



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

=-
October 1, 2020

**Via Electronic Mail To: danielscarting@gmail.com
And Certified Return Receipt or Equivalent**

**Filed October 07, 2020 @ 12:01pm
USEPA – Region II
Regional Hearing Clerk**

David E. Daniels, CEO
D. Daniels Contracting LTD.
32 Gates Avenue
Inwood, NY 11096

Re: Notice of Proposed Assessment of a Civil Penalty Class I
D. Daniels Contracting LTD., Inwood, NY
Docket No. CWA-02-2021-3304
SPDES ID No. NYR00F710 also EPA No. NYU008061

Dear Mr. Daniels:

Enclosed is a complaint which the U.S. Environmental Protection Agency ("EPA") is issuing to you as a result of our determination that D. Daniels Contracting LTD ("Respondent") failed to comply with the 2012 New York State Department of Environmental Conservation ("NYSDEC") State Pollutant Discharge Elimination System ("SPDES") Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity ("MSGP" or "Permit"), and failed to obtain coverage under the 2018 MSGP, as required by the storm water regulations. Respondent also failed to respond to an EPA-issued Request for Information letter. Failure to comply with its 2012 MSGP, failure to obtain coverage under the 2018 MSGP, and failure to comply with a Request for Information letter are violations of Sections 301, 308, and/or 402 of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §§ 1311, 1318, and/or 1342. This Complaint is filed pursuant to the authority of § 309(g) of the Act, 33 U.S.C. § 1319(g). The Complaint proposes that a penalty of **\$55,800** be assessed against Respondent for these violations.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or they are found to be true after you have had an opportunity for a hearing on them, you have the right to contest the penalty proposed in the Complaint. Enclosed is a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" ("CROP") (40 Code of Federal Regulations (C.F.R.) Part 22) which the Agency follows in cases of this kind. Please note the requirements for an Answer at 40 C.F.R. § 22.15. **If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file an Answer within thirty (30) days of your receipt of the enclosed Complaint to the EPA Regional Hearing Clerk at the following address:**

Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor (Room 1631)
New York, New York 10007-1866

Internet Address (URL) • <http://www.epa.gov>

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If you do not file an Answer within thirty (30) days of receipt of this Complaint, you may be judged to have defaulted (See, § 22.17 of the CROP). If a default order is entered, the entire proposed penalty may be assessed without further proceedings.

Whether or not you request a formal hearing, you may informally confer with EPA concerning the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement as a result of such informal conference with the Agency. You may represent yourself or be represented by an attorney at any stage of the proceedings, including any informal discussions, whether in person or by telephone.

Please note that a request for an informal conference does not substitute for a written Answer or affect what you may choose to say in an Answer, nor does it extend the thirty (30) days by which you must file an Answer requesting a hearing. Any hearing held in this matter will be conducted in accordance with the Proposed CROP, including Subpart I thereof.

EPA acknowledges that the COVID-19 pandemic may be impacting your operations. If that is the case, please contact us and we will consider your specific circumstances in determining an appropriate timeline for payment of the penalty.

If you have any questions or wish to discuss a settlement of this matter with the EPA by an informal conference, please have your attorney immediately contact:

Tim Murphy, Assistant Regional Counsel
Office of Regional Counsel, Water and General Law Branch
U.S. Environmental Protection Agency
290 Broadway - 16th Floor
New York, New York 10007-1866
212-637-3236

Or you can contact Justine Modigliani, P.E., Chief CWA Compliance Section at (212) 637-4268. We urge your prompt attention to this matter.

