pleading is required.

18. Part 2.1.1.3 of the 2012 CGP requires that, “by the time earth-disturbing activities in any given portion of [a] site have begun,” an operator must “install and make operational any downgradient controls (*e.g. buffers or equivalent sediment controls, perimeter controls, exit point controls, storm drain inlet protection*) that control discharges from the initial site clearing, grading, excavating and other land-disturbing activities.”

ANSWER: Paragraph 18 consists of legal conclusions and characterizations as to which no responsive pleading is required. Any factual allegations in Paragraph 18 are denied.

19. Part 2.1.1.3 b. of the 2012 CGP provides that an operator “must install all stormwater controls in accordance with good engineering practices, including applicable design specifications.”

ANSWER: Paragraph 19 consists of legal conclusions and characterizations as to which no responsive pleading is required.

20. Part 2.1.1.4 of the 2012 CGP requires an operator to “ensure that all erosion and sediment controls required in this Part remain in effective operating condition during permit coverage and are protected from activities that would reduce their effectiveness.” When problems are found, an operator “must make necessary repairs or modifications in accordance with the following schedule: Initiate work to fix the problem completely after discovering the problem, and complete such work by the close of the next work day, if the problem does not require significant repair or replacement, or if the problem can be corrected through routine maintenance.”

ANSWER: Paragraph 20 consists of legal conclusions and characterizations as to which no responsive pleading is required. Any factual allegations in Paragraph 20 are denied.

21. Part 2.1.2.1 of the 2012 CGP states that an operator “must ensure that any discharges to surface waters through the area between the disturbed portions of the property and any surface waters located within 50 feet of [the] site are treated by an area of undisturbed natural buffer and/or additional erosion and sediment controls in order to achieve a reduction in sediment load equivalent to that achieved by a 50-foot natural buffer.”

ANSWER: Paragraph 21 consists of legal conclusions and characterizations as to which no responsive pleading is required.

22. Part 2.1.2.2 of the 2012 CGP states that an operator “must install sediment controls along those perimeter areas of your site that will receive stormwater from earth-disturbing activities,” and that an operator must “remove sediment before it has accumulated to one-half of the above-ground height of any perimeter control.”

ANSWER: Paragraph 22 consists of legal conclusions and characterizations as to which no responsive pleading is required.

ALLEGATIONS

23. Respondent Borrego Solar Systems, Inc. is a domestic profit corporation organized under the laws of California, with a place of doing business at 1115 Westford St., 2nd Floor, Lowell, Massachusetts 01851.

ANSWER: Admitted insofar as Respondent is a domestic profit corporation organized under the laws of California with a place of doing business at 1115 Westford St., 2nd Floor, Lowell, Massachusetts 01851 at the time alleged in the Complaint. Respondent’s current place of doing business is 55 Technology Drive, Suite 102, Lowell, MA 01851.

24. Respondent is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

ANSWER: Paragraph 24 consists of legal conclusions and characterizations as to which no responsive pleading is required.

25. Respondent provides engineering and construction services for the development of solar power sites. Respondent provided construction services for, and directed the construction at, three solar power array sites located off Little Rest Road, in Warren, Massachusetts,

namely Midstate 1 (also known as “Midstate A”), Midstate 2 (also known as “Midstate B”), and Midstate 3 (also known as “Midstate C”). Hereinafter, the sites are identified in this Complaint as the “Midstate 1 Site,” the “Midstate 2 Site,” and the “Midstate 3 Site,” and they are identified collectively as the “Sites” or the “Construction Sites.”

ANSWER: Admitted insofar as the Respondent provided construction services for, and directed construction at three solar power array sites located off Little Rest Road, in Warren, Massachusetts.

26. Respondent submitted Notices of Intent (“NOIs”) to be covered under the 2012 CGP for the Midstate 1 Site (Permit No. MAR12AL63), Midstate 2 Site (Permit No. MAR12AL68) and Midstate 3 Site (Permit No. MAR12AL26), on June 21, 2013, June 23, 2013, and June 14, 2013, respectively.

ANSWER: Admitted.

27. Construction activities under the NOI resulted in disturbed areas of approximately 24.75 acres at the Midstate 1 Site; approximately 26.5 acres at the Midstate 2 Site; and approximately 37.8 acres at the Midstate 3 Site.

