



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I  
5 POST OFFICE SQUARE, SUITE 100  
BOSTON, MA 02109-3912

RECEIVED

DEC 07 2015

EPA ORC  
Office of Regional Hearing Clerk **By HAND**

**December 7, 2015**

Wanda Santiago, Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 1 (ORA 18-1)  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

Re: *In the matter of Weymouth Salvage Company.*  
Docket No. CWA-01-2016-10

Dear Ms. Santiago:

Enclosed for filing are the following original documents, and one copy of each, relating to the above-referenced matter:

1. Administrative Complaint and Notice of Opportunity for Hearing; and
2. Certificate of Service.

Kindly file the documents in the usual manner. I have also included a copy of the letter notifying the Massachusetts Department of Environmental Protection of the filing of this Complaint.

Thank you very much for your help.

Very truly yours,

A handwritten signature in blue ink, appearing to read "R. Ramirez Ballagas".

Rohemir Ramirez Ballagas  
Enforcement Counsel

Enclosures

cc: George S. Eacobacci Jr., President, Weymouth Salvage Company  
David Turin, EPA Region 1

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

RECEIVED

DEC 07 2015

Docket No. CWA-01-2016-0010  
EPA ORC  
Office of Regional Hearing Clerk

IN THE MATTER OF )  
)

WEYMOUTH SALVAGE COMPANY )  
307 Middle Street )  
South Weymouth, MA 02189 )

Respondent. )  
)

Proposing to Assess a Civil Penalty )  
Under Sections 309(g) and 311(b) of the Clean )  
Water Act, 33 U.S.C. §§ 1319(g), 1321(b) )  
)

COMPLAINT AND NOTICE OF  
OPPORTUNITY FOR HEARING

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Administrative Complaint and Notice of Opportunity to Request a Hearing has been sent to the following persons on the date noted below:

Original and one copy,  
hand-delivered:

Ms. Wanda Santiago  
Regional Hearing Clerk  
U.S. EPA, Region I (ORA18-1)  
5 Post Office Square, Suite 100  
Boston, MA 02109-3912

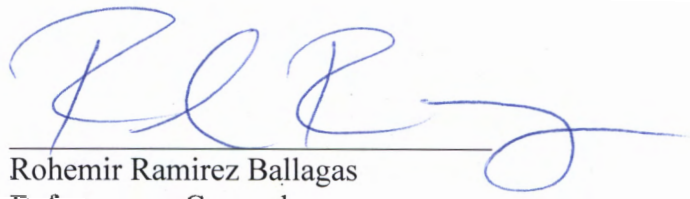
Copy by UPS, with a copy of 40 C.F.R. Part 22, and a copy of Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer:

George S. Eacobacci Jr., President  
Weymouth Salvage Company  
307 Middle Street  
Weymouth, MA 02189

Copy, by Certified Mail,  
Return Receipt Requested

Pamela Talbot  
Massachusetts Department of Environmental Protection  
One Winter Street, 7<sup>th</sup> Floor  
Boston, MA 02108

Dated: 12/7/15



Rohemir Ramirez Ballagas  
Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100 (OES04-3)  
Boston, MA 02109-3912  
Tel (617) 918-1262  
Fax (617) 918-1862

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

IN THE MATTER OF	)	Docket No. CWA-01-2016-0010
WEYMOUTH SALVAGE COMPANY	)	
307 Middle Street	)	<b>COMPLAINT AND NOTICE OF</b>
South Weymouth, MA 02189	)	<b>OPPORTUNITY FOR HEARING</b>
	)	
Respondent.	)	
	)	
Proposing to Assess a Civil Penalty	)	
Under Sections 309(g) and 311(b) of the Clean	)	
Water Act, 33 U.S.C. §§ 1319(g), 1321(b)	)	

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

IN THE MATTER OF	)	
	)	Docket No. CWA-01-2016-0010
	)	
WEYMOUTH SALVAGE COMPANY	)	
307 Middle Street	)	
South Weymouth, MA 02189	)	<b>COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING</b>
	)	
Respondent.	)	
	)	
Proposing to Assess a Civil Penalty	)	
Under Sections 309(g) and 311(b) of the Clean	)	
Water Act, 33 U.S.C. §§ 1319(g), 1321(b)	)	
	)	

**I. STATEMENT OF AUTHORITY**

1. The United States Environmental Protection Agency (“EPA”) issues this administrative Complaint and Notice of Opportunity for Administrative Hearing (“Complaint”) to Weymouth Salvage Company (“Respondent” or “Weymouth”) pursuant to Sections 309(g) and 311(b)(6) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. §§ 1319(g) and 1321(b)(6), as amended by the Oil Pollution Act of 1990, and the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits” (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. The Complainant is the Director, Office of Environmental Stewardship, EPA Region 1.

