

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

**IN THE MATTER OF:**

City of Peekskill  
840 Main Street  
Peekskill, New York 10566

SPDES Permit No. NYR20A310

**Respondent**

Proceeding pursuant to Section 309(g) of the  
Clean Water Act, 33 U.S.C. § 1319(g)

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

**DOCKET No. CWA-02-2018-3314**

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

**I. STATUTORY AND REGULATORY AUTHORITIES**

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 (“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, Division of Enforcement and Compliance Assistance (“DECA”) 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 (2001), a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against Respondent, as a result of Complainant’s determination that the Respondent is in violation of Section 301 of the Act, 33 U.S.C. § 1311, by failing to comply with the terms of the New York Department of Environmental Conservation’s (“NYSDEC’s”) State Pollutant Discharge Elimination System (“SPDES”) General Permit for Storm Water Discharges from Municipal Separate Storm Sewer Systems (“MS4s”) for the MS4 that the Respondent owns and operates.



## **II. DEFINITIONS AND STATUTORY PROVISIONS**

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source into waters of the United States, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of EPA to issue a National Pollutant Discharge Elimination System (“NPDES”) permit for the discharge of any pollutant, or combination of pollutants subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The NYSDEC is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA. Additionally, under the authority granted to the NYSDEC by the EPA under Section 402(b) of the CWA, 33 U.S.C. § 1342(b), a SPDES permit is required to be issued to facilities by the NYSDEC for the discharge of pollutants from said facilities from a point source to a navigable water of the United States.
3. “Person” is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State.
4. “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, biological materials and agricultural waste discharged into water.
5. “Navigable waters” is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), to include the waters of the United States.
6. “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.
7. “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.
8. Section 402(p) of the CWA, 33 U.S.C. § 1342(p) sets forth the permit requirements for the discharge of stormwater, including discharges of stormwater from Municipal Separate Storm Sewer Systems (“MS4s”).
9. 40 C.F.R. § 122.26(b)(8), defines an MS4 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 or pursuant to 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...”



10. 40 C.F.R. § 122.26(b)(3) defines “incorporated place,” in part, as a city, town, township, or village that is incorporated under the laws of the State in which it is located.
11. 40 C.F.R. § 122.26(b)(16)(ii) defines “small municipal separate storm sewer system,” in part, as not defined as “large” or “medium” MS4s.
12. Pursuant to 40 C.F.R. § 122.32(a)(1), all small MS4s located in an “urbanized area” (as determined by the latest Decennial Census by the Bureau of Census) are regulated small MS4s.
13. 40 C.F.R. §§ 122.33(a) and (b)(1) require operators of regulated small MS4s to seek authorization to discharge under the applicable NPDES general permit issued by the permitting authority, by submitting a Notice of Intent (“NOI”) for coverage under such permit.
14. NYSDEC issued a SPDES General Permit for Storm Water Discharges from MS4s (GP-0-15-003) (“Permit”) on May 1, 2015 and expired on April 30, 2017 but has been administratively extended. The Permit supersedes the previous SPDES permit (GP-0-10-002), which became effective on May 1, 2010 and expired on April 30, 2015, and SPDES permit (GP-0-08-002), which became effective on May 1, 2008 and expired on April 30, 2010.
15. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a civil penalty for violations of Section 301 of the CWA, 33 U.S.C. § 1311, or any permit condition or limitation implementing, inter alia, Section 301, and contained in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

### **III. FINDINGS OF VIOLATION**

1. The City of Peekskill (“City” or “Respondent”) is a public body chartered under the laws of the State of New York, and as such, the Respondent is a person, as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2, and is an “incorporated place” as defined in 40 C.F.R. § 122.26(b)(3).
2. Respondent owns and operates the MS4, located in the City of Peekskill, Westchester County, New York and is an “owner or operator” within the meaning of 40 C.F.R. § 122.2.
3. The MS4 owned and operated by the Respondent is a small MS4 located in a urbanized area within the meaning of 40 C.F.R. § 122.26(b)(16)(ii) and 40 C.F.R. § 122.32(a)(1).
4. Respondent’s MS4 includes at least twenty-eight (28) outfall pipes which are point sources within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
5. Respondent discharges stormwater, which is a pollutant within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to the Hudson River and Hudson River tributaries, waters of the United States within the meaning of 40 C.F.R. § 122.2, via its MS4. As such, Respondent discharges pollutants within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).
6. The City submitted a Notice of Intent (“NOI”) to NYSDEC and subsequently received authorization in March 2003 under the MS4 General Permit pursuant to permit No.