Sincerely,

For Dore LaPosta, Director
Enforcement and Compliance Assurance Division

Enclosures

cc: Karen Maples, Regional Hearing Clerk
Ed Hampston, P.E., NYSDEC
Steve McCague, NYSDEC w/enclosures (via email)
Anthony Leung, P.E. Regional Water Engineer, NYSDEC Region 1 w/enclosures (via email)
Douglas Tuman, Commissioner, Dept. of Eng. Town of Hempstead – DougTum@TOHmail.org

D. Daniels Contracting, LTD.
Docket No. CWA-02-2021-3304

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007-1866**

IN THE MATTER OF:

David E. Daniels, CEO
D. Daniels Contracting LTD.
32 Gates Avenue
Inwood, NY 11096

Respondent

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

SPDES ID No. NYR00F710

**PROCEEDING TO ASSESS A CLASS I CIVIL
PENALTY**

DOCKET No. CWA-02-2021-3304

Filed October 07, 2020 @ 12:01pm
USEPA – Region II
Regional Hearing Clerk

**ADMINISTRATIVE COMPLAINT
FINDINGS OF VIOLATION, NOTICE OF PROPOSED
ASSESSMENT OF AN ADMINISTRATIVE PENALTY, AND
NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

I. STATEMENT OF AUTHORITY

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing (“Complaint”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“Administrator” or “EPA”) by Section 309(g)(2)(A) of the Clean Water Act (“Act” or “CWA”), 33 U.S.C. § 1319(g)(2)(A). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Enforcement and Compliance Assurance Division (“ECAD”) of EPA, Region 2 (“Complainant”).
2. Pursuant to Section 309(g)(2)(A) of the Act, and in accordance with 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 (“CROP”), 40 C.F.R. Part 22, a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against D. Daniels Contracting LTD. (“Respondent”), as a result of Complainant’s determination that Respondent is in violation of Sections 301, 308 and 402 of the Act, 33 U.S.C. §§ 1311, 1318 and 1342. Because Respondent failed to: a) obtain coverage under the 2018 New York State Department of Environmental Conservation (“NYSDEC”) State Pollutant Discharge Elimination System (“SPDES”) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (“MSGP”) for its industrial stormwater discharges in accordance with Sections 301, 308 and 402 of the Clean Water Act for

its Land Transportation and its former Scrap/Recycling/Salvaging Site that Respondent owns and operates; b) comply with its 2012 MSGP pursuant to Sections 301 and 402 of the CWA; and c) respond to a 2019 EPA Request for Information pursuant to Section 308 of the CWA.

II. APPLICABLE LEGAL REQUIREMENTS

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into navigable waters, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), this prohibition also applies to discharges of stormwater associated with industrial activity.
2. “Discharge of a pollutant” is defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12), to include any addition of any pollutant to navigable waters from any point source.
3. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water.
4. “Person” is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include, among other things, an individual, corporation, partnership, association or municipality.
5. “Point source” is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
6. “Navigable waters” is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), as the waters of the United States, including the territorial seas, and “waters of the United States” is defined by 40 C.F.R. § 122.2, to include: all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; all interstate waters, including interstate "wetlands;" all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce, including tributaries thereto.
7. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), authorizes the Administrator to issue a National Pollutant Discharge Elimination System (“NPDES”) permit for the discharge of any pollutant, or combination of pollutants, notwithstanding the prohibition in Section 301(a) of the CWA, upon the condition that any such discharges will meet the requirements of the CWA and its implementing regulations.
8. The Administrator has promulgated regulations, at 40 C.F.R. § 122.26, that require permits for stormwater discharges associated with certain types of industrial activities, including those at the Respondent’s facility.