2. Pursuant to Section 309(g) of the Act, 33 U.S.C. §§ 1319(g) and 1321(b)(6), and in accordance with the Consolidated Rules of Practice, EPA hereby provides notice that it seeks to assess penalties against Respondent for the following violations of the Act: (1) discharge of stormwater associated with industrial activity without authorization under a National Pollutant Discharge Elimination System (“NDPES”) permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a); (2) failure to apply for an NPDES permit in violation of Section 308 of the

CWA, 33 U.S.C. § 1318(a); (3) failure to prepare and implement a Spill Prevention, Control, and Countermeasure (“SPCC”) Plan in accordance with the requirements of 40 C.F.R Part 112, in violation of Section 311 of the CWA, 33 U.S.C. § 1321; and (4) failing to provide the requested information in violation of Section 308 of the Act, 33 U.S.C. § 1318.

## **II. STATUTORY AND REGULATORY AUTHORITY**

### Discharge of Pollutants

3. The CWA is designed to restore and maintain the chemical, physical, and biological integrity of the nation’s waters. 33 U.S.C. § 1251(a). To accomplish these objectives, Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into navigable waters except in compliance with the terms and conditions of a permit issued pursuant to Section 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, and EPA’s implementing regulations, found at 40 C.F.R. Part 122.

4. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), authorizes the Administrator of EPA to issue NPDES permits for the discharge of pollutants into navigable waters in compliance with the CWA.

5. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” to include “an individual, corporation, [or] partnership.”

6. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

7. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, solid waste, chemical wastes, rock, sand, and industrial waste discharged into water.

8. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” to include

“any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged.”

9. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including the territorial seas.” The term “waters of the United States” includes, among other things: (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; (ii) all inter-state waters; (iii) tributaries to such waters; and (iv) wetlands adjacent to such waters or their tributaries. 40 C.F.R. § 122.2.

#### Stormwater Permits

10. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes the Administrator of EPA to require the owner or operator of any point source to provide such information as the Administrator may reasonably need to carry out the objectives of the CWA, which includes, among other things, the development and issuance of NPDES permits.

11. Pursuant to Sections 308 and 402 of the CWA, 33 U.S.C. §§ 1318 and 1342, EPA promulgated storm water discharge regulations at 40 C.F.R. § 122.26.

12. Forty C.F.R. § 122.26(b)(13) defines “stormwater” to include stormwater runoff, snow melt runoff, and surface runoff and drainage.

13. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulation 40 C.F.R. § 122.26(a)(1)(ii), require that facilities discharging stormwater associated with industrial activity obtain a permit. Under 40 C.F.R. § 122.26(c)(1), dischargers of stormwater associated with industrial activity must apply for an individual NPDES permit or seek coverage under a general permit.

14. Forty C.F.R. § 122.26(b)(14)(iii) specifies that facilities “engaging in industrial activity”



includes facilities “involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards,” classified under Standard Industrial Classification (“SIC”) codes 5015 (motor vehicles parts, used) and 5093 (scrap and waste materials).

15. Forty C.F.R. § 122.26(b)(14) specifies that, for the categories of facilities classified under SIC codes 5015 and 5093, the term “stormwater discharge associated with industrial activity” includes stormwater discharges from, among others, (1) material handling sites; (2) sites used for the storage and maintenance of material handling equipment; (3) immediate access roads used or travelled by carriers of raw materials, manufactured products, waste products, or by-products used or created by the facility; (4) sites used for the storage and maintenance of material handling equipment, and (5) areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water.

16. On September 29, 1995, EPA issued an NPDES Stormwater Multi-Sector General Permit for Industrial Activities” (“1995 MSGP”). 73 Fed. Reg. 56,527 (Sept. 29, 2008). EPA reissued the Multi-Sector General Permit for Industrial Activities on October 30, 2000 (“2000 MSGP”), 65 Fed. Reg. 64746, September 29, 2008 (“2008 MSGP”) and reissued it again on June 4, 2015 (“2015 MSGP”). The 2015 MSGP became effective on the date of issuance. 80 Fed. Reg. 34,403 (June 16, 2015).