NYR20A310. Permit coverage was maintained under the subsequent, and current permit which became effective on May 1, 2015.

7. On March 8, 2016, EPA transmitted a Notice of MS4 Program Audit to Respondent stating that EPA would be conducting an audit of Respondent's MS4 on April 19 through 21, 2016 and the letter informally requested certain pertinent MS4 information be provided to EPA prior to the Audit and no later than April 8, 2016.
8. On April 8, 2016 and April 13, 2016, EPA contacted representatives of Respondent reiterating the dates of the scheduled Audit and that, as of that date, none of the information EPA had requested had been provided by Respondent.
9. On April 18, 2016, EPA learned that key personnel would not be available on the scheduled Audit dates, April 19 through 21, 2016 to meet with EPA. In addition, EPA had not received any of the requested information. Therefore, EPA postponed the Audit until May 3 through 5, 2016 and requested that certain information be provided no later than April 29, 2016.
10. On May 3, 2016 and May 4, 2016, EPA conducted the compliance Audit of the City's MS4. As of that date, EPA had not received any of the requested information. In addition, multiple key personnel and records were not available to EPA at the time of the Audit and therefore, EPA spent two (2) days rather than the scheduled and typical three (3) days conducting its audit.
11. NYSDEC General Permit for Storm Water Discharges from Municipal Separate Storm Sewer Systems (GP-0-15-003) was the effective permit at the time of the Audit.
12. **At the time of the Audit**, EPA identified the following violations of the Permit:
  - a. Part IV.A of the Permit states that all permittees under GP-0-10-002 must have prepared a Stormwater Management Program ("SWMP") Plan documenting modifications to their SWMP. Part X of the Permit states that documents to include in the SWMP Plan ("SWMPP") are procedures and materials for each Minimum Control Measure ("MCM"), and measurable goals. In accordance with the 2003 permit, the City was required to develop and have fully implemented its SWMP by January 8, 2008. The City's SWMPP did not include the following required elements detailed below. Therefore, the Respondent violated Parts IV.A and X of the Permit:
    - i. Updates to incorporate two (2) subsequent MS4 Permits and associated requirements which became effective on May 1, 2010 and May 1, 2015, as required by Part IV.A of the Permit;
    - ii. Updates to the SWMP Committee, which currently includes former employees no longer working for the City;
    - iii. The measurable goals listed in the SWMP Plan are inconsistent with the measurable goals reported on the City's Annual Report;
    - iv. Identified Pollutants of Concern ("POCs"), as required by Part VII.A.1.a of the Permit;
    - v. Identified Waterbodies of Concern ("WOCs"), as required by Part VII.A.1.a of the Permit;
    - vi. Identified Geographic Areas of Concern ("GOCs"), as required by Part VII.A.1.a of the Permit;



