

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

RECEIVED
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Office of Regional Hearing Clerk
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IN THE MATTER OF)
)
Town of North Providence,)
Department of Public Works)
2 Mafalda Street)
North Providence, RI 02904)
_____)

DOCKET NO. CWA-01-2009-0093

AMENDED ADMINISTRATIVE COMPLAINT

I. STATUTORY AUTHORITY

The following Findings are made and Notices given under the authority vested in the U.S. Environmental Protection Agency ("EPA") by Section 309(g)(1)(B) of the Clean Water Act (the "Act"), 33 U.S.C. § 1319(g)(1)(B). The Complainant is the Director of the Office of Environmental Stewardship, EPA, Region 1.

II. FINDINGS OF VIOLATION

COUNT 1

1. The Town of North Providence, Rhode Island ("Respondent") is a person within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
2. The Respondent owns and operates a wastewater collection system located in North Providence, Rhode Island, which engages in the "discharge of a pollutant," as defined in Section 502(12) and of the Act, 33 U.S.C. § 1362(12), from a "point source," as defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14), into "navigable waters," as defined at Section 502(7) of the Act, 33 U.S.C. § 1362(7).

3. Section 308(a) of the Act, 33 U.S.C. § 1318(a), authorizes EPA to require the submission of information whenever necessary for the purpose of carrying out the objectives of the Act.

4. Pursuant to Sections 308(a) and 309(a)(3) of the Act, 33 U.S.C. §§ 1318(a) and 1319(a)(3), on April 7, 2008, EPA issued an administrative order (“2008 Order”) to the Respondent that required, among other tasks, that the Respondent submit a Capacity, Management, Operation and Maintenance Program Implementation Annual Report (“CMOM Annual Report”) on January 31, 2009, and each January 31st annually thereafter. The Respondent failed to provide the required information by January 31, 2009, in violation of Section 308(a) and 309(a)(3) of the Act, 33 U.S.C. §§ 1318(a) and 1319(a)(3).

5. Pursuant to Section 308 of the Act, 33 U.S.C. § 1318, on January 26, 2009, EPA issued a Request for Information (“2009 Information Request”) requesting the submission of additional information pertaining to the ultimate fate of any sanitary sewer overflow discharges that occurred in the previous calendar year. The 2009 Information Request was received by the Respondent on January 27, 2009 and required a response within 30 days; therefore a response was due to EPA no later than February 26, 2009. The Respondent failed to provide the requested information by February 26, 2009, in violation of Section 308 of the Act, 33 U.S.C. § 1318.

6. On March 17, 2009, EPA sent a letter to the Respondent informing it that EPA had not received the CMOM Annual Report or a written response regarding the 2009 Information Request and reminding Respondent that compliance with the 2008 Order and the 2009 Information Request is mandatory.

7. To date, the Respondent has failed to provide the requested information, in violation of Section 308 of the Act, 33 U.S.C. § 1318.

8. Section 309(g)(1)(B) of the Act, 33 U.S.C. § 1319(g)(1)(B), authorizes EPA to assess Class II administrative penalties for violations of Section 308 of the Act, 33 U.S.C. § 1318. Respondent is therefore subject to an assessment of penalties under Section 309(g)(1)(B) of the CWA as amended by 40 C.F.R. § 19.4, which authorizes EPA to assess a civil penalty of up to \$16,000 per day for each day during which the violations of Section 311 continue, up to a maximum of \$177,500.

COUNT 2

9. The allegations in paragraphs 1 through 8 are incorporated by reference herein.

10. Section 301(a) of the Act, 33 U.S.C. §1311(a), makes unlawful the discharge pollutants to waters of the United States except in compliance with, among other things, the terms and conditions of a NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

11. On or about September 22, 2009, a contractor for the Narragansett Bay Commission (“NBC”), owner and operator of a conveyance system and publically owned treatment works (“POTW”) into which North Providence’s collection system discharges, discovered a sanitary sewer overflow (“SSO”) occurring from the collection system owned by North Providence in the area of bordered by Route 146, Mineral Spring Avenue, and Morrill Lane.

12. The SSO occurred for a period of at least three days. During this time untreated sewage discharged from a manhole and sewer in the area bordered by Route 146, Mineral Spring

Avenue, and Morrill Lane, to Canada Pond. Canada Pond is a tributary to the West River, which flows to the Moshassuck River, and ultimately to Narragansett Bay. These waters, including Canada Pond, are “navigable waters,” as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7) and the regulations promulgated thereunder.

13. The manhole and sewer from which the SSO occurred is a “point source,” as defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14).