17. The 2008 and 2015 MSGPs (the “Permits”) contain terms and conditions designed to ensure the implementation of practices to minimize the pollutants in stormwater discharges associated with industrial activity.

18. Under the 2008 and 2015 MSGPs, a facility discharging stormwater associated with industrial activity is required to submit a Notice of Intent (“NOI”) to be covered under the

Permit, prepare and implement a Stormwater Pollution Prevention Plan (“SWPPP”), conduct inspections, conduct monitoring and sampling, and meet other eligibility requirements.

19. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), provides for the assessment of penalties for violations of Sections 301 and 308 of the CWA.

Spill Prevention Control and Countermeasure Plan

20. Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), provides that the President shall issue regulations “establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances . . . from onshore and offshore facilities, and to contain discharges . . . .”

21. Pursuant to Section 311(j)(1) of the CWA, EPA’s Oil Pollution Prevention regulations at 40 C.F.R. Part 112 establish procedures, methods, and requirements for preventing the discharge of oil. These requirements apply to owners or operators of non-transportation-related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products which, due to their location, could reasonably be expected to discharge oil in harmful quantities (as defined in 40 C.F.R. Part 110) to navigable waters of the United States or adjoining shorelines. 40 C.F.R. § 112.1(b). However, except as provided in 40 C.F.R. § 112.1(f), these requirements do not apply to the owner or operator of any facility which meets both of the following requirements: (1) the completely buried storage capacity of the facility is 42,000 U.S. gallons or less of oil; and (2) the aggregate above ground storage capacity of the facility is 1,320 U.S. gallons or less of oil. 40 C.F.R. § 112.1(d)(2).

22. Under 40 C.F.R. § 112.3(a)(1), an owner or operator of an onshore facility that became operational prior to August 16, 2002 and that has discharged or, due to its location, could reasonably be expected to discharge, oil in harmful quantities into or upon the navigable waters

of the United States must prepare and fully implement an SPCC plan in accordance with the requirements of 40 C.F.R. § 112.7.

23. Section 311(b)(6), 33 U.S.C. § 1321(b)(6), of the CWA provides for the assessment of penalties for violations of Section 311(j) of the CWA.

### **III. GENERAL ALLEGATIONS**

#### *The Facility*

24. At all times relevant to the allegations in this Complaint, Respondent was a corporation organized under the laws of the Commonwealth of Massachusetts with its principal place of business located at 307 Middle Street, South Weymouth, Massachusetts (the “Facility”).

25. Respondent is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

26. At all times relevant to the allegations in this Complaint, Respondent controlled all daily business and industrial operations at the Facility, and otherwise met the definition of an “operator” of the Facility, as defined at 40 C.F.R. § 122.2.

27. At all times relevant to the allegations in this Complaint, the Facility included two areas: the Main Lot and the Office Complex.

28. At all times relevant to the allegations in this Complaint, operations at the Facility included, but were not limited to, the dismantling of automobiles (SIC code 5015) and scrap metal recycling (SIC code 5093). Therefore, Respondent engaged in “industrial activity” within the meaning of 40 C.F.R. § 122.26(b)(14)(iii).

29. More specifically, at all times relevant to the allegations in this Complaint, Respondent conducted automobile dismantling and scrap metal recycling services in the Main Lot area.

30. At all times relevant to the allegations in this Complaint, Respondent used the Main Lot

area as a site for storing auto parts, scrap metal and material handling equipment.

31. On June 16, 2015, EPA conducted an inspection at the Facility to determine compliance with stormwater and the Oil Pollution Prevention regulations.

Stormwater Discharges from the Facility

32. During storm events from at least December 1, 2010 to the present, stormwater from the Main Lot discharged into an unnamed water body.

33. The unnamed water body flows in a downstream path into other unnamed streams that flows into the Weymouth Fore River.

34. The above-referenced streams and river are “waters of the United States,” as defined at 40 C.F.R. § 122.2, and thereby are “navigable waters,” as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

35. The stormwater discharge described in paragraph 32 contains, *inter alia*, oil, solid waste, chemical waste, wrecked or discarded material, rock and industrial waste, which constitute “pollutants” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

36. Runoff from the Main Lot flows primarily through a rock barrier to a constructed detention basin at the base of the slope. This runoff and the basin associated with it are “point sources” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

37. The stormwater discharge described in paragraph 32 results in the “discharge of pollutants,” as defined at Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

38. Accordingly, at all times relevant to the allegations in this Complaint, Respondent operated an automobile salvage yard facility that discharged “stormwater associated with industrial activity,” as defined at 40 C.F.R. § 122.26(b)(14)(iii), to waters of the United States.