- vii. Updates to accurately reflect the number of outfalls and status of MS4 mapping, as required by Part VII.A.3.b.i of the Permit;
  - viii. Updates to the Public Education and Outreach program to include the storm drain marking program, geese deterrence strobe light program, don't feed waterfowl signs, pet waste ordinance and pet waste disposal signs, as required by Part VII.A.1.b of the Permit;
  - ix. Written description of the established procedures for identifying priority areas of concern (geographic, audiences, or otherwise) for the Illicit Discharge Detection and Elimination ("IDDE") program; description of priority areas of concern; and available equipment, as required by Part VII.A.3.g of the Permit;
  - x. Construction site Stormwater Pollution Prevention Plan ("SWPPP") review procedures, SWPPP review checklist, SWPPP acceptance procedures, and procedures for documenting actions, as required by Parts VII.A.4.a.vii and VII.A.5.a.v of the Permit;
  - xi. Written description of the established procedures for receipt, follow up, and documentation of complaints or other information submitted by the public regarding construction site storm water runoff, as required by Part VII.A.4.a.viii of the Permit;
  - xii. Written description for the established procedures for construction site inspections, enforcement of erosion and sediment control measures, Notice of Termination ("NOT") procedures, steps to identify priority sites for inspection and enforcement and contractor training requirements, as required by Part VII.A.4.a.ix of the Permit;
  - xiii. An active construction site inventory;
  - xiv. Description of procedures to confirm that construction site operators have received the required training prior to conducting work within the MS4s jurisdiction, as required by Part VII.A.4.xi of the Permit;
  - xv. Construction site enforcement escalation procedures;
  - xvi. Updates to incorporate two (2) subsequent Construction General Permits and associated requirements which became effective on January 29, 2010 and January 29, 2015, as required by Part IV.A of the Permit;
  - xvii. Description of procedures for developing and maintaining a post construction inventory, as required by Part VII.A.5.a.vi of the Permit;
  - xviii. Description of procedures to ensure adequate long-term operation and maintenance of post-construction management practices by trained staff, including inspections, as required by Part VII.A.5.a.vii of the Permit;
  - xix. Description of the City's Annual Report preparation process and use of City contracted engineers;
  - xx. Municipal facility inventory;
  - xxi. Spill response procedures specific to the City;
  - xxii. Status of sewershed mapping; and
  - xxiii. Written description of the established techniques to reduce the use of fertilizers, pesticides, and herbicides, as well as potential impact to surface water, as required by Part VII.A.6.e of the Permit.
- b. Part IV.G of the Permit requires that all permittees must, through a signed certification statement, contract, or agreement, provide adequate assurance that the third parties will comply with permit requirements applicable to the work performed by the third party. Third parties conducting SWMP-related work on behalf of the City include the Dolph Rotfeld Engineering firm that prepared the SWMP Plan and Annual Reports for the City, and Chazen Engineering that completes planning documents ahead of construction projects and reviews submitted Stormwater Pollution Prevention Plans ("SWPPPs"). The City had not



provided EPA with a signed certification statement or equivalent to assure that any such third parties will comply with permit requirements. Therefore, the Respondent violated Part IV.G of the Permit.

- c. Part V.B of the Permit states that all permittees must keep records required by this SPDES general permit (records that document SWMP, records included in SWMP Plan, other records that verify reporting required by the permit, NOI, past annual reports, and comments from the public and the NYSDEC, etc.) for at least five (5) years after they are generated. Records must be available to the public at reasonable times during regular business hours. The City was unable to provide EPA with SWMP implementation documentation including training documentation, construction site inspections, third party certifications, and construction site and post-construction site inventory, at the time of the Audit. Therefore, the Respondent violated Part V.B of the Permit.
- d. Part V.C.1 of the Permit requires the Annual Report to be received by NYSDEC no later than June 1 of each reporting year. Two (2) of the five (5) required Annual Reports from the past five (5) years were received by NYSDEC after the June 1 deadline. The Annual Report submitted in 2014 was received by NYSDEC on June 2, 2014, and the Annual Report submitted in 2016 was received by NYSDEC via email 126 days late, on October 5, 2016. Therefore, the Respondent violated Part V.C.1 of the Permit.
- e. Part VII.A.1.a of the Permit requires permittees to identify Pollutants of Concern (“POCs”), waterbodies of concern, and geographic areas of concern. At the time of the Audit, the City had not identified POCs, waterbodies of concern, and geographic areas of concern. Additional Permit requirements not met by the City due to the lack of identified POCs include Parts III.B.1, VII.A.1.b.ii, VII.A.1.d, VII.A.3.f, VII.A.3.k, VII.A.4.a.xiv, VII.A.5.d and VII.A.6.d of the Permit. Therefore, the Respondent violated Part VII.A.1.a of the Permit.
- f. Part VII.A.1.b of the Permit states that, at a minimum, all permittees must develop and implement an ongoing Public Education and Outreach program designed to describe to the general public and target audiences: the impacts of stormwater discharges on waterbodies, POCs and their sources, and steps that contributors of these pollutants can take to reduce pollutants in stormwater runoff. At the time of the Audit, the City had not developed and implemented a public education and outreach program designed to describe to target audiences POCs and their sources. Therefore, the Respondent violated Part VII.A.1.b of the Permit.
- g. Part VII.A.2.b of the Permit states that, at a minimum, all permittees must develop and implement a Public Involvement/Participation program that identifies key individuals and groups, public and private, who are interested in or affected by the SWMP. At the time of the Audit, the City had not implemented a public involvement/participation program that identifies key individuals and groups who are interested in or affected by the SWMP. Therefore, the Respondent violated Part VII.A.2.b of the Permit.
- h. Part VII.A.3.a of the Permit states that at a minimum, all permittees must develop, implement and enforce a program to detect and eliminate illicit discharges into the MS4. The City noted flow from eleven (11) outfalls during outfall inspections in June 2015, and



at the time of the Audit had not perform any documented follow up to these potential illicit discharges. Therefore, the Respondent violated Part VII.A.3.a of the Permit.