9. “Storm water” is defined by 40 C.F.R. § 122.26(b)(13) as storm water runoff, snow melt runoff, and surface runoff and drainage.
10. “Owner or operator” is defined by 40 C.F.R. § 122.2 as the owner or operator of any “facility or activity” subject to regulation under the NPDES program.
11. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), allows any State, upon application to and approval by EPA, to directly administer the NPDES permitting program. EPA has authorized the NYSDEC to directly administer the NPDES program in New York. Accordingly, any person who will discharge pollutants from a point source to waters of the United States within New York State must first obtain a New York SPDES permit, and must comply with all of its terms.
12. There are two MSGPs issued by NYSDEC that are the subject of this Complaint. The first is MSGP No. GP-0-12-001, which became effective on October 1, 2012, and expired on September 30, 2017, (“2012 MSGP”), but was administratively extended for existing dischargers to May 30, 2018. The second, MSGP GP-0-17-004, became effective on March 1, 2018, and will expire on February 28, 2023 (“2018 MSGP”).
13. Under the MSGP, the term “Stormwater Associated with Industrial Activity” means “the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under Part 122. For the categories of industries identified in this section, the term includes, but is not limited to: stormwater discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 C.F.R. Part 401 of this chapter); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater for the purposes of this paragraph. Material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots, as long as the drainage from the excluded areas is not mixed with stormwater drained from the above described areas. Industrial facilities include those that are federally, State, or municipally owned or operated that meet the description of the facilities listed in Appendix D of the MSGP permit. The term also includes those facilities designated under the provisions of 40 C.F.R. 122.26(a)(1)(v).”
14. Under the MSGP, the terms “Municipal Separate Storm Sewer” and “MS4” are defined as: “a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by State law) . . . that discharges into waters of the United States; (ii) designed or used for collecting or conveying stormwater; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works as defined at 40 C.F.R. 122.2.”

15. Under the MSGP, the term “Owner or Operator” means the owner or operator of any facility or activity subject to regulation under 6 NYCRR Part 750. In accordance with 6 NYCRR Part 750 1.6(a), when a facility or activity is owned by one person, but is operated by another person, it is the operator's duty to obtain a permit.
16. Under the MSGP, the term “Conditional Exclusion for No Exposure” or “No Exposure” means that facilities may qualify for a "Conditional Exclusion for No Exposure" where industrial activities and materials are completely sheltered from exposure to rain, snow, snowmelt and/or runoff. Facilities qualifying for this exclusion are not required to obtain MSGP coverage. This exclusion is available on a facility wide basis only and is not applicable to individual outfalls.

To obtain the “Conditional Exclusion of No Exposure”, the owner or operator must submit a certification to the NYSDEC attesting to the condition of no exposure using forms provided by the NYSDEC. This certification must be completed and submitted once every 5 years and is nontransferable. Facilities must maintain the condition of no exposure. If changes at a facility result in industrial activities or materials becoming exposed, the no exposure exclusion ceases to apply. Owners or operators who certified that their facilities qualify for the conditional no exposure exclusion may, nonetheless, be required by the Department to obtain permit coverage, based on a determination that stormwater discharges are likely to have an adverse impact on water quality. More information regarding the “Conditional Exclusion for No Exposure” is available at: <http://www.dec.ny.gov/chemical/62833.html>.

17. A corporate officer can be held personally liable for violations of the Clean Water Act if he or she had “authority with respect to the conditions that formed the basis of the alleged violations” (*United States v. Iverson*, 162 F.3d 1015, 1024 (9th Cir. 1998) (quoting *United States v. Park*, 421 U.S. 658 (1975))).
18. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes the Administrator, upon a finding that any person has violated, among other things, Section 301(a) of the Act, or has violated any permit condition or limitation implementing such section in a permit issued under Section 402 of the Act, to assess a civil penalty, and Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), as adjusted by 40 C.F.R. § 19.4, authorizes the assessment of a penalty of up to \$22,320 per violation, and not exceeding \$55,800.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. D. Daniels Contracting, LTD (“Respondent”) is a “person” pursuant to Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
2. Respondent currently operates a vehicle maintenance (Land Transportation) facility and, in the past, operated a transfer station/sorting/salvage operation at 32 Gates Ave. and 40 Gates Ave. in Inwood, NY (Nassau County) (the “Site” or “Facility”).
3. On November 27, 2013, EPA conducted a Compliance Evaluation Inspection (“CEI” or “EPA Inspection”) at the Site.

