



May 3, 2011

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

**Reference:** EPA Docket No. CWA-03-2011-0080DN  
Notice of Proposed Assessment of a Civil Penalty  
Answers Addressing Each Allegation in the Complaint  
VPDES Permit No. VAR10-10-103647

To Whom It May Concern:

As requested in the letter we received regarding the Notice of Proposed Assessment of a Civil Penalty served to us on April 6, 2011, EPA Docket No. CWA -03-2011-0080DN, we offer the following answers regarding each allegation in the Complaint, as demonstrated in Section III. FINDINGS OF VIOLATION:

**Count 1: Concrete Wash-out Area**

- Item #17 – Statement only, no response required.
- Item #18 – Statement only, no response required.
- Item #19:
  - We admit that at the time of the June 16, 2010 EPA inspection, the concrete wash-out area was not marked on the Site Map.
    - a. We have no grounds of defense for not having this area demonstrated on our site map.
    - b. We dispute no facts regarding this violation.
    - c. Basis for opposing any relief: We do respectfully request relief concerning this Count of the Violation, as although the site map was not marked, we did attempt to have a concrete wash-out area (although also found not to be 100% compliant but, upon additional discussions and education from the EPA Agents, immediate steps were taken to bring the wash-out area into compliance, as well as include the location of the concrete wash-out area on the site map – Please see the enclosed W. M. Jordan Company letter of May 3, 2011, regarding “Responses and Demonstration of Corrective Action” as to our steps to correct this deficiency. We specifically address this issue in Response “a”, Item #17).
    - d. No hearing is requested regarding Count 1 of this Complaint; however, we will request a Settlement Conference (as indicated in Section IV. of the EPA Administrative Complaint Information).



• Item #20:

- We admit that at the time of the June 16, 2010 EPA inspection, the concrete wash-out area that we had on site did not comply with the requirements of Section 1 Part D.1.Q (4) of the SWPPP.
  - a. We have no grounds of defense for not having this area fully up to compliance standards.
  - b. We dispute no facts regarding this violation.
  - c. Basis for opposing any relief: We do respectfully request relief concerning this Count of the Violation, as although our Concrete Wash-out area did not comply regarding the specific detail and standard, we did have a concrete wash-out area that was not allowing run-off to pollute any inlets or storm systems. Upon discussions with the EPA Agents, immediate steps were taken to bring the wash-out area into compliance – Please see the enclosed W. M. Jordan Company letter of May 3, 2011, regarding “Responses and Demonstration of Corrective Action” as to our steps to correct this deficiency. We specifically address this issue in Response “a”, Items #18, 19 & 21).
  - d. No hearing is requested regarding Count 1 of this Complaint; however, we will request a Settlement Conference (as indicated in Section IV. of the EPA Administrative Complaint Information).

• Item #21:

- We admit that at the time of the June 16, 2010 EPA inspection, failure to mark the concrete wash-out area on the Site Map included with the SWPPP and to contain the concrete wash-out area with controls specified in the SWPPP violate the Permit and Section 301 of the Act, 33, U.S.C. § 1311.
  - a. We have no grounds of defense for not having this area fully up to compliance standards.
  - b. We dispute no facts regarding this violation.
  - c. Basis for opposing any relief: As defined in our response to Response “c” in the above Items #19 & 20 we do respectfully request relief regarding this matter.
  - d. No hearing is requested regarding Count 1 of this Complaint; however, we will request a Settlement Conference (as indicated in Section IV. of the EPA Administrative Complaint Information).

**Count 2: Concrete Mixing Areas**

- Item #22 – Statement only, no response required.
- Item #23 – Statement only, no response required.
- Item #24:
  - We admit that at the time of the June 16, 2010 EPA inspection, the concrete mixing area at the south side of the Site was not contained properly. We admit that process waste water was observed running off the concrete mixing area. We admit the Storm Sewer inlet, DI 113, was near the concrete mixing area. We

admit there was standing non-storm water around the inlet and the surrounding area between the concrete mixing area and storm sewer inlet was wet.