- i. Part VII.A.3.b.i of the Permit states that all permittees must develop and maintain a map showing the location of all outfalls. At the time of the Audit, the City outfall map did not depict eight (8) outfalls identified by EPA, including outfalls at the City's Water Treatment Plant and the City's Peekskill Stadium parking lot. In addition, the map did not depict connections from the City's MS4 into County or State MS4s that according to City representatives exist along the numerous State and County roads that traverse the City. Therefore, the Respondent violated Part VII.A.3.b.i of the Permit.
- j. Part VII.A.3.d of the Permit requires all permittees to conduct an Outfall Reconnaissance Inventory ("ORI"), as described in the EPA publication entitled "Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessment," addressing every outfall within the urbanized area and additionally designated area within the permittee's jurisdiction at least once every five years, with reasonable progress each year. According to outfall inspection documentation provided by the City at the time of the Audit, outfall inspections were conducted at a total of twenty-eight (28) outfalls in June 2015; on January 24 and 27, 2014; on July 3 and 7, 2014; and on January 31 and February 1, 2012. However, the outfall inspection documentation does not specify the date or time each outfall was inspected or weather conditions, and only notes whether or not the outfall was "dry", "trickle", "slow running" or "running", inconsistent with the ORI standards specified in the IDDE guidance manual, the City's SWMP Plan and the requirements of the Permit. Therefore, the Respondent violated Part VII.A.3.d of the Permit.
- k. Part VII.A.3.f of the Permit requires all permittees to prohibit, through a law, ordinance, or other regulatory mechanism, illicit discharges into the small MS4, and implement appropriate enforcement procedures and actions. The mechanism must be certified by the attorney representing the small MS4 as being equivalent to the State's model illicit discharge local law. The City was unable to provide EPA with documentation that the City's local law is equivalent to the NYSDEC sample local law, despite numerous requests prior to, during, and immediately subsequent to the Audit. Therefore, the Respondent violated of Part VII.A.3.f of the Permit.
- l. Part VII.A.3.g of the Permit requires permittees to develop and implement a program to detect and address non-stormwater discharges to the small MS4. The program must include: available equipment; procedures for identifying and locating illicit discharges (trackdown); procedures for eliminating illicit discharges; and procedures for documenting actions. The City had not developed or implemented a written IDDE program that includes procedures for identifying priority areas of concern (geographic, audiences, or otherwise) for the IDDE program; description of priority areas of concern; and available equipment. Therefore, the Respondent violated Part VII.A.3.g of the Permit.
- m. Part VII.A.4.a.i of the Permit requires all permittees to develop, implement and enforce a program that provides equivalent protection to the New York State General Permit for Stormwater Discharges from Construction Activities ("CGP"), unless more stringent requirements are contained within the MS4 General Permit. At the time of the Audit, EPA observed that the City had not implemented and enforced a program that provided



equivalent protection to the CGP. Therefore, the Respondent violated Part VII.A.4.a.i of the Permit, as detailed below:

- i. Part II.C.1 of the CGP requires the owner or operator to ensure that the provisions of the SWPPP are implemented from commencement of construction activity until all areas of disturbance have achieved final stabilization and a Notice of Termination (“NOT”) has been submitted to the NYSDEC in accordance with Part V of the Permit. At the time of the Audit, EPA identified two (2) City owned/operated construction sites, the Water Treatment Plant (NYR10J954) and Tompkins Park (NYR10K053), that have completed construction activities but failed to submit an NOT to NYSDEC; therefore, the CGP and its requirements continue to be active.
- ii. Part IV.A.1 of the CGP states that the owner or operator must ensure that all erosion and sediment control practices identified in the SWPPP are maintained in effective operating conditions at all times. At the time of the Audit, EPA and the City identified the following SWPPP implementation deficiencies at the Autozone / Main Street Commons construction site (NYR11A300) and it is unclear if these deficiencies have been corrected:
  1. Soil stockpile with down perimeter silt fencing;
  2. Sediment tracking on public right of way; and
  3. Concrete waste outside designated washout area.
- n. Part VII.A.4.a.iii of the Permit requires all permittees to develop, implement, and enforce a program that includes a law, ordinance or other regulatory mechanism to require a SWPPP for each applicable land disturbing activity, that includes erosion and sediment controls that meet the NYSDEC’s most current technical standards. This mechanism must be equivalent to one of the versions of the “NYSDEC Sample Local Laws for Stormwater Management and Erosion and Sediment Control” and the equivalence must be documented. The City was unable to provide EPA with documentation that the City’s local law is equivalent to the NYSDEC sample local law, despite numerous requests prior to, during, and immediately subsequent to the Audit. Therefore, the Respondent violated Part VII.A.4.a.iii of the Permit.
- o. Part VII.A.4.a.vii of the Permit requires all permittees to develop, implement and enforce a program that describes procedures for SWPPP review. The City had not developed a program that describes procedures for SWPPP review. Therefore, the Respondent violated Part VII.A.4.a.vii of the Permit.
- p. Part VII.A.4.a.viii of the Permit requires all permittees to develop, implement and enforce a program that describes procedures for receipt and follow up on complaints or other information submitted by the public regarding construction site stormwater runoff. At the time of the Audit, the City did not have procedures for receipt and follow up on complaints by the public regarding construction site stormwater runoff. Therefore, the Respondent violated Part VII.A.viii of the Permit.
- q. Part VII.A.4.a.ix of the Permit requires all permittees to develop, implement and enforce a program that describes procedures for site inspections and enforcement of erosion and sediment control measures, including steps to identify priority sites for inspection and enforcement and Notice of Termination (“NOT”) procedures for signing the MS4



acceptance statement on the NOT. The City had not developed a program that describes procedures for site inspections and enforcement of erosion and sediment control measures, including steps to identify priority sites for inspection and enforcement and NOT procedures for signing the MS4 acceptance statement on the NOT. In addition, the City was unable to provide EPA with documentation of any construction site inspections conducted by the City despite numerous requests prior to, during, and subsequent to the Audit. Therefore, the Respondent violated Part VII.A.4.a.ix of the Permit.

- r. Part VII.A.4.a.xi of the Permit requires all permittees to develop, implement and enforce a program that ensures that construction site operators have received erosion and sediment control training before they do work within the covered entity's jurisdiction, and maintain records of that training. At the time of the Audit, City representatives had not developed, implemented or enforced a program that ensures that construction site operators have received erosion and sediment control training before they do work. During and subsequent to the Audit, City representatives were unable to provide documentation or records that the construction site operators have received the necessary training. Therefore, the Respondent violated Part VII.A.4.a.xi of the Permit.
- s. Part VII.A.5.a.iii of the Permit requires all permittees to develop, implement, and enforce a program that includes a law, ordinance or other regulatory mechanism to require post construction runoff controls from new development and re-development projects to the extent allowable under State law that meet the State's most current technical standards. This mechanism must be equivalent to one of the versions of the "NYSDEC Sample Local Laws for Stormwater Management and Erosion and Sediment Control" and the equivalence must be documented. The City was unable to provide EPA with documentation that the City's local law is equivalent to the NYSDEC sample local law, despite numerous requests prior to, during and immediately subsequent to the Audit. Therefore, the Respondent violated Part VII.A.5.a.iii of the Permit.
- t. Part VII.A.5.a.vi of the Permit requires all permittees to develop, implement, and enforce a program that maintains an inventory of post-construction stormwater management practices within the MS4's jurisdiction. At a minimum, it must include practices discharging to the small MS4 that have been installed since March 10, 2003, all practices owned by the small MS4, and those practices found to cause or contribute to water quality standard violations. At the time of the Audit, EPA identified that the City did not maintain an inventory of all post-construction stormwater management practices discharging to the small MS4 that have been installed since March 10, 2003, all practices owned by the small MS4, and those practices found to cause or contribute to water quality standard violations. Therefore, the Respondent violated Part VII.A.5.a.vi of the Permit.
- u. Part VII.A.5.a.vii of the Permit requires all permittees to develop, implement and enforce a program that ensures adequate long-term operation and maintenance of management practices identified in Part VII.5.a.vi of the Permit by trained staff, including inspections to ensure that practices are performing properly. At the time of the Audit, EPA identified that the City had not developed, implemented, and enforced a program that ensures adequate long-term operation and maintenance of management practices identified in Part VII.5.a.vi by trained staff, including inspections to ensure that practices are performing properly. Therefore, the Respondent violated Part VII.A.5.a.vii of the Permit.