4. Based upon observations by an EPA inspector during a rain event during the November 27, 2013, EPA inspection, stormwater associated with land transportation and salvaging operations discharged either to Jamaica Bay via an MS4 catch basin on Roger Ave or the driveway of the Vehicle Maintenance facility discharges to an MS4 catch basin tributary to Jamaica Bay located along Bayview Avenue.
5. Jamaica Bay is a navigable water of the United States pursuant to Section 502(7) of the Act, 33 U.S.C. § 1362(7).
6. Respondent discharges stormwater associated with industrial activity, which is a “pollutant” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6), via the above mentioned pipes, which are “point sources” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to a navigable water of the United States, and as such, discharges pollutants pursuant to Section 502(12) of the CWA, 33 U.S.C. § 1362(12).
7. At the time of the November 27, 2013 EPA inspection, Respondent had not obtained coverage under the 2012 MSGP. Operators regulated under 40 C.F.R. § 122.26(b)(14) must seek MSGP coverage by filing an NOI form under the terms and conditions of the MSGP, in accordance with 40 C.F.R. § 122.26(a)(1)(ii).
8. As a result of Respondent’s failure to obtain MSGP coverage under the CWA, EPA issued Administrative Compliance Order CWA-AO-2014-3026 (“ACO”) under Section 309(a) of the CWA on January 31, 2014, that was received by Respondent on February 10, 2014. The ACO required Respondent to obtain MSGP coverage within 90 days of receipt.
9. Respondent did not file a Notice of Intent (“NOI”) for MSGP Sector N3 (Scrap and Waste Materials Salvage Operations) until August 5, 2015, that was received by the NYSDEC on August 7, 2015. NYSDEC sent an Acknowledgement of Receipt of the NOI, dated November 16, 2015, and stated that the Facility’s 2012 MSGP became effective on September 6, 2015. Respondent filed a revised Notice of Intent (“NOI”) dated March 2, 2016, that was received by the NYSDEC March 4, 2016 (“2016 NOI”). The 2016 NOI stated that the Facility conducts industrial activities under SIC Code 5093 (Scrap and Waste Materials) and 4212 (Local Trucking without Storage) and therefore is regulated under 40 C.F.R. § 122.26(b)(14), Part VIII Sector N3 (Scrap Recycling Facilities) and Part VIII Sector P (Land Transportation) of the 2012 MSGP, and Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p). Respondent stated during the 2019 inspection that MSGP Sector N salvage activities were no longer taking place at the facility.
10. The Facility did ultimately develop a SWPPP and submit an NOI, and received coverage under the 2012 MSGP on or about September 6, 2015, more than a year after the date set forth in the EPA ACO.

Claim 1 – Discharge without a Permit (Section 301 of the CWA) and Failure to obtain a Permit (Section 308 of CWA)

11. The 2012 MSGP expired on September 30, 2017, but was administratively extended for existing permittees until May 30, 2018, which was the final date to resubmit an NOI. As of August 31, 2020, the Facility had not submitted an NOI to obtain coverage under the 2018 MSGP, nor did it submit a No-Exposure certification, and therefore it is not covered under the 2018 MSGP.

12. EPA conducted an inspection of the Facility on March 7, 2019, and documented that the Facility was conducting Land Transportation Activities and did not have MSGP coverage as required. EPA subsequently issued an Administrative Compliance Order and Request for Information (“ACO/RFI” or 2019 ACO/RFI) CWA-02-2019-3023, dated April 24, 2019, requiring that the Permittee obtain MSGP coverage. The 2019 ACO/RFI was received by Respondent on April 29, 2019.
13. For the period June 1, 2018 (when there was rainfall of 1.18 inches as measured by the gauge at the nearby JFK airport) to the present (August 31, 2020), Respondent violated Section 301 of the Clean Water Act during days in which discharges of Stormwater Associated with Industrial Activities without a Permit occurred. Respondent also violated Section 308 of the CWA because it failed to file an NOI and obtain MSGP coverage on or before May 30, 2018. A table of 34 precipitation events greater or equal to 1 inch for the period June 1, 2018 to August 31, 2020 is attached (Attachment 1).

