

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

2017 MAR 22 AM 11:02
RECEIVED
CIVIL
ENFORCEMENT
DIVISION

IN THE MATTER OF:

Town of Binghamton
279 Park Avenue
Binghamton, New York 13903

SPDES Permit No. NYR20A009

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

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

DOCKET No. CWA-02-2017-3305

**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 (2017), 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 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 it expires on April 30, 2017. 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 FACTS AND VIOLATIONS

1. The Town of Binghamton (“Town” 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 Town of Binghamton, Broome 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. The MS4 in the Town of Binghamton is a point source 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), into Bayless Creek, Park Creek, Pierce Creek, and West Fork Little Snake Creek, 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 Town of Binghamton submitted a Notice of Intent (“NOI”) to NYSDEC on March 3, 2003 and subsequently received authorization under the MS4 General Permit pursuant to permit No. NYR20A009, and has been covered under the conditions and limitations in the MS4 General Permit at all relevant times addressed by this Order.
7. EPA, accompanied by its contractors and by NYSDEC, conducted a Compliance Audit of the Town’s MS4 on April 12, 2012 through April 13, 2012.
8. NYSDEC General Permit for Storm Water Discharges from Municipal Separate Storm Sewer Systems (GP-0-10-002), effective on May 1, 2010, was the effective permit at the time of the audit.
9. At the time of the Audit, EPA identified the following violations of the Permit:

- a. Part IV.A of the Permit requires that all permittees under GP-0-08-002 must have prepared a Storm Water Management Program (“SWMP”) Plan documenting modifications to their SWMP. In accordance with the 2003 permit, the Town was required to develop and have fully implemented its SWMP by January 8, 2008. Part IV.A of the Permit also requires that the SWMP Plan shall be made readily available to MS4 staff, to the public, and to NYSDEC and EPA staff. At the time of the audit, it was observed that the Town of Binghamton did not have a SWMP plan. The Town of Binghamton was authorized under GP-0-08-002 and did not prepare a SWMP plan documenting modifications to its SWMP as it did not have one. Therefore, the Town of Binghamton failed to develop, implement and enforce a Stormwater Management Program, in violation of Part IV.A, Part IV.D and Part IV.F of the Permit.
- b. Part VII.A.3.b of the Permit requires that the Town “develop (*for newly authorized MS4s*) and maintain a map, at a minimum within the *covered* entity’s jurisdiction in the *urbanized area* and *additionally designated* area.” Part VII.A.3.b.i of the Permit requires all permittees to develop and maintain a map, at a minimum within the permittees’ jurisdiction in the urbanized area and additionally designated area, showing the location of all outfalls. During the audit, the Town stated that it had not developed a map of its storm sewer system. Therefore, the Town of Binghamton failed to map its storm sewer system and preliminary boundaries of the Town’s storm sewersheds, in violation of Part VII.A.3.b of the Permit.
- c. Part VII.A.3.c of the Permit requires all permittees to field verify outfall locations. During the audit, the Town stated that while the Town Highway Superintendent had knowledge of the storm drain system from his maintenance activities, the Town had not formally field verified outfall locations. Therefore, the Town of Binghamton failed to field verify outfall locations, in violation of Part VII.A.3.c of the Permit.
- d. Part VII.A.3.d of the Permit requires all permittees to conduct an outfall reconnaissance inventory, 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. The NYSDEC SPDES MS4 General Permit GP-0-08-002 with the effective date of May 1, 2008, includes this requirement, therefore, the five year deadline was May 1, 2013. During the audit, it was observed that the Town had not conducted an outfall reconnaissance inventory of every outfall within the urbanized area and any additionally designated areas within the Town’s jurisdiction, nor had the Town demonstrated reasonable progress each year since 2008. Therefore, the Town of Binghamton failed to conduct an outfall reconnaissance inventory, in violation of Part VII.A.3.d of the Permit.
- e. 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. This mechanism must be equivalent to the State’s model Illicit Discharge and Elimination (“IDDE”) local law “NYSDEC Model Local Law to Prohibit Illicit Discharges, Activities and Connections to Separate Storm Sewer Systems”. The mechanism must be certified by the attorney representing the small MS4 as being equivalent to the State’s model illicit discharge local law. During the audit, it was observed that the Town did not have an ordinance, law, or other regulatory mechanism to prohibit illicit discharges into the small MS4. Town staff provided a letter from a Town consultant dated February 19, 2009, indicated that the Town’s consultant had informed the Town Board of the need to adopt an illicit discharge ordinance. Yet, the Town had not taken action to do so. Therefore, the Town of Binghamton failed to prohibit through a law, ordinance, or other

regulatory mechanism, illicit discharges into the small MS4, in violation of Part VII.A.3.f of the Permit.