- v. Part VII.A.6.a.i of the Permit requires all permittees to develop and implement a pollution prevention/good housekeeping program for municipal operations and facilities that addresses municipal operations and facilities that contribute or potentially contribute Pollutants of Concern (“POCs”) to the small MS4 system. At the time of the Audit, EPA inspectors observed inadequate pollution prevention/good housekeeping that may contribute or potentially contribute POCs to the MS4 from municipal operations and facilities as detailed below. Therefore, the Respondent violated Part VII.A.6.a.i of the Permit:
- i. At the Department of Public Works (“DPW”) Garage:
    - 1. Fueling pumps were uncovered and located uphill from an unprotected catch basin and there was no spill kit in the vicinity;
    - 2. Oil sheens were observed on puddles going into catch basins at two (2) locations; and
    - 3. Three (3) catch basins that discharge to a Hudson River tributary via the City’s MS4 were observed with paint residue on them, indicating improper disposal at this location.
  - ii. At the Central Garage ancillary stock pile location: EPA observed a dark puddle at the catch basin near the uncovered mulch and street sweeping stock piles;
  - iii. At the Water Filter Plant: EPA observed a hose outside a shed with cleaner/detergent where vehicles are washed uphill from a catch basin which discharges to a swamp on-site, then to a pond, then to the Peekskill Hollow Creek, then to Hudson River, according to the City representative. The Water Filter Plant’s SPDES Permit (NY0274585) Part F prohibits the discharge of wash water containing detergent; and
  - iv. At the Peekskill Stadium parking lot: EPA observed two (2) stockpiles uncovered and uphill from an unprotected catch basin that discharges to a Hudson River tributary via the City’s MS4.
- w. Part VII.A.6.a.ii of the Permit requires that all permittees, must at a minimum frequency of once every three years, perform a self-assessment of all municipal operations addressed by the SWMP to: determine the sources of pollutants potentially generated by the permittee’s operations and facilities, and identify the municipal operations and facilities that will be addressed by the pollution prevention and good housekeeping program, if it is not done already. At the time of the Audit, the City had not completed and documented self-assessments as required at all of the municipal operated facilities and municipal operations addressed by the SWMP. At the time of the Audit, the City provided EPA with a Stormwater Management Program Facility Inspection form for the DPW Garage, however, the form was incomplete, undated and unsigned. No forms were provided for any other municipal facilities or operations at the time of the Audit. Therefore, the Respondent violated Part VII.A.6.a.ii of the Permit.
- x. Part VII.A.6.a.vi of the Permit requires that all permittees develop and implement a pollution prevention / good housekeeping program for municipal operations and facilities that includes an employee pollution prevention and good housekeeping training program, and ensures that staff receive and utilize training. In addition, the City’s SWMP Plan states that good housekeeping training is to be held and documented annually. The Annual Report submitted by the City in 2015 lists employee pollution prevention and good housekeeping training held on 2/11/2015. However, at the time of the Audit, the City was unable to provide EPA with any details or documentation regarding training content or attendance for



the training held in 2015. At the time of the Audit, the City only provided EPA with documented stormwater pollution prevention training held in 2013 and 2014. Therefore, the Respondent violated Part VII.A.6.a.vi of the Permit.