Claim 2 – Failure to Comply with 2012 MSGP (Section 402 of the CWA)

14. Part IV. E.1 of the 2012 MSGP required that, “[t]he owner or operator shall retain all records of monitoring information, copies of all reports required by this permit, and records of all data used to complete the NOI and/or Notice of Modification forms to be covered by this permit, until at least 5 years after coverage under this permit.”
15. Part V.Q (Inspection and Entry) of the 2012 MSGP, required that the authorized representatives of the NYSDEC, EPA and the authorized MS4 have access to and copy at reasonable times, any records that must be kept under the conditions of this permit.
16. During the March 7, 2019, inspection, EPA requested the records required to be kept under the 2012 MSGP, but the Facility representatives could not provide any records to the EPA inspector.
17. Paragraph D.1 of the 2019 ACO/RFI issued to Respondent D. Daniels, pursuant to Section 308 of the CWA, required that all inspection, monitoring and training records required to be maintained under the MSGP for the period January 2016 to the present be submitted to EPA within 30 days of receipt (which was May 29, 2019). As of August 31, 2020, no records have been submitted to EPA.
18. Based on the failure to provide the required records to EPA, outlined in the two above paragraphs, despite repeated attempts by EPA and NYSDEC to obtain such records (as set forth in the table below), Respondent has failed to conduct required inspections, training, and monitoring required by Part IV of the MSGP as follows:
 - a. Respondent failed to conduct Annual Site Compliance Inspections required by Part IV.A of the 2012 MSGP in 2016 and 2017;
 - b. Respondent failed to conduct Quarterly Visual Monitoring required by Part IV.B.1.a of the 2012 MSGP for the 9 quarters from at least January 1, 2016 to March 31, 2018;
 - c. Respondent failed to conduct Annual Dry Weather Flow Monitoring required by Part IV.B.1.b of the 2012 MSGP in 2016 and 2017;
 - d. Respondent failed to conduct annual benchmark monitoring in 2016 and 2017 as required by Part IV.B.1.c of the 2012 MSGP under Part VIII Sectors N3 and P of the MSGP;

e. Respondent failed to conduct Annual Employee Training in 2016 and 2017 as required by Part III.C.7.e of the 2012 MSGP;

19. Attachment 2 contains a table that sets forth dozens of precipitation events that were 0.5 inches or greater at the nearby JFK Airport gauge. These rain events would have generated discharges from D. Daniels monitoring points that would have required visual and benchmark monitoring for the period June 2016 to May 2018.

20. Below is a recent history of correspondence from EPA and NYSDEC with D. Daniels since November 2015, by which both agencies notified Respondent that it was overdue on several required submittals:

Date of Correspondence	Brief Summary	Sent by
November 16, 2015	Acknowledgment of Receipt for NOI for MSGP Coverage (GP-0-12-001)	NYSDEC
April 26, 2016	Notice of Violation (“NOV”) for Failure to submit Discharge Monitoring Repot (“DMR”)	NYSDEC
May 8, 2017	NOV for Failure to Submit DMR	NYSDEC
May 8, 2017	NOV for Failure to Submit Annual Compliance Report (“ACR”)	NYSDEC
February 23, 2018	Letter- NOI Submission Required for Continued Permit Authorization	NYSDEC
August 29, 2018	NOV for Failure to Submit DMR	NYSDEC
August 29, 2018	NOV for Failure to Submit ACR	NYSDEC
January 10, 2019	Letter - Failure to Renew MSGP Coverage	NYSDEC
March 7, 2019	EPA MSGP Inspection	EPA Region 2
April 24, 2019	Mailed Administrative Compliance Order and Information Request CWA-02-2019-3023 (“ACO/RFI”) (Received 4/29/19)	EPA Region 2
April 26, 2019	Emailed ACO/RFI CWA-2019-3023 to danielscarting.com	EPA Region 2
May 22, 2019	NOV for Failure to Submit the ACR	NYSDEC
May 23, 2019	NOV for Failure to submit Discharge Monitoring Report	NYSDEC
May 31, 2019	Overdue Notice – Failure to comply with ACO/RFI CWA-02-2019-3023 (received on June 5, 2019)	EPA Region 2
June 3, 2019	Email correspondence with Mr. Daniels and transmittal of May 31, 2019, Overdue Notice to danielscarting@gmail.com	EPA Region 2
June 4, 2019	D. Daniels submitted signed Acknowledgement or Receipt of the AO/RFI	D. Daniels
June 5, 2019	D. Daniels emailed EPA and stated that no detergents are used outside for truck washing. Per C.2 of the Order – it was not signed with certification statement.	D. Daniels
June 5, 2019	Emailed danielscarting@gmail.com relative to overdue ACO/RFI Milestones	EPA Region 2
July 1, 2019	emailed Facility that they are overdue with meeting milestones under ACO/RFI to danielscarting@gmail.com	NYSDEC