- a. We have no grounds of defense for not having this area fully up to compliance standards.
- b. We dispute no facts regarding this violation.
- c. Basis for opposing any relief: We do respectfully request relief concerning this Count of the Violation, as although our Concrete Mixing area did not comply at the time of the inspection, please note, immediately following the inspection (please see the enclosed W. M. Jordan Company letter of May 3, 2011, regarding "Responses and Demonstration of Corrective Action" as to our steps to correct this deficiency. We specifically address this issue in Response for Item "b", Item #24) the mixing station was moved to a new location, DI 113 was visually inspected to confirm that no concrete and/or mortar run-off, or other foreign material was found to be in the drop inlet.
- d. No hearing is requested regarding Count 2 of this Complaint; however, we will request a Settlement Conference (as indicated in Section IV. of the EPA Administrative Complaint Information).

• Item #25:

- We admit that at the time of the June 16, 2010 EPA inspection, failure to prevent process waste water from reaching the storm sewer inlet DI 113 through containment of the concrete mixing area violates the Permit and Section 301 of the Act, 33, U.S.C. § 1311.
  - a. We have no grounds of defense for not having this area fully up to compliance standards.
  - b. We dispute no facts regarding this violation.
  - c. Basis for opposing any relief: We do respectfully request relief regarding this violation, as in lieu of just complying with containment requirements, the entire mixing area was relocated, the new area was contained and the storm system was inspected for signs of sediment and foreign material which, none were found.
  - d. No hearing is requested regarding Count 2 of this Complaint; however, we will request a Settlement Conference (as indicated in Section IV. of the EPA Administrative Complaint Information).

**Count 3: Construction Equipment**

- Item #26 – Statement only, no response required.

• Item #27:

- We admit that at the time of the June 16, 2010 EPA inspection, the EPA inspectors observed fluid from construction equipment, specifically a back-hoe, to be leaking on the ground. We admit it was observed to be brown stains on the ground near the parked back-hoe.
  - a. Please know that while we are in agreement that the piece of equipment was found to be leaking fluid, we would also offer that:

- Finding a piece of leaking equipment does not necessarily constitute that we were not in compliance, as all equipment on this project site is used daily and it was not determined when or how long the leak had been in existence.
      - As each piece of equipment is operated by a dedicated operator or company, each piece of equipment is usually reviewed periodically in attempts to provide the equipment with daily inspections for routine maintenance.
      - Although we cannot be certain of the actual date and time the leak occurred, it also cannot be confirmed or denied that the found deficiency regarding the leaking hydraulic fluid did not in-fact occur that day.
      - With this said, our defense regarding this specific item is the EPA inspectors may have identified the leak during the inspection, we were not necessarily in violation of the permit, as we too may have identified the leak that same day and taken the same swift and prompt measures in removing the said equipment from the site, requesting the subcontractor responsible for the equipment to have the leak fixed so no additional fluid leaks potentially causing a negative impact, as we did anyway.
    - b. We would offer the dispute that a leak on equipment does not necessarily violate the Permit, as it was not intentional or allowed to continue upon identification, and it cannot be confirmed when the actually leak first occurred.
      - Also, it should be noted that the fluid found on the ground was immediately contained and removed.
    - c. Basis for opposing any relief: We respectfully request that we are not held responsible for an accidental leak of a part on a piece of equipment in which we promptly corrected upon identification of the problem.
    - d. No hearing is requested regarding Count 3 of this Complaint; however, we will request a Settlement Conference (as indicated in Section IV. of the EPA Administrative Complaint Information).
- Item #28:
  - We deny that we failed to clean the area of the site where the fluid from the construction equipment was leaking.
    - a. As identified in our statements and position regarding the actual time of the leak, it cannot be confirmed as to when the initial leak occurred so it also could be assumed that the leak may have occurred that day and not yet found. With this said, it was during the actual EPA inspection when the EPA Agents, accompanied by our Project Superintendent, first discovered the said problem with equipment causing the leak.
    - b. We dispute the statement that, "we failed to clean the area of the site where the fluid from the construction equipment was leaking" is not true. It should be known that immediately following the EPA inspection, the area in which the fluid was noted on the ground was corrected.

- Areas where fluid did leak on the soil were collected and disposed of.
- c. Basis for opposing any relief: We respectfully request that we are not held responsible for failing to clean the area when we did investigate the situation and promptly cleaned the area upon identification.
- d. No hearing is requested regarding Count 3 of this Complaint; however, we will request a Settlement Conference (as indicated in Section IV. of the EPA Administrative Complaint Information).