- y. Part VII.A.6.e of the Permit requires all permittees to adopt techniques to reduce the use of fertilizers, pesticides, and herbicides, as well as potential impact to surface water. At the time of the Audit, EPA identified that the City applies fertilizers and pesticides to municipal property, including ballfields and Depew Park. However, the City does not have a written description of the established techniques to reduce the use of fertilizers, pesticides, and herbicides, as well as potential impact to surface water. Therefore, the Respondent violated Part VII.A.6.e of the Permit.
- 13. On June 8, 2016, the EPA issued Respondent a Request for Information (“RFI”), Docket No. CWA-IR-16-024, requiring the City to submit information relating to the MS4 within fourteen (14) calendar days of receipt of the RFI that were not provided prior to or at the time of the Audit. EPA did not receive the RFI requested information from the City prior to issuance of the Order.
- 14. On November 9, 2016, EPA issued an Administrative Compliance Order (“AO” or “Order”) (CWA-02-2017-3017). The AO directed the Respondent to comply with the requirements of the Permit in accordance with a compliance schedule.
- 15. On March 31, 2017, the Respondent began implementation of a comprehensive SWMP addressing the violations EPA identified at the time of the Audit, according to submissions provided by the Respondent.
- 16. Based on the Findings cited in paragraphs 1-15 above, Respondent violated Section 301 of the Act, 33 U.S.C. § 1311.

#### **IV. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY**

Based on the foregoing Findings of Violation, 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 civil penalty of **\$8,000**. 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 violation (or 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. Based on the Findings set forth above, the **Respondent is liable for twenty-five (25) violations of the Act, which have continued for at least three hundred and thirty-two (332) days**. 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 the Complaint within that time and requests 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 states 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 the Respondent disputes (and thus intends 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 affirmatively to 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 40 C.F.R. Part 22.

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. 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 Respondent requests 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, Respondent may comment on the charges made in this Complaint and Respondent may also provide whatever additional information is believed to be relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

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 Respondent may have regarding this Complaint should be directed to:

Lauren Charney, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
290 Broadway, 16th Floor  
New York, NY 10007-1866  
Telephone (212) 637-3181  
charney.lauren@epa.gov

The parties may engage in settlement discussions regardless of whether Respondent has requested a Hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal Hearing does not prevent Respondent 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 Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. Note that no penalty reduction will be made simply because an informal settlement conference is held.

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 accepting the Consent Agreement, Respondent waives any right to contest the allegations in the Complaint and waive any right to appeal the Final Order that is to accompany the 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).

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 Respondent (note that a new enforcement action may be initiated based on continued non-compliance). Entering into a settlement agreement does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

## **VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE**

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty (**\$8,000**) within 30 days after receipt of the Complaint, provided that Respondent 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 addresses:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
Docket No. CWA-02-2018-3314

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 Respondent elects 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 in accordance with 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 (note that a new enforcement action may be initiated based on continued non-compliance). Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's 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 Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

### **VIII. FILING OF DOCUMENTS**

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

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

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

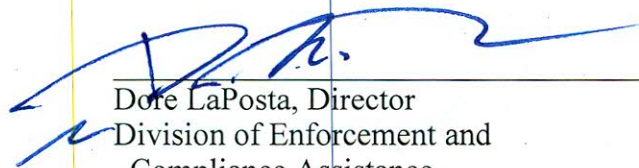
Lauren Charney, Esq.  
Assistant Regional Counsel  
Office of Regional Counsel  
290 Broadway, 16th Floor  
New York, NY 10007-1866  
Telephone (212) 637-3181  
charney.lauren@epa.gov

### **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 20<sup>th</sup> DAY OF March, 2018.



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Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance  
U. S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, New York 10007-1866



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

**IN THE MATTER OF:**

City of Peekskill  
840 Main Street  
Peekskill, New York 10566

SPDES Permit No. NYR20A310

**Respondent**

Proceeding pursuant to Section 309(g) of the  
Clean Water Act, 33 U.S.C. §1319(g)

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

**DOCKET No. CWA-02-2018-3314**

CERTIFICATE OF SERVICE

**MAR 23 2018**

I certify that on \_\_\_\_\_, I served the foregoing fully executed Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing, bearing the above referenced docket number, on the persons listed below, in the following manner:

Original and One Copy  
By Hand:

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

Copy by Certified Mail  
Return Receipt Requested:

Mr. Richard Leins, City Manager  
City of Peekskill  
840 Main Street  
Peekskill, New York 10566

Copy by Certified Mail  
Return Receipt Requested:

Mr. Joseph DiMura, Director  
Bureau of Water Compliance Programs  
Division of Water  
New York State Department of Environmental Conservation  
625 Broadway – 4<sup>th</sup> Floor  
Albany, New York 12233-3506

Dated: 03/23/18

  
Marie St. Germain, Branch Secretary  
New York, NY