

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

DATE: FEB 4 2008

SUBJECT: Administrative Penalty Assessment - Class I
Frank H. Truck Corp.
(CWA-02-2008-3306)

FROM: Philip Greco, CHMM *EG*,
Enforcement Specialist, DECA-SET

TO: File

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2008 FEB -5 PM 12:29
REGIONAL HEARINGS
CLERK

We have determined an appropriate proposed penalty for assessment against Frank H. Truck Corp. ("Respondent") whose facility is located at 7-02 154th Street, Whitestone, New York, through the following application of the statutory factors in §309(g) of the Act.

(A) Nature, Circumstances, Extent and Gravity of the Violation

Respondent discharged non-domestic and domestic waste from its activities into Tropicana Products, Inc. storm water discharge system which discharges into the East River, a navigable water of the United States pursuant to Section 502(7) of the Act, 33 U.S.C. §1362(7). Respondent violated federal National Pollutant Discharge Elimination System (NPDES) requirements in violation of the Act and its implementing regulations pursuant to §301, §308, and §402 of the Clean Water Act (CWA). Respondent failed to obtain and implement a State Pollutant Discharge Elimination System (SPDES) permit for the discharge to the East River.

The Respondent is in violation of Sections 307 and 308 of the Clean Water Act (CWA). Presently, there is no data to assess the violation's effect on human health.

(B) Prior History of Such Violations

Respondent began operations at the Whitestone, New York facility on or about September 2004. An EPA inspection conducted on July 19, 2007 verified that Respondent did not obtain a SPDES permit for the discharge as noted above.

(C) Degree of Culpability

The Respondent should be aware of its obligation to monitor and report in accordance with the applicable Pretreatment Standards, as the applicable Pretreatment Standards had been promulgated and subsequently revised and/or effective for a number of years, have been renoticed and subsequently revised.

(D) Recalcitrance

Presently, there is n evidence of recalcitrance.

(E) Economic Benefit

The Economic Benefit of non-compliance was incurred as a result of Respondent's failure to obtain a SPDES permit and sample and analyze the regulated discharge as required for reporting pursuant to 40 CFR §403.12. Non-submittal of semi-annual Discharge Monitoring Reports (DMR) was considered for the "Economic Benefit" calculation as applicable.

Cost data which was inputted into the "BEN" computer program for sampling/reporting was obtained from contract laboratories as reasonable expenditure. Consequently, appropriate costing data for specific parameters as required in a SPDES permit was utilized. In addition, a conservative estimate of the administrative costs for preparing a DMR and a permit application was inputted for calculation of the "Economic Benefit". The economic benefit was, therefore, computed to be \$4,447.00.

(F) Ability to Pay

Presently, EPA possesses no information to include an inability to pay consideration.

In conclusion, the application of the statutory factors in §309(g) fully supports the proposed penalty of \$25,000.00.

bcc: Karen Maples, Regional Hearing Clerk
Doughlas McKenna, DECA-WCB
Timothy Murphy, ORC-WGL
Henry Mazzucca, DECA-WCB
Philip Greco, DECA-WCB
Phyllis Feinmark, ORC-WGL