ANSWER: Denied.

28. Respondent commenced construction activities at the Sites under the NOI on about August 31, 2013. Construction activities were completed on approximately June 27, 2014. On-site construction included clearing, grading and excavation activities.

ANSWER: Admitted insofar as Respondent’s activities included clearing, grading and excavation on the dates stated. Further answering, Respondent states that its construction activities also included, but were not limited to, the installation and maintenance of storm

water management infrastructure, implementation of stormwater best practices, and on-site construction impact prevention and mitigation training.

29. Respondent had operational control over construction plans and specifications for the Construction Sites and day-to-day operational control of those activities at the Sites necessary to ensure compliance with permit conditions. Thus, Respondent is an “operator” at the Construction Sites within the meaning of the 2012 CGP.

ANSWER: Admitted insofar as Respondent had day-to-day control over the Construction Sites. Further answering, Respondent states that Paragraph 29 contains legal conclusions to which no responsive pleading is required.

30. When Respondent commenced clearing, grading, and excavating at the Construction Sites, Respondent engaged in the “commencement of earth-disturbing activities” as defined in Appendix A of the 2012 CGP.

ANSWER: Paragraph 30 consists of legal conclusions to which no responsive pleading is required.

31. The construction at the Construction Sites was an “industrial activity” within the meaning of 40 C.F.R. § 122.26(b)(14)(x).

ANSWER: Paragraph 31 consists of legal conclusions to which no responsive pleading is required.

32. As an “operator” of the Construction Sites, once Respondent obtained NPDES permit coverage for the construction activities at the Construction Sites, Respondent was required to comply with all requirements and conditions for operation under the Act, its regulations, and the applicable permit.

ANSWER: Paragraph 32 consists of legal conclusions to which no responsive pleading is required.

33. The Construction Sites are located within the Quaboag River watershed. The Quaboag River is classified by the Commonwealth of Massachusetts as a Class B water.

ANSWER: Admitted insofar as Construction Sites are located within the Quaboag River watershed. The balance of Paragraph 33 consists of legal conclusions to which no responsive pleading is required.

34. On January 8, 2014, in response to concerns about impacts to wetlands from runoff at the Construction Sites, the Conservation Commission for the Town of Warren, Massachusetts, issued three enforcement orders (File Numbers 318-0208, 318-0207, and 318-0206), requiring among other things, the stabilization of the Sites and use of erosion control to prevent sediment from surface runoff into surface waters and buffers zones, and the cleanup of sedimentation in an intermittent stream at Midstate 3.

ANSWER: Admitted insofar as Conservation Commission for the Town of Warren, Massachusetts, issued three enforcement orders (File Numbers 318-0208, 318-0207, and 318-0206), requiring among other things, the stabilization of the Sites and use of erosion control to prevent sediment from surface runoff into surface waters and buffers zones, and the cleanup of sedimentation in an intermittent stream at Midstate 3. Otherwise, Respondent lacks the requisite knowledge with regard to the internal reasoning of said Conservation Commission and so cannot either admit or deny the balance of Paragraph 34.

35. On May 1, 2014, EPA conducted an inspection at Midstate 1, Midstate 2, and Midstate 3.

ANSWER: Admitted.

36. At Midstate 1, EPA's inspector observed erosional gullies and runoff from unvegetated areas, and failures of erosion controls.

ANSWER: Respondent lacks the requisite knowledge with regard to the personal views of EPA's inspector and so cannot either admit or deny the allegations set forth in Paragraph 36. Further answering, Respondent states that on May 1, 2014 its on-site representatives met with EPA's inspector, Mr. Andrew Spejewski. Respondent's representatives walked and/or reviewed all three Sites with Mr. Spejewski, along with Mr. Ryan Joyce of New England Environmental, Inc. Mr. Spejewski indicated on several occasions he was pleased to see the ongoing preventative maintenance Respondent had been performing with its sub-contractors, with the possible exception of Midstate 1's far West Slope. Mr. Spejewski expressed his overall satisfaction with Respondent's progress and maintenance of the Site and did not state any major concerns with the then-current condition of any of the three Project Sites, stating that there would be no follow-up report forthcoming from EPA. Respondent and Mr. Spejewski spent approximately three hours onsite.