*Permit Coverage*

39. Respondent did not apply for an individual NPDES permit or submit a NOI for coverage under the 2008 MSGP, nor has it applied for coverage under the 2015 MSGP.

*Stormwater Management Practices at the Facility*

40. Respondent has not developed an SWPPP.

*Spill Prevention, Control, and Countermeasure Regulations*

41. Respondent is the “owner or operator” of the Facility within the meaning of Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2. At all times relevant to the allegations in this Complaint, Respondent engaged in storing, using, and consuming “oil” or oil products located at the Facility within the meaning of 40 C.F.R. § 112.2.

42. At all times relevant to the allegations in this Complaint, the Facility had an aggregate above ground oil storage capacity greater than 1,320 gallons. 40 C.F.R. § 112.1(d)(2).

43. At all times relevant to the allegations in this Complaint, oil tanks and fuel transfer stations at the Facility were found in the Main Lot area.

44. At all times relevant to the allegations in this Complaint, oil tanks and fuel transfer stations at the Facility were located adjacent to the unnamed waterbody.

45. The Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.

46. The Facility is a “non-transportation-related” facility within the meaning of Appendix A to 40 C.F.R. Part 112, as incorporated by reference within 40 C.F.R. § 112.2.

47. Accordingly, the Facility is a non-transportation-related onshore facility which, due to its location, could reasonably be expected to discharge oil to navigable waters of the United States or its adjoining shorelines in a harmful quantity.

48. Respondent is therefore subject to the Oil Pollution Prevention regulations at 40 C.F.R.

Part 112 at the Facility.

#### **IV. VIOLATIONS**

##### **COUNT I**

###### **Unauthorized Discharge of Stormwater Associated with Industrial Activity**

49. Paragraphs 1 through 48 are incorporated by reference as if fully set forth herein.

50. Respondent discharged stormwater associated with industrial activity at the Facility to waters of the United States during storm events from at least December 7, 2010 through the filing of this complaint without authorization under any NPDES permit, and thereby violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

###### **Failure to Apply for an NPDES Permit**

51. Respondent failed to apply for an individual NPDES permit or submit an NOI for coverage under the 2008 MSGP from November 1, 2010 until June 3, 2015.

52. Respondent failed to apply for an individual NPDES permit or submit an NOI for coverage under the 2015 MSGP from June 4, 2015 until the filing of this complaint.

53. Respondent violated Section 308(a) of the CWA, 33 U.S.C. § 1318(a), each day from at least November 1, 2010 through and including the date of filing of this complaint.

54. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 *et seq.*, the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 *et seq.*, and the rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.1-19.4 (61 Fed. Reg. 69360 (Dec. 31, 1996); 69 Fed. Reg. 7121 (Feb. 13, 2004); 73 Fed. Reg. 75340 (Dec. 11, 2008)), Respondent is subject to civil penalties of up to sixteen thousand (\$16,000) per day for each day prior to and including December 6, 2013, during which the violations continued, and up to sixteen thousand dollars (\$16,000) per day for

each day after December 6, 2013, during which the violations continued, up to a maximum of one hundred and eighty-seven thousand five hundred dollars (\$187,500).

## COUNT II

### **Failure to Prepare and Implement an SPCC plan**

55. Paragraphs 1 through 54 are incorporated herein by reference.

56. During the June 16, 2015 inspection, EPA determined that Respondent had failed to prepare and fully implement an SPCC Plan. This violation has continued through at least the filing of this complaint, in violation of Section 311(j) of the Act.

57. By failing to prepare and fully implement an SPCC plan for the Facility in accordance with the requirements of 40 C.F.R. §§ 112.7 and 112.8, as described above, Respondent violated 40 C.F.R. § 112.3 and Section 311(j) of the CWA, 33 U.S.C. § 1321(j), from at least December 1, 2010 until the filing of this complaint.

58. Pursuant to Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 *et seq.*, the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 *et seq.*, and the rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.1-19.4 (61 Fed. Reg. 69360 (Dec. 31, 1996); 69 Fed. Reg. 7121 (Feb. 13, 2004); 73 Fed. Reg. 75340 (Dec. 11, 2008)), Respondent is subject to civil penalties of up to sixteen thousand (\$16,000) per day for each day after December 6, 2013, during which the violations continued, up to a maximum of one hundred and eighty-seven thousand five hundred dollars (\$187,500).

