



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 Post Office Square, Suite 100
Boston, MA 02109-3912**

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

June 10, 2010

Richard Chalpin, Regional Director
Massachusetts Department of Environmental Protection
Northeast Regional Office
205B Lowell Street
Wilmington, Massachusetts 01887

Re: In the Matter of the Town of Winthrop, Massachusetts
Administrative Penalty Complaint
Docket No. CWA-01-2009-0077

Dear Mr. Chalpin:

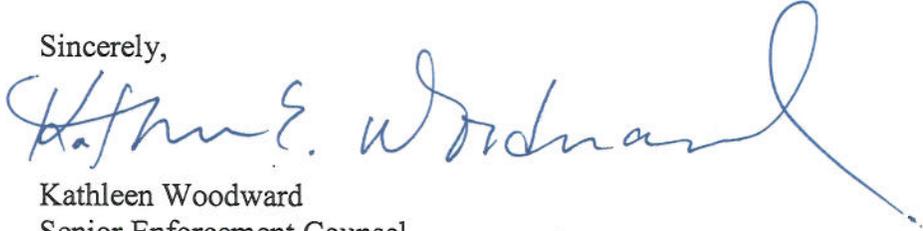
Enclosed is an Amended Administrative Complaint which the U.S. Environmental Protection Agency is issuing to the Town of Winthrop, Massachusetts (the "Town"), pursuant to Section 309(g) of the Clean Water Act ("CWA"), 33 U.S.C. §1319(g). The Complaint addresses violations of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

The Town has been authorized to discharge storm water under EPA's National Pollutant Discharge Elimination System General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems ("Permit") (MAR041084) since 2003. The Permit requires, among other things, that the Town develop, implement and enforce a program to detect and eliminate illicit discharges to its municipal separate storm sewer system. The Town failed to comply with these requirements in violation of the Permit in violation of a National Pollutant Discharge Elimination System ("NPDES") permit issued under Section 402 of the CWA, 33 U.S.C. § 1342. On August 13, 2009, EPA issued an administrative complaint seeking a penalty of \$70,000 as a result of such violations. EPA provided you with a copy of that complaint.

The enclosed complaint varies from the complaint issued in August of 2009 only in that EPA eliminated the original Count 1, Failure to Comply with the Permit Requirement to Develop a Storm Sewer Map. EPA has concluded, based on evidence that Winthrop presented during settlement negotiations, that the map that the Town had originally submitted was in fact in compliance with the Permit.

Should you wish to consult further on this matter, please call me at (617) 918-1780.

Sincerely,

A handwritten signature in blue ink that reads "Kathleen E. Woodward". The signature is fluid and cursive, with a large loop at the end.

Kathleen Woodward
Senior Enforcement Counsel
U.S. Environmental Protection Agency
5 Post Office Square, Suite 100
Mail Code OES4-2
Boston, MA 02109-3912

Enclosure

cc: James M. McKenna, Town Manager, Town of Winthrop
Marc J. Goldstein, Esq.

ALLEGATIONS

3. The Respondent is a municipality, as defined in Section 502(4) of the Act, 33 U.S.C. § 1362(4).
4. The Respondent is a person under Section 502(5) of the Act, 33 U.S.C. § 1362(5).
5. The Respondent is the owner and operator of a regulated small municipal separate storm sewer system ("Regulated Small MS4") as defined at 40 C.F.R. §§ 122.26(b)(16) and 122.32(a)(1).
6. Respondent discharges from its Regulated Small MS4 storm water containing pollutants within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), from catch basins through one or more outfalls constituting "point sources" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14), to waters including, but not limited to, Belle Isle Marsh; Broad Sound; Lewis Lake; and Winthrop Bay.
7. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person from a point source into 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.
8. Pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p), and the Storm Water Regulations set forth at 40 C.F.R. §§ 122.26(a)(9), 122.32, and 122.33, Regulated Small MS4s must have permit coverage to discharge storm water to waters of the United States.
9. On April 18, 2003, the Director of the Office of Ecosystem Protection of EPA, Region I (the "Director of OEP"), issued the Permit pursuant to the authority

eliminate illicit discharges” (“IDDE Program”). Part II.B.3. of the Permit provides that “An illicit discharge is any discharge to a municipal separate storm sewer that is not composed entirely of storm water [with limited exceptions set forth elsewhere in the Permit].” Part II.B.3.(a)-(d) of the Permit requires that the IDDE Program contain the following components:

- (a) A storm sewer map reflecting, at a minimum, the location of all outfalls and names of all waters that receive discharges from those outfalls;
- (b) An ordinance or other regulatory mechanism that prohibits non-storm water discharges into the system and the permittee must implement appropriate enforcement procedures and actions;
- (c) A plan to detect and address non-storm water discharges that includes:
 - (i) procedures to identify priority areas;
 - (ii) procedures for locating illicit discharges;
 - (iii) procedures for locating the source of illicit discharges and procedures for the removal of the source; and
 - (iv) procedures for documenting actions and evaluating impacts on the storm sewer system subsequent to removal;and
- (d) The permittee must inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper waste disposal.

- 15. Respondent submitted to EPA its Notice of Intent, dated October 21, 2003, that the discharges from its MS4 would be covered by the Permit.
- 16. On or about November 21, 2003, EPA granted Respondent authorization to discharge storm water from its MS4 subject to the terms and conditions of its Permit (Permit No. MAR041084).

**COUNT 3: FAILURE TO COMPLY WITH THE PERMIT
REQUIREMENT TO PUBLICIZE HAZARDS OF ILLEGAL DISCHARGES AND
IMPROPER WASTE DISPOSAL**

23. Complaint incorporates Paragraphs 1 through 22 by reference.
24. During the Permit term through the present, Respondent has failed to comply with Part II.B.3.(d) of the Permit by failing to inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper waste disposal.
25. Respondent's failure to publicize hazards associated with illegal discharges and improper waste disposal in compliance with Part II.B.3.(e) of the Permit is a violation of a permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

PROPOSED ASSESSMENT OF CIVIL PENALTY

26. 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.*; the rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.1-19.4; and pursuant to the 2008 Civil Monetary Penalty Inflation Adjustment Rule effective January 12, 2009 (73 Fed. Reg. 75,340 (Dec. 8, 2008)), 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 seventy-seven thousand five hundred dollars (\$177,500).
27. Based on the foregoing allegations, EPA is seeking a penalty under Counts 1 through 3 from Respondent in the amount of seventy thousand dollars (\$70,000).

31. 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 I
1 Congress Street, Suite 1100 RCA
Boston, Massachusetts 02114-2023

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

32. 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:

Kathleen E. Woodward
Senior Enforcement Counsel
U.S. Environmental Protection Agency
Region I
1 Congress Street, Suite 1100 (SEL)
Boston, Massachusetts 02114-2023

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

CONTINUED COMPLIANCE OBLIGATION

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

Date: 06/10/10

Susan Studien
Susan Studien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region I
1 Congress Street, Suite 1100 SAA
Boston, Massachusetts 02114-2023

In the Matter of: Town of Winthrop, Massachusetts
Docket No. CWA 01-2009-0077

CERTIFICATE OF SERVICE

I certify that the foregoing complaint was sent to the following persons, in the manner specified on the date below:

Copy hand-delivered:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Square, Suite 100
Mail Code ORA17-1
Boston, MA 02109-3912

Copy by certified mail, return receipt requested:

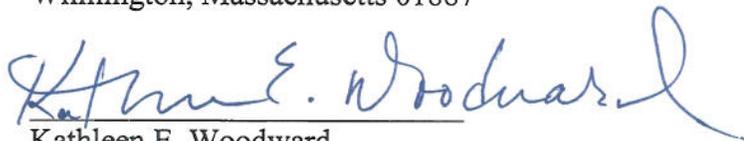
James M. McKenna
Town Manager
Town of Winthrop
Town Hall
1 Metcalf Square
Winthrop, Massachusetts 02152

Copy by first-class mail to:

Marc J. Goldstein
Beveridge & Diamond PC
15 Walnut Street, Suite 400
Wellesley, Massachusetts 02481-2133

Richard Chalpin, Regional Director
Massachusetts Department of Environmental
Protection
Northeast Regional Office
205B Lowell Street
Wilmington, Massachusetts 01887

Dated: June 10, 2010



Kathleen E. Woodward
Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. EPA, Region I
5 Post Office Square, Suite 100
Mail Code OES4-2
Boston, MA 02109-3912
(617) 918-1780