37. At Midstate 2, EPA's inspector observed significant runoff flowing offsite into a pond and wetlands associated with Tufts Brook; erosional gullies and runoff; failures of erosion controls; and unstabilized soils. In addition, a stormwater detention basin in the northeast corner of Midstate 2 had not been built, although the earth-moving and construction had already commenced, and soils were not stabilized.

ANSWER: Respondent lacks the requisite knowledge with regard to the personal views of EPA's inspector and so cannot either admit or deny the allegations set forth in Paragraph 37. Further answering, Respondent states that on May 1, 2014 its on-site

representatives meet with EPA's inspector, Mr. Andrew Spejewski. Respondent's representative walked and/or reviewed all three Sites with Mr. Spejewski, along with Mr. Ryan Joyce of New England Environmental, Inc. Mr. Spejewski had indicated on several occasions he was pleased to see the ongoing Preventative Maintenance Respondent had been performing along with its sub-contractors, including that he was pleased to see multiple levels of BMP's in-place, monitored and maintained on Midstate 2. Mr. Spejewski expressed his overall satisfaction with Respondent's progress and maintenance of the Site and did not state any major concerns with the then-current condition of any of the three Project Sites, stating that there would be no follow-up report forthcoming from EPA. Respondent and Mr. Spejewski spent approximately three hours onsite.

38. At Midstate 3, EPA's inspector observed erosional gullies and runoff; failure of erosional controls; and unstabilized detention basins, one with turbid water overflowing the basin and depositing sediments into a tributary to Taylor Brook, and another where turbid water overtopped a basin and entered wetlands adjacent to Taylor Brook.

ANSWER: Respondent lacks the requisite knowledge with regard to the personal observations of EPA's inspector and so cannot either admit or deny the allegations set forth in Paragraph 38. Further answering, Respondent states that on May 1, 2014 its on-site representatives meet with EPA's inspector, Mr. Andrew Spejewski. Respondent's representative walked and/or reviewed all three Sites with Mr. Spejewski, along with Mr. Ryan Joyce of New England Environmental, Inc. Mr. Spejewski had indicated on several occasions he was pleased to see the ongoing Preventative Maintenance Respondent had been performing along with its sub-contractors. With specific regard to Midstate 3, Mr. Spejewski's only comments were in connection with a temporary swale to divert water

into Detention Basin # 1 combined with removal and replacement of approximately 100 feet of silt fence & bales outside of the chain link fence bordering Pond # 1, as they had been maximized so that their removal or replacement would be the only feasible solution. Mr. Spejewski expressed his overall satisfaction with Respondent's progress and maintenance of the Site and did not state any major concerns with the then-current condition of any of the three Project Sites, stating that there would be no follow-up report forthcoming from EPA. Respondent and Mr. Spejewski spent approximately three hours onsite.

39. EPA issued a request for information pursuant to Section 308 of the Act to Respondent on July 3, 2014. Respondent responded to the request on August 28, 2014. In its response, Respondent stated that although construction plans called for the use of a clay core for the detention basins at Midstate 3, they had been constructed without clay cores or other techniques sufficient to prevent break-through or erosion of the walls. The detention basins in Midstate 3 were reportedly reconstructed in June and July, 2014 utilizing a geocomposite clay liner.

ANSWER: Admitted insofar as Respondent responded to EPA's request on August 28, 2014. Otherwise denied, as said response speaks for itself.

40. In January, 2014, in response to the Town of Warren's enforcement orders, Respondent hired an environmental consulting firm, New England Environmental, Inc. ("NEE"), to monitor and document erosion and sedimentation at the Sites, to document, quantify and assess impacts to resource areas, a to [SIC] determine the best approach to restoration and cleanup, and to oversee restoration and cleanup.

ANSWER: Admitted.

41. In various observations at Midstate 1 on January 11, 12, 14 and 15, 2014, NEE observed: that although best management practices (“BMPs”) were in place, Site 1 was overwhelmed by rain and snow melt; exposed soil at the site contributed to turbid runoff; several areas of turbid runoff; and that turbid water was flowing through a temporary basin and swale, several rows of erosion control barrier, and into Taylor Brook.