## COUNT III

### **Failure to Timely Respond to an Information Request**

59. Paragraphs 1 through 58 are incorporated herein by reference.

60. Pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a), on July 20, 2015, EPA sent Respondent, in writing, a Request for Information (the “Information Request”) pertaining to its compliance with the Clean Water Act. However, delivery was not completed because “an authorized recipient was not available.”

61. On August 12, 2015 the Information Request was resent via a private carrier service and effectively delivered on August 13, 2015.

62. The Information Request stated that a response was required to be provided within 30 days of receipt of the Information Request.

63. The Respondent received the Information Request on, or about, August 13, 2015; therefore a response was due no later than September 14, 2015. The Respondent failed to provide the requested information by this date in violation of Section 308 of the Act, 33 U.S.C. § 1318.

64. On October 2, 2015, EPA sent a letter to the Respondent informing Respondent that EPA had not received a written response to its Information Request and reminding the Respondent that compliance with the requirements of the Information Request is mandatory.

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

66. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 *et seq.*, the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 *et seq.*, and the rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.1-19.4 (61 Fed. Reg. 69360 (Dec. 31, 1996); 69 Fed. Reg. 7121 (Feb. 13, 2004); 73 Fed. Reg. 75340 (Dec. 11, 2008)), Respondent is subject to civil penalties of up to sixteen thousand dollars (\$16,000) per day for each day after December 6, 2013, during



which the violations continued, up to a maximum of one hundred and eighty-seven thousand five hundred dollars (\$187,500).

#### **V. NOTICE OF PROPOSED ASSESSMENT OF CIVIL PENALTY**

67. Based on the foregoing allegations and pursuant to the authority of Section 309(g) and 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1319(g) and 33 U.S.C. § 1321(b)(6)(B)(ii); the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, *et seq.*; the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, *et seq.*; and the Civil Monetary Penalty Inflation Adjustment Rule, 73 Fed. Reg. 75,340 (Dec. 11, 2008) (codified at 40 C.F.R. Part 19), Complainant proposes that a Final Order assessing civil penalties be issued against Respondent of up to sixteen thousand (\$16,000) per day for each day prior to and including December 6, 2013, during which the violations continued, and up to sixteen thousand dollars (\$16,000) per day for each day after December 6, 2013, during which the violations continued, up to a maximum of one hundred and eighty-seven thousand five hundred dollars (\$187,500) for Count I (unauthorized stormwater discharge and failure to apply for a permit) and Count III (failure to timely respond to an Information Request) collectively, and up to a maximum of one hundred and eighty-seven thousand five hundred dollars (\$187,500) for Count II (failure to prepare and implement an SPCC plan).

68. In determining the amount of the penalty to be assessed under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), EPA takes into account the statutory factors listed in Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), including the nature, circumstances, extent and gravity of the violations; Respondent's prior compliance history; Respondent's degree of culpability for the cited violations; any economic benefit or savings accruing to Respondent resulting from the violations; Respondent's ability to pay the proposed penalty; and such other

matters as justice may require.

69. In determining the amount of the penalty to be assessed under Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), EPA takes into account the statutory factors listed in Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), including the seriousness of the violations; the economic benefit accruing to Respondent as a result of the violation; the degree of Respondent's culpability; any other penalty for the same incident; any history of prior violations; the nature, extent, and degree of success of any efforts by Respondent to minimize or mitigate the effects of the discharge; the economic impact of the penalty on Respondent; and any other matters as justice may require.

70. EPA is seeking civil penalties for each day of violation under Count I (unauthorized discharge of stormwater and failure to apply for a permit), of up to sixteen thousand (\$16,000) per day for each, for the duration of Respondent's violations, which was up to a total of 1827 days. The maximum total civil penalty EPA is seeking for Count I (along with Count III) is not more than one hundred and eighty-seven thousand five hundred dollars (\$187,500).

71. EPA is seeking civil penalties for each day of violation under Count II (failure to prepare and implement an SPCC plan) of up to sixteen thousand (\$16,000) per day for each, for the duration of Respondent's violations, which was up to a total of 175 days. The maximum total civil penalty EPA is seeking for Count II is not more than one hundred and eighty-seven thousand five hundred dollars (\$187,500).