#### **Count 4: Inlet Protection**

- Item #29 – Statement only, no response required.
- Item #30 – Statement only, no response required.
- Item #31 – Statement only, no response required.
- Item #32 – Statement only, no response required.
- Item #33 – Statement only, no response required.
- Item #34 – Statement only, no response required.
- Item #35:
  - We admit that at the time of the June 16, 2010 EPA inspection, the inlet protection for the three (3) structures identified were not acceptable per the E&S Control Standards.
    - a. We have no grounds of defense for not having the proper inlet protection; however, we would like to correct a statement in that there was initially at the beginning of the inspection fabric wrapped around the grates; while still deemed inadequate, this was performed in lieu of the full inlet protection, as these structures were located in an active construction site roadway.
    - b. We do not dispute the fact that the inlet protection was not per the acceptable standard. Also, during the inspection, it was noted that we provided additional measures although also deemed unacceptable. Please note since these inlets were actually in an existing asphalt area, it was difficult to comply with the details for installation of silt fence drop inlet protection as dictated in the E&S plans.
      - The additional protection installed during the inspection was to establish a perimeter of wood around the grate, wrapping the wood, and covering the inlet grate, with wire mesh, creating a protective cover over the inlet. Atop the wire, the entire assembly was covered with stone to allow only water to pass into the inlet while the stone filtered the sediment.
      - This detail is similar to the approved, "Storm Drain Inlet Protection: STD 3.07-6 (Gravel Curb Inlet Sediment Filter) allowed per the E&S handbook, as it is specifically for roadways or areas with an active asphalt roadway.

- c. Basis for opposing any relief: We do respectfully request relief concerning this Count of the Violation, as although the inadequate protection was not deemed acceptable per the standard E&S guidelines, it should be noted that there was some protection on the inlets and during the inspection it was explained why the full perimeter silt fence protection was not performed (two of the inlets were above an existing asphalt roadway currently being used as a construction loop road).
- d. No hearing is requested regarding Count 4 of this Complaint; however, we will request a Settlement Conference (as indicated in Section IV. of the EPA Administrative Complaint Information).

Item #36:

- o We admit that at the time of the June 16, 2010 EPA inspection, the materials applied to DI 113, DI 081, and Grate 173 did not meet the E&S plan specifications.
  - a. We have no grounds of defense other than what was provide under Item #35 of this same section.
  - b. We dispute no facts regarding this violation.
  - c. Basis for opposing any relief: We do respectfully request relief concerning this Count of the Violation as requested in Item #35 of this same section.
  - d. No hearing is requested regarding Count 4 of this Complaint; however, we will request a Settlement Conference (as indicated in Section IV. of the EPA Administrative Complaint Information).

Item #37:

- o We admit that at the time of the June 16, 2010 EPA inspection, there was a hole under the silt fence at Grate 175 and it did not meet the E&S Plan Specifications.
  - a. We have no grounds of defense for this item.
  - b. We dispute no facts regarding this violation.
  - c. Basis for opposing any relief: None for the violation.
  - d. No hearing is requested regarding Count 4 of this Complaint; however, we will request a Settlement Conference (as indicated in Section IV. of the EPA Administrative Complaint Information).

Item #38:

- o We admit that at the time of the June 16, 2010 EPA inspection, the inlets identified were not acceptable per the E&S Plan specifications.
  - a. We have no grounds of defense for this item other than as discussed in Item # 35 and #36 of this section.
  - b. We dispute no facts regarding this violation other than as discussed in Item #35 and #36 of this section.
  - c. Basis for opposing any relief: We respectfully request relief of this item as requested in Item #35 and #36 of this section.
  - d. No hearing is requested regarding Count 4 of this Complaint; however, we will request a Settlement Conference (as indicated in Section IV. of the EPA Administrative Complaint Information).