Date of Correspondence	Brief Summary	Sent by
August 1, 2019	Second Overdue Notice for non-compliance with ACO/RFI (received on August 6, 2019)	EPA Region 2
September 6, 2019	Emailed Mr. Daniels danielscarting@gmail.com reminder that ACO/RFI responses are overdue.	EPA Region 2
September 9, 2019	Emailed Mr. Daniels (danielscarting@gmail.com) to follow up on tracking information for information that he said he submitted to EPA in response to ACO/FI	EPA Region 2
September 18, 2019	Emailed reminder that Facility Overdue with responses to ACO/RFI to danielscarting@gmail.com	EPA Region 2
October 16, 2019	Email reminder of Overdue Items with ACO/RFI CWA-02-2019-3023 to danielscarting@gmail.com	EPA Region 2
November 12, 2019	Final Overdue Notice – Failure to Comply with ACO/RFI CWA-02-2019-3023 (Letter hard copy and Email to danielscarting@gmail.com) (received on 11/15/19)	EPA Region 2

Claim 3 – Failure to Comply with EPA Request for Information

21. Section 308 (a) of the CWA 33 U.S.C. § 1318 - Maintenance; monitoring equipment; entry; access to information states, “[w]henever required to carry out the objective of this chapter, including but not limited to (1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under this chapter; **(2) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance;** (3) any requirement established under this section; or (4) carrying out Sections 305, 311, 402, 404 (relating to State permit programs), 405, and 504 of this title – (A)the Administrator shall require the owner or operator of any point source to (I) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as he may reasonably require.”
22. Paragraph D.2 of the Request for Information portion of the 2019 ACO/RFI, pursuant to Section 308 of the CWA, required that the Respondent submit a written response detailing the actions that are being taken to address the Potential Non-Compliance Items (“PNCs”) and Areas of Concern (“AOCs”) identified in the report from EPA’s March 7, 2019, EPA Inspection. A response from Respondent was due within 45 days of receipt of the RFI. Based on the April 29, 2019, date of receipt, a response was due on or before June 13, 2019. Despite repeated overdue notifications to Respondent (shown in the above table), as of August 31, 2020, no response has been received, in violation of Section 308 of the CWA.
23. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent is liable for violations of Sections 301, 308, and 402 of the Clean Water Act, 33 U.S.C. §§ 1311, 1318, and 1342 for its discharges of stormwater associated with industrial activity without Permit coverage; for failing to comply with its Permit, when it did have Permit coverage; and failure to comply with an EPA Request for Information letter.