ANSWER: Respondent lacks the requisite knowledge with regard to the personal observations of NEE’s inspector and so cannot either admit or deny the allegation set forth in Paragraph 41. Further answering, NEE produced two reports following its visits to Midstate 1 on January 11, 12, 14 and 15, 2014. Respondent denies the allegations as to January 12 and 15, 2014 and states that the documents memorializing the observations referred to in Paragraph 41 speak for themselves.

42. NEE issued a Wetland Impact Evaluation report for Site B (Midstate 2) on May 21, 2014 (revised June 12, 2014). The report noted that at least 20 square feet of sediment had been deposited in an intermittent stream flowing north between Midstate 1 and Midstate 2; and that sediment was deposited in wetlands north, and to the east/northeast of Midstate 2. NEE conducted restoration at these locations in June, 2014, removing approximately 25 cubic yards of material from wetlands at Midstate 2.

ANSWER: Admitted insofar as NEE conducted restoration at the described site; otherwise denied. Further answering, the report referenced in Paragraph 42 speaks for itself.

43. NEE also issued a Wetland Impact Evaluation for Site C (Midstate 3) on May 21, 2014 (revised June 12, 2014). The report noted that near detention basin #3 in the southwest corner of Midstate 3, erosion control barriers were heavily backfilled with sediment, and

sediment was observed in the wetlands nearby. Similarly, sedimentation was observed in wetlands near detention basin #1 in the northeast corner. In addition, widespread sedimentation, ranging in depth from 3-8 inches, was observed in an intermittent stream channel near the entrance to Midstate 3. NEE conducted restoration at these locations in June and July, 2014, removing approximately 10 cubic yards of material from wetlands and the intermittent stream at Midstate 3.

ANSWER: Admitted insofar as NEE conducted observations and restoration at the described site; otherwise denied. Further answering, the report referenced in Paragraph 43 speaks for itself.

44. Storm water at the Construction Sites drains to, and discharges storm water, to Taylor Brook and its tributaries to the west, and Tufts Brook, including some ponded areas, and adjacent wetlands to the north.

ANSWER: Borrego lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 44, and on that basis denies the allegations.

45. Taylor Brook flows to Tufts Brook, which flows to Blodgett Mill Brook, and thence to the Quaboag River, the Chicopee River, the Connecticut River, and Long Island Sound, a part of the Atlantic Ocean.

ANSWER: Borrego lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 45, and on that basis denies the allegations.

46. Taylor Brook, Tufts Brook, its ponded areas and wetlands adjacent to it, Blodgett Mill Brook, the Quaboag River, the Chicopee River, the Connecticut River, Long Island Sound 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 in Section 502(7) of the Act, 33 U.S.C. § 1362(7).

ANSWER: Paragraph 46 consists of legal conclusions to which no responsive pleading is required. To the extent Paragraph 46 contains any factual allegations, they are denied.

47. Storm water from disturbed areas of the Sites contaminated with sand, dirt, sediment, suspended solids, residues of construction material, and turbidity has been conveyed through detention basins, outfalls, ditches, swales, and gullies, to waters of the United States. The detention basins, outfalls, ditches, swales, and gullies constitute “point source[s]” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

ANSWER: Paragraph 47 consists of legal conclusions to which no responsive pleading is required. To the extent Paragraph 47 contains any factual allegations, Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47, and on that basis denies the allegations.

48. 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 Act, 33 U.S.C. § 1362(6).

ANSWER: Paragraph 48 consists of legal conclusions to which no responsive pleading is required. To the extent Paragraph 48 contains any factual allegations, Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 48, and on that basis denies the allegations.

49. The storm water discharges from the Site result in the “discharge of pollutants” as defined at Section 502(13) of the Act, 33 U.S.C. § 1362(12).

ANSWER: Paragraph 49 consists of legal conclusions to which no responsive pleading is required. To the extent Paragraph 49 contains any factual allegations, Respondent lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 49, and on that basis denies the allegations.