14. Untreated sewage contains “pollutants,” as defined in Sections 502(6) and (12) of the Act, 33 U.S.C. §§ 1362(6) and (12).

15. Respondent’s unauthorized discharge of pollutants to Canada Pond from the manhole and sewer violates Section 301(a) of the Act, 33 U.S.C. § 1311(a).

16. Section 309(g)(1)(B) of the Act, 33 U.S.C. § 1319(g)(1)(B), authorizes EPA to assess Class II administrative penalties for violations of Section 301(a) of the Act, 33 U.S.C. § 1311(a). Respondent is therefore subject to an assessment of penalties under Section 309(g)(1)(B) of the Act, as amended by 40 C.F.R. § 19.4, which authorizes EPA to assess a civil penalty of up to \$16,000 per day for each day during which the violations of Section 311 continue, up to a maximum of \$177,500.

III. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

Based on the forgoing Findings of Violation, and pursuant to the authority of Section 309(g)(2)(B) of the CWA, as amended by 40 C.F.R. § 19.4, the Complainant proposes that a Final Order assessing administrative penalties be issued against Respondent in an amount not to exceed the amounts set forth above.

When calculating the penalty under Section 309(g)(3), EPA takes into account the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and such other matters as justice may require.

Respondent's failure to respond to the administrative order and information request issued under Section 308 of the CWA represents a significant violation of the CWA because it seriously impedes the EPA's ability to assess the possible environmental impact of the discharges.

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), Respondent may request a hearing on the proposed penalty assessment and, at the hearing, may contest any material fact contained in the Findings of Violation set forth in Section II above, and the appropriateness of the proposed penalty amount. The requirements for requesting a hearing, and the procedures for the hearing, if one is requested, are set forth in the Consolidated Rules of Practice, found at 40 C.F.R. Part 22, a copy of which is enclosed herewith.

A request for a hearing must be incorporated into the Respondent's Answer to this Complaint, which must be filed with the Regional Hearing Clerk at the following address within thirty (30) days of receipt of the Complaint:

Wanda Santiago
Regional Hearing Clerk, RCA
U.S. Environmental Protection Agency
Region I
1 Congress Street, Suite 1100
Boston, Massachusetts 02114-2023

The Answer must comply with Section 22.15 of the enclosed Consolidated Rules of Practice.

Respondent is also required to provide a contemporaneous copy of any Answer to Complainant's legal counsel, who is authorized to receive service on behalf of EPA pursuant to 40 C.F.R. § 22.5(c)(4), at the following address:

Tonia Bandrowicz,
Senior Enforcement Counsel
Office of Environmental Stewardship (SEL)
U.S. Environmental Protection Agency – Region 1
One Congress Street, Suite 1100
Boston, Massachusetts 02114-2023
Tel: 617-918-1734 Fax: 617-918-0734
Email: bandrowicz.toni@epa.gov

Pursuant to 40 C.F.R. § 22.15, the Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has knowledge. If the Answer asserts no knowledge of a particular factual allegation, the allegation shall be deemed denied. Otherwise, the failure to admit, deny, or explain any material factual allegation contained in this Complaint constitutes an admission of the allegation. The Answer shall also state the circumstances or arguments for any defense Respondent may wish to assert, challenges to any factual allegation in the Complaint, and any basis Respondent may have to oppose the Complainant's proposed penalty.

Following receipt of the Answer, a Presiding Officer will be assigned. The Presiding Officer will notify the parties of his assignment, and shall notify the parties of the time and place of further proceedings in the case.

Members of the public, to whom the 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 comment on the proposal and to be heard and present evidence at the hearing.

Be advised that if the Respondent does not file a timely Answer to this Complaint, Respondent may be found in default. Default constitutes an admission of all facts alleged in this Complaint and a waiver of the right to a hearing on such factual allegations. In order to avoid default in this matter, Respondent must within 30 days after receipt of this Complaint either: (1) settle this matter with the Complainant; or (2) file both an original and one copy of a written Answer to this Complaint to the Regional Hearing Clerk at the address above.

VI. PUBLIC NOTICE FOR CLEAN WATER ACT VIOLATION

Pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, the Complainant is providing public notice of, and reasonable opportunity to, comment on this proposed issuance of a Final Order assessing administrative penalties against Respondent for CWA violations. If a hearing is held on this matter, members of the public who submitted timely comments on this proceeding have the right under Section 309(g) of the CWA to be heard and present evidence at the hearing.

VII. SETTLEMENT

You may request an informal conference with Complainant's attorney, Tonia Bandrowicz, concerning the alleged violations and the amount of the proposed penalty. A request for an informal conference does not extend any deadlines in this proceeding, including the deadline by which you must submit an Answer to this Complaint.