IV. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

Based on the foregoing findings, and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), and the Debt Collection Improvement Act of 1996, EPA, Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties (“Final Order”) to Respondent assessing a penalty of **\$55,800**. EPA determined the proposed penalty after taking into account the applicable factors identified at Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). EPA has taken account of the nature, circumstances, extent and gravity of the violations, and Respondent’s prior compliance history, degree of culpability, economic benefit or savings accruing to Respondent by virtue of the violations, and Respondent’s ability to pay the proposed penalty. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after Respondent’s receipt of this Notice, unless Respondent files an Answer to this Complaint within that time and request a Hearing on this Notice pursuant to the following section.

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE ACTION

The rules of procedure governing this civil administrative litigation have been set forth in the CROP, 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

A. Answering The Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007-1866**

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a). Respondent’s Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which the Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so state in the Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondent disputes (and thus intend to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether Respondent requests a Hearing. 40 C.F.R. § 22.15(b).

Respondent’s failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of a defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a Hearing.

B. Opportunity To Request A Hearing

If requested by Respondent in its Answer, a Hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If however, Respondent does not request a Hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a Hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any Hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A Hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of the CROP, at 40 C.F.R. §§ 22.21-22.26.

Should Respondent request a Hearing on this proposed penalty assessment, members of the public to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondent not request a Hearing, EPA will issue a Final Order, and only members of the public who submit timely comment on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a Hearing thereon. EPA will grant the petition and will hold a Hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

C. Failure To Answer

If Respondent fails in any Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely Answer to the Complaint [i.e. not in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)], Respondent may be found in default upon motion by Complainant. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondent, and to collect the assessed penalty amount, in federal court.

VI. INFORMAL SETTLEMENT CONFERENCE

Regardless of whether Respondents request a formal Hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondents may comment on the charges made in this Complaint and Respondents may also provide whatever additional information they believe to be relevant to the disposition of this matter, including: (1) actions Respondents have taken to correct any or all of the violations herein alleged, (2) any information relevant to the amount of the proposed penalty, (3) the effect the proposed penalty would have on

Respondents' ability to continue in business and/or (4) any other special facts or circumstances Respondents wish to raise. Note that no penalty reduction will be made simply because an informal settlement conference is held.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, in response to any relevant information previously not known to Complainant that demonstrates that any of the findings herein are without merit, or that the proposed penalty is not warranted. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondents may have regarding this Complaint should be directed to:

Tim Murphy, Assistant Regional Counsel
Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone: (212) 637-3236

The parties may engage in settlement discussions regardless of whether Respondents have requested a Hearing. 40 C.F.R. § 22.18(b)(1). Respondents' request for a formal Hearing does not prevent Respondents from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint.

A request for an informal settlement conference does not affect Respondents' obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3). In accepting the Consent Agreement, Respondents waive any right to contest the allegations in the Complaint and waive any right to appeal the Final Order. 40 C.F.R. § 22.18(b)(2).

Entering into a settlement through the signing of such Consent Agreement and complying with the terms and conditions set forth in such Consent Agreement and Final Order terminates this administrative litigation and these civil proceedings against Respondents. Entering into a settlement agreement does not extinguish, waive, satisfy or otherwise affect Respondents' obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance, and EPA may initiate a new enforcement action based on evidence of new or continued violations.

VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondents may choose to pay the total amount of the proposed penalty, **\$55,800**, within thirty (30) days after receipt of the Complaint, provided that Respondents file with the Regional Hearing Clerk, Region 2 (at the address noted above), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Attorney identified in Section VI above. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America", in the full amount of the penalty assessed in this Complaint to the following addressee:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Docket No. CWA-02-2020-3314

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York
ABA = 021030004
Account = 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".

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondents elect to pay the full amount of the penalty proposed in the Complaint within thirty (30) days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order pursuant to 40 C.F.R. § 22.18(a)(3). In accordance with 40 C.F.R. § 22.45(c)(3), no Final Order shall be issued until at least ten (10) days after the close of the comment period on this Complaint. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondents shall constitute a waiver of Respondents' right both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondents' obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance, and EPA may initiate a new enforcement action based on evidence of new or continued violations.