COUNT 1: FAILURE TO COMPLY WITH THE CONSTRUCTION GENERAL PERMIT

50. Complainant incorporates by reference, as if fully set forth herein, Paragraph 1 through 49.

ANSWER: Borrego repeats and realleges its answers to Paragraphs 1 through 49, and incorporates them by reference as if fully set out herein.

51. By failing to install and make operational the stormwater detention basin in the northeast corner of Midstate 2 before earth-disturbing activities were begun in that portion of the Midstate 2 Site, Respondent violated Part 2.1.1.3.a. of the 2012 CGP.

ANSWER: To the extent that the allegations contained in Paragraph 51 contain legal conclusions they do not require a response. To the extent a response is required, denied.

52. By failing to install stormwater detention basins at Midstate 3 in accordance with good engineering practices, including the design specification calling for a clay core construction, Respondent was in violation of Part 2.1.1.3.b. of the 2012 CGP.

ANSWER: To the extent that the allegations contained in Paragraph 52 contain legal conclusions they do not require a response. To the extent a response is required, denied.

53. By failing to ensure that discharges to surface waters through the area between the disturbed portions of the Construction Sites and surface waters were treated by an area of undisturbed natural buffer and/or additional erosion and sediment controls in order to

achieve a reduction in sediment load equivalent to that achieved by a 50-foot natural buffer, Respondent was in violation of Section 2.1.2.1 of the 2012 CGP.

ANSWER: To the extent that the allegations contained in Paragraph 53 contain legal conclusions they do not require a response. To the extent a response is required, denied.

54. By failing to install and/or maintain fabric filters, hay bales, and other perimeter controls at the Construction Sites, resulting in the discharge of between 24 and 35 cubic yards of sediment into wetlands and other surface waters, Respondent was in violation of Part 2.1.1.4 of the 2012 CGP.

ANSWER: To the extent that the allegations contained in Paragraph 54 contain legal conclusions they do not require a response. To the extent a response is required, denied.

55. By failing to remove sediment at the Construction Sites before it had accumulated to one-half of the above-ground height of the silt fencing, and by failing to ensure that this silt fencing remained in effective operating condition during permit coverage and was protected from activities that would reduce its effectiveness, Respondent was in violation of Parts 2.1.2.2. and 2.1.1.4 of the 2012 CGP.

ANSWER: To the extent that the allegations contained in Paragraph 55 contain legal conclusions they do not require a response. To the extent a response is required, denied.

56. By discharging storm water associated with industrial activity into waters of the U.S. in violation of the terms and conditions of a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and by failing to comply with all the conditions in the 2012 CGP, Respondent violated Section 301(a) of the Act, 33 U.S.C. § 1311(a) from approximately August 31, 2013 through at least May 1, 2014.

ANSWER: To the extent that the allegations contained in Paragraph 56 contain legal conclusions they do not require a response. To the extent a response is required, denied.

PROPOSED ASSESSMENT OF CIVIL PENALTY

57. Pursuant to Section 309(g) of the Act, 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); 78 Fed. Reg. 66,643 (Nov. 6, 2013)), Respondent is subject to civil penalties of up to sixteen thousand dollars (\$16,000) per day for each day during which the violation continued up to a maximum of one hundred and eighty-seven thousand and five hundred dollars (\$187,500) for each violation.

ANSWER: Paragraph 57 consists of legal conclusions and characterizations as to which no responsive pleading is required. Any factual allegations in Paragraph 57 are denied.

58. EPA is seeking a penalty from Respondent of up to \$16,000 for each day of violation for approximately 240 days, up to a maximum of \$187,500.

ANSWER: Paragraph 58 consists of legal conclusions and characterizations as to which no responsive pleading is required. Any factual allegations in Paragraph 58 are denied.

59. In determining the amount of the penalty to be assessed under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), EPA will take into account the statutory factors listed in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). These factors include the nature, circumstances, extent and gravity of the violations, Respondent's prior compliance history, the degree of culpability for the cited violations, any economic benefit or savings

accruing to Respondent resulting from the violations, Respondent's ability to pay the proposed penalty, and such other matters as justice may require.

ANSWER: Paragraph 59 consists of legal conclusions and characterizations as to which no responsive pleading is required. Any factual allegations in Paragraph 59 are denied.