72. EPA is seeking civil penalties for each day of violation under Count III (failure to timely respond to an Information Request) of up to sixteen thousand (\$16,000) per day for each, for the duration of Respondent's violations, which was up to a total of 85 days. The maximum total civil penalty EPA is seeking for Count III (along with Count I) is not more than one hundred and

eighty-seven thousand five hundred dollars (\$187,500).

73. The stormwater violations alleged in Count I represent significant violations of the CWA because of the extent and duration of the violations and because compliance with the federal stormwater program is important for ensuring that stormwater runoff does not contribute to the impairment of water quality. Among other concerns, untreated and unmanaged stormwater from the Facility may contain pollutants that reduce the oxygen levels in surface waters and have the potential to stress aquatic animals and plants. When they settle, solids can form sediment deposits on the bottom of the water body that destroy the bottom fauna and the spawning grounds of fish.

74. The violations of the Oil Pollution Prevention regulations alleged in Count II represent significant violations of the CWA because failure to maintain and implement an adequate SPCC plan leaves a facility unprepared to deal with an oil spill and to prevent a spill from having potentially serious environmental consequences.

75. Failing to timely respond to an Information Request alleged in Count III represents a significant violation of the CWA because it directly obstructs EPA's regulatory enforcement capabilities. The Information Request is one of EPA's most effective tools to adequately enforce the CWA and ensure that regulated entities are in compliance.

76. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty, as required by the Consolidated Rules of Practice.

**VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING  
AND FILE AN ANSWER**

77. Pursuant to Sections 309(g) and 311(b)(6) of the Act, 33 U.S.C. §§ 1319(g) and 1321(b)(6), and 40 C.F.R. § 22.14, notice is hereby given that Respondent has the right to

request a hearing on any material fact alleged in this Complaint and on the appropriateness of any proposed penalty. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is enclosed. Members of the public, to whom EPA is obliged to give notice of this proposed action, have a right under Sections 309(g)(4)(B) and 311(b)(6)(C) of the Act, 33 U.S.C. §§ 1319(g)(4)(B) and 1321(b)(6)(C), to comment on any proposed penalty and to be heard and to present evidence at the hearing.

78. To be entitled to a hearing, Respondent must include its request for a hearing in an Answer to the Complaint. Respondent's Answer must comply with 40 C.F.R. § 22.15 and must be filed with the Regional Hearing Clerk at the address listed below within thirty (30) days of receipt of the Complaint.

79. In its Answer, Respondent may also: (1) dispute any material fact in the Complaint; (2) contend that the proposed penalty is inappropriate; or (3) contend that it is entitled to judgment as a matter of law. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. If Respondent has no knowledge of a particular factual allegation and so states, the allegation is considered denied. The failure to deny an allegation constitutes an admission of that allegation. The Answer must also include the grounds for any defense and the facts Respondent intends to place at issue.

80. The original and one copy of the Answer, as well as a copy of all other documents which Respondent files in this action, must be sent to:

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square  
Suite 100 (Mail Code: ORA18-1)  
Boston, Massachusetts 02109-3912

Respondent should also send a copy of the Answer, as well as a copy of all other documents which Respondent files in this action, to Rohemir Ramirez Ballagas, the attorney assigned to represent EPA and designated to receive service in this matter at:

Rohemir Ramirez Ballagas  
Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square  
Suite 100 (Mail Code: OES04-3)  
Boston, Massachusetts 02109-3912  
Tel: 617-918-1262  
Email: ramirezballagas.rohemir@epa.gov

81. If Respondent fails to file a timely Answer to this Complaint, it may be found to be in default, pursuant to 40 C.F.R. § 22.17, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing.

82. The filing and service of documents, other than the complaint, rulings, orders, and decisions, in all cases before the Region 1 Regional Judicial Officer governed by the Consolidated Rules of Practice may be filed and served by email, consistent with the "Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer," a copy of which has been provided with the Complaint.

83. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in any default order shall become due and payable by Respondents without further proceedings thirty (30) days after the default order becomes final.

**VII. CONTINUED COMPLIANCE OBLIGATION**

84. Neither assessment nor payment of a civil penalty pursuant to Section 309(g)(4)(B) or Section 311(b)(6)(C) of the Act shall affect Respondent's continuing obligation to comply with the CWA, the regulations promulgated thereunder, or any other applicable requirements of Federal, State, or local law.

Susan Studlien  
Susan Studlien, Director  
Office of Environmental Stewardship  
U.S. Environmental Protection Agency  
Region 1 – New England

12/04/2015  
Date