### **Count 5: Silt Fences**

- Item #39 – Statement only, no response required.
- Item #40 – Statement only, no response required.
- Item #41 – Statement only, no response required.
- Item #42 – Statement only, no response required.
- Item #43:
  - We admit that at the time of the June 16, 2010 EPA inspection, the silt fence was as described.
    - a. We have no grounds of defense for this item.
    - b. We dispute no facts regarding this violation.
    - c. Basis for opposing any relief: We do respectfully request relief concerning this Count of the Violation, as all deficiencies were promptly corrected within approximately two weeks from the date of the inspection.
    - d. No hearing is requested regarding Count 5 of this Complaint; however, we will request a Settlement Conference (as indicated in Section IV. of the EPA Administrative Complaint Information).
- Item #44
  - We admit that at the time of the June 16, 2010 EPA inspection, we had failed to properly install, maintain, and repair the silt fences per the Permit and Section 301 of the Act, 33, U.S.C. §1311.
    - a. We have no grounds of defense for this item.
    - b. We dispute no facts regarding this violation.
    - c. Basis for opposing any relief: We do respectfully request relief concerning this Count of the Violation, as all deficiencies were promptly corrected within approximately two weeks from the date of the inspection.
    - d. No hearing is requested regarding Count 5 of this Complaint; however, we will request a Settlement Conference (as indicated in Section IV. of the EPA Administrative Complaint Information).

### **Count 6: Inspections**

- Item #45 – Statement only, no response required.
- Item #46 - Statement only, no response required.
- Item #47 - Statement only, no response required.
- Item #48:
  - We admit that at the time of the June 16, 2010 EPA inspection, we had failed to document and maintain records of inspections from October 20, 2009 to June 16, 2010.
    - a. We have no grounds of defense for this item.
    - b. We dispute no facts regarding this violation.
    - c. Basis for opposing any relief: We do respectfully request relief concerning this Count of the Violation, as it is our company policy to strictly adhere to this requirement.

- We would like to present to your organization that just a few weeks prior to the inspection, our Company's Project Superintendent who had been responsible for this project site was removed from the project and ultimately let go from our organization.
- Although there is no excuse for this information (the inspection reports) not being present in the SWPPP where they belong, we cannot confirm or deny that the inspections were or were not ever performed. We do agree however that we could not and still cannot, find any record of them.
- Please know that all inspection reports from June 16, 2010 on have been performed and maintained and can be reviewed in our Project Site Field office. Also, if requested, we would be pleased to provide this additional information.
- d. No hearing is requested regarding Count 6 of this Complaint; however, we will request a Settlement Conference (as indicated in Section IV. of the EPA Administrative Complaint Information).
- Item #48:
  - We admit that at the time of the June 16, 2010 EPA inspection, we had failed to properly install, maintain, and repair the silt fences per the Permit and Section 301 of the Act, 33, U.S.C. §1311.
    - a. We have no ground of defense for this item.
    - b. We dispute no facts regarding this violation.
    - c. Basis for opposing any relief: None, other than our explanation in Item #47 of this Section.
    - d. No hearing is requested regarding Count 6 of this Complaint; however, we will request a Settlement Conference (as indicated in Section IV. of the EPA Administrative Complaint Information).

Please allow me to reiterate that all items identified in this Notice of Proposed Assessment of a Civil Penalty, as identified in the June 16, 2010 EPA site visit was corrected within a few weeks of the actual visit, and maintained throughout the remainder of the project. Also, please note, the referenced project where the occurrences were found is scheduled to be completed within the next 35 days with no other incidents noted.

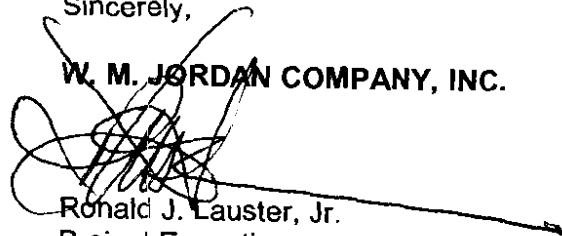
Please know we deeply respect why these rules are in place, especially as a company that resides in a community along the Chesapeake Bay. Learning from this experience we will utilize this experience to better promote, train and educate our workers to be more diligent with regards to ensuring all the rules are met or exceeded as defined in our current and future SWPPP and Permits.



Thank you in advance for your kind attention regarding this matter. If I can provide additional information and/or assurances that we are in compliance, please do not hesitate to contact me.

Sincerely,

**W. M. JORDAN COMPANY, INC.**



Ronald J. Lauster, Jr.  
Project Executive

c: John Lawson – W. M. Jordan Company  
Ken Taylor – W. M. Jordan Company

Enclosures:

- W. M. Jordan Company Responses and Demonstration of Corrective Action letter dated May 3, 2011, (6) pages
- EPA Notice of Proposed Assessment of a Civil Penalty, (15) pages