60. The violations alleged are significant because failure to properly implement or maintain the BMPs necessary to prevent the discharge of pollutants resulted in discharge of between 24 and 35 cubic yards of sediment to waters of the United States.

ANSWER: Paragraph 60 consists of legal conclusions and characterizations as to which no responsive pleading is required. Any factual allegations in Paragraph 60 are denied.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

61. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.14, notice is hereby given that Respondent has the right to request a hearing on any material fact alleged in this Complaint and on the appropriateness of any proposed penalty. Any such hearing will be conducted in accordance with the Consolidated Rules of Practice, a copy of which is enclosed. Members of the public, to whom EPA is obliged to give notice of this proposed action, have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to comment on any proposed penalty and to be heard and to present evidence at the hearing.

ANSWER: To the extent that the allegations contained in Paragraph 61 contain legal conclusions they do not require a response. To the extent a response is required, Respondent lacks knowledge or information sufficient to form a belief as to their truth, and on that basis denies the allegations. Further answering, Respondent hereby requests

a hearing on the disputed material facts alleged in this Complaint and on the appropriateness of the proposed penalty.

62. Respondent's Answer must comply with 40 C.F.R. § 22.15 and must be filed with the Regional Hearing Clerk at the following address within thirty (30) days of receipt of the Complaint:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1
5 Post Office Square, Suite 100
Mail Code ORA18-1
Boston, Massachusetts 02109-3912

ANSWER: Admitted.

63. To be entitled to a hearing, Respondent must include a request for a hearing in its Answer to the Complaint.

ANSWER: Respondent respectfully requests a hearing upon the issues raised by this Complaint.

64. Pursuant to Section 22.5(c)(4) of the enclosed Consolidated Rules of Practice, the following individual is authorized to receive service on behalf of EPA:

Margery Adams, Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region 1
5 Post Office Square, Suite 100
Mail Code OES04-2
Boston, Massachusetts 02109-3912
Telephone: 617-918-1733

ANSWER: Admitted.

65. If Respondent does not file a timely Answer to this Complaint, Respondent may be found in default. Default constitutes, for purposes of this action only, an admission of 1 [SIC]

facts alleged in the Complaint and a waiver of Respondent's right to a hearing on factual allegations contained herein.

ANSWER: Respondent has timely filed and served its Answer to the Complaint.

66. The filing and service of documents, other than the complaint, rulings, orders, and decisions, in all cases before the Region 1 Regional Judicial Officer governed by the Consolidated Rules of Practice may be filed and served by email, consistent with the "Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer," a copy of which has been provided with the Complaint.

ANSWER: Respondent has been supplied with the Complaint and Consolidated Rules of Practice.

CONTINUED COMPLIANCE OBLIGATION

67. Neither assessment nor payment of an administrative penalty shall affect Respondent's continuing obligation to comply with the Act and implementing regulations and other applicable federal, state and local laws.

ANSWER: To the extent that the allegations contained in Paragraph 67 contain legal conclusions they do not require a response.

Dated: June 11, 2015



Harlan M. Doliner
Mathew J. Todaro
Verrill Dana, LLP
One Boston Place, Suite 1600
Boston, MA 02108-4407
Tel: 617-309-2600
Fax: 617-309-2601
E-mail: hdoliner@verrilldana.com

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

In the Matter of:)	Docket No. CWA-01-2015-0047
)	
Borrego Solar Systems, Inc.,)	ANSWER TO ADMINISTRATIVE
)	COMPLAINT Proposing to Assess a
)	Civil Penalty Under Section 309(g) of
Respondent)	the Clean Water Act
)	

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Answer to Administrative Complaint has been sent to the following persons on the date noted below:

Original and one copy,
hand-delivered:

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region 1 (ORA 18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Copy, hand-delivered:

Jeffrey Kopf, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code OES04-2
Boston, Massachusetts 02109-3912

Copy, hand-delivered:

Margery Adams, Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code OES04-2
Boston, Massachusetts 02109-3912

Dated: June 11, 2015



Harlan M. Doliner
Verrill Dana, LLP
One Boston Place, Suite 1600
Boston, MA 02108-4407
Tel: 617-309-2600
Fax: 617-309-2601
E-mail: hdoliner@verrilldana.com