VIII. FILING OF DOCUMENTS

The Answer and any Hearing Request and all subsequent documents filed in this action should be sent to and e-mailed to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
Maples.Karen@epa.gov

A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to and e-mailed to:

Tim Murphy, Assistant Regional Counsel
Office of Regional Counsel, Water and General Law Branch
U.S. Environmental Protection Agency
290 Broadway - 16th Floor
New York, New York 10007-1866
(212) 637-3236
Murphy.tim@epa.gov

IX. GENERAL PROVISIONS

1. Respondent has a right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated there under, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act will affect Respondent's continuing obligation to comply with the Act, 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.

ISSUED THIS 1st DAY OF October, 2020.

For Dore LaPosta, Director
Enforcement and Compliance Assurance Division
U. S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007

Attachment 1 – Dates of Precipitation greater than or equal to 1” at the JFK International Airport Rain Gauge for the period June 1, 2018 to August 31, 2020. Provided by the Northeast Regional Climate Center

JFK June 2018 to August 31, 2020 precipitation greater or equal to 1”			
Date	Precip. (Inches)	Date	Precipitation (inches)
6/1/2018	1.18	7/22/2019	1.59
7/27/2018	1.17	7/23/2019	2.07
8/12/2018	1.84	8/7/2019	1
9/10/2018	1.25	10/16/2019	1.02
9/28/2018	1.26	12/9/2019	1.71
10/11/2018	1.03	12/13/2019	1.15
11/13/2018	1.16	12/14/2019	1.62
11/24/2018	1.2	12/17/2019	1.07
11/25/2018	1.22	2/27/2020	1
11/26/2018	1.17	3/19/2020	1.07
12/16/2018	1.16	3/23/2020	1.28
12/21/2018	1.73	4/13/2020	1.14
12/31/2018	1.23	7/10/2020	2.33
1/20/2019	1.23	7/31/2020	1.07
1/24/2019	1.37		
4/26/2019	1.11		
5/5/2019	1.52		
5/12/2019	1.07		
5/30/2019	1.23		
6/18/2019	1.38		

ATTACHMENT 2 - JFK Rainfall greater or equal to 0.5" Jan 2016 to May 2018 from Northeast Regional Climate Center

Date	Precip (inches)	Date	Precip (inches)
1/23/2016	2.9	2/9/2017	0.74
10/29/2017	2.84	5/6/2016	0.68
7/25/2016	2.47	6/5/2016	0.67
3/31/2017	2.07	6/8/2016	0.66
3/14/2017	1.94	7/29/2016	0.65
7/7/2017	1.92	5/22/2017	0.65
5/5/2017	1.78	2/15/2016	0.64
6/24/2017	1.73	7/22/2017	0.62
5/13/2017	1.65	12/23/2017	0.62
11/29/2016	1.42	12/12/2016	0.6
1/10/2016	1.28	12/24/2016	0.6
11/15/2016	1.23	1/17/2017	0.59
1/24/2017	1.22	8/29/2017	0.57
5/25/2017	1.14	10/27/2016	0.54
6/19/2017	1.12	9/2/2017	0.54
2/24/2016	1.05	7/1/2017	0.53
5/30/2016	1.05	7/4/2016	0.52
4/4/2017	1.05	10/24/2017	0.51
4/25/2017	0.98	9/1/2016	0.5
9/19/2016	0.97	9/6/2017	0.5
4/6/2017	0.96	2/4/2018	0.96
3/28/2017	0.93	2/7/2018	0.84
10/21/2016	0.92	2/11/2018	1.13
10/9/2016	0.84	2/25/2018	1.3
1/23/2017	0.84	3/1/2018	0.57
7/24/2017	0.78	3/2/2018	2.16
11/7/2017	0.78	3/7/2018	1.02
2/5/2016	0.76	3/21/2018	0.88
5/3/2016	0.75	4/16/2018	1.53
12/17/2016	0.74	5/17/2018	0.72
		5/19/2018	0.75
		5/27/2018	0.89