In the Matter of Town of North Providence, RI
EPA Docket No. CWA-01-2009-0093

CERTIFICATE OF SERVICE

I certify that the foregoing Amended Compliant was transmitted to the following persons, in the manner specified, on the date below:

Original and one copy
hand-delivered:

Judy Lao-Ruiz,
Acting Regional Hearing Clerk
U.S. EPA - Region I
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114-2023

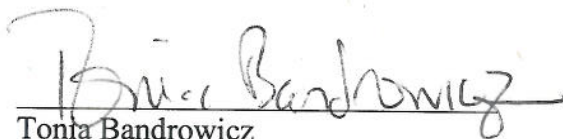
Copy by Overnight Mail

Barbara A. Gunning,
U.S. Administrative Law Judge
U.S. EPA
Office of Administrative Law Judges
Franklin Court Building
1099 14th Street, NW, Suite 350
Washington, DC 20460

Copy by certified mail,
return receipt requested:

Stephen H. Burke, Esq.
Ratcliffe Burke Haren & Elias, LLP
1600 Financial Plaza
Providence, RI 02903

Dated: 12/1/09



Tonia Bandrowicz
U.S. EPA - Region I
One Congress Street, Suite 1100 (SEL)
Boston, MA 02114-2023
Phone: (617) 918-1734
Fax: (617) 918-0734

If you have any questions concerning the enclosed Complaint, or wish to arrange for an informal conference, please contact Ms. Bandrowicz at (617) 918-1734.

Date: 11 | 02 | 09

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
1 Congress Street
Suite 1100 - SES
Boston, MA 02114-2023

BY HAND

December 1, 2009

Judy Lao-Ruiz,
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region I
One Congress Street, Suite 1100 (RCA)
Boston, MA 02114-2023

Re: In the Matter of Town of North Providence, Rhode Island
Docket No. CWA-01-2009-0093

Dear Ms. Lao-Ruiz,

Enclosed for filing in the above-referenced action, please find the original and one copy of the Amended Complaint.

Thank you for your attention to this matter.

Sincerely,



Tonia Bandrowicz
Senior Enforcement Counsel

Enclosure

cc: Barbara A. Gunning, Adm. Law Judge
Stephen H. Burke, Esq.

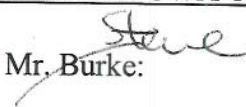
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
1 Congress Street
Suite 1100 - SES
Boston, MA 02114-2023

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

December 1, 2009

Stephen H. Burke, Esq.
Ratcliffe Burke Haren & Elias, LLP
1600 Financial Plaza
Providence, RI 02903

Re: In the Matter of Town of North Providence, RI
Docket No. CWA-1-2009-0093

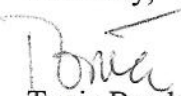
Dear Mr.  Burke:

Pursuant to our previous conversations, and in accordance with the Presiding Officer's November 25, 2009 Order granting the U.S. Environmental Protection Agency's motion to amend the complaint, enclosed please find a copy of the Amended Complaint which EPA is filing today. The schedule for answering the complaint, as well as filing the prehearing exchanges in this case, are set forth in the November 25, 2009 Order.

Once EPA receives the additional information requested, we can continue informal settlement discussions and hopefully come to a mutually agreeable resolution of this matter.

If you have any questions, please feel free to contact me.

Sincerely,


Tonia Bandrowicz
Sr. Enforcement Counsel
U.S. EPA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

1 Congress Street
Suite 1100 - SES
Boston, MA 02114-2023

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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Office of Regional Hearing Clerk
gssa

December 1, 2009

David Chopy, Acting Chief
Office of Compliance and Inspection
Rhode Island Department of
Environmental
235 Promenade Street
Providence, RI 02908-5767


Re: Notice of Amending of Administrative Complaint
Docket No. CWA-01-2009-0093
Issued to Town of North Providence, Rhode Island

Dear Mr. Chopy:

Pursuant to recent conversations my staff had with staff at the Rhode Island Department of Environmental Management, this is to inform you that the Administrative Law Judge granted EPA's motion to file the Amended Complaint on November 25, 2009. Enclosed please find a copy of the Amended Administrative Complaint which the U.S. Environmental Protection Agency, New England Region is filing today.

If you wish to confer further on this matter or if you have any additional comments or questions, please call me at (617) 918-1734, or Dave Turin of the Regional Water Technical Section at (617) 918-1598.

Sincerely,


Tonia Bandrowicz
Sr. Enforcement Counsel
Office of Environmental Stewardship
U.S. EPA

Enclosure

cc: Judy Lao-Ruiz, Acting Regional Hearing Clerk