- f. 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 (track down); procedures for eliminating illicit discharges; and procedures for documenting actions. According to the Town's 2010-2011 Annual Report, the Town stated that it had not targeted any "generating sites/sewersheds" for inspection during the reporting period. In addition, prior to the audit, the EPA audit team formally requested a priority list of risk areas in the storm drain system for the most recent reporting year, however the Town did not provide the requested information. Therefore, the Town of Binghamton failed to identify priority areas of concern for the IDDE program and identify procedures or actions that must be taken for those priority areas, in violation of Part VII.A.3.g of the Permit.
- g. Part VII.A.4.a.i of the Permit requires that the Town develop (*for newly authorized MS4s*), implement and enforce a construction site stormwater runoff control program that "provides equivalent protection to the NYS SPDES General Permit for Stormwater Discharges from Construction Activities (either GP-02-01, GP-0-08-001 or GP-0-10-001), unless more stringent requirements are contained within this SPDES general permit." During the audit, it was observed that there were two construction sites with land disturbances in the Town that qualified for coverage under the NYS SPDES General Permit for Stormwater Discharges from Construction Activities, Stanton Fill Site and Muska Fill Site. However, the sites had not obtained coverage under the NYS SPDES General Permit for Stormwater Discharges from Construction Sites. It was observed that the Town had completed the required MS4 Stormwater Pollution Prevention Plan ("SWPPP") Acceptance Forms for each site; however, the site owners had not submitted the respective forms or the NOI for coverage to NYSDEC. The Town Code Enforcement Officer stated that he was unaware that coverage for the NYS SPDES General Permit for Stormwater Discharges from Construction Sites had not been granted to either site. Therefore, the Town of Binghamton failed to develop, implement and enforce a construction site stormwater runoff control program that provided equivalent protection to the NYS SPDES General Permit for Stormwater Discharges from Construction Sites, in violation of Part VII.A.4.a.i of the Permit.
- h. Part VII.A.4.a.vii of the Permit requires that the Town develop (*for newly authorized MS4s*), implement and enforce a construction site stormwater runoff control program that "describes procedures for SWPPP [Stormwater Pollution Prevention Plan] review with consideration of potential water quality impacts and review of individual SWPPPs to ensure consistency with State and local sediment and erosion control requirements." During the audit, it was observed that the Town had not documented its SWPPP review procedures. Therefore, the Town of Binghamton failed to develop, implement and enforce a construction site stormwater runoff control program which includes describing SWPPP review procedures, in violation of Part VII.a.4.vii of the Permit.
- i. Part VII.A.5.a.v of the Permit requires that the Town develop (*for newly authorized MS4s*), implement and enforce a post-construction stormwater management program that "describes procedures for SWPPP [Stormwater Pollution Prevention Plan] review with consideration of potential water quality impacts and review of individual SWPPPs to ensure consistency with State and local post-construction stormwater requirements." During the audit, it was observed that the Town had not developed a procedure for SWPPP review for post-

construction stormwater requirements. Therefore, the Town of Binghamton failed to develop a program which includes SWPPP post-construction review procedures, in violation of Part VII.A.5.a.v of the Permit.

- j. 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 to the small MS4 system. The operations and facilities may include, but are not limited to: street and bridge maintenance; winter road maintenance; stormwater system maintenance; vehicle and fleet maintenance; park and open space maintenance; municipal building maintenance; solid waste management; new construction and land disturbances; right-of-way maintenance; marine operations; hydrologic habitat modification; or other. Specifically, EPA observed the following violations:
- i. Lack of wash water containment Best Management Practices (“BMPs”) at the Town Highway Garage. The EPA audit team observed a Town employee washing a street sweeper outside of the main garage in a gravel area adjacent to the West Fork of the Little Snake Creek. Wash water from the operation was flowing north overland approximately ten feet and actively discharging into the creek.
 - ii. Lack of salt storage containment BMPs at the Town Highway Garage. The EPA audit team observed salt residue trailing from a large sand/salt stockpile toward the West Fork of the Little Snake Creek. An area of ponded water was observed in the southwest area of the Town Highway Garage site, adjacent to Hawleytown Road. The EPA audit team observed a wet trail from the ponded area that came into contact with the sand/salt stockpile which then led north approximately twenty feet towards a drainage inlet that discharged into the West Fork of the Little Snake Creek. The EPA audit team also observed that the salt shed used for storage by the Town is open to the north with the area directly outside the shed sloping downward toward the West Fork of the Little Snake Creek. The EPA audit team observed salt stored in close proximity to the open north side, and in some areas beyond the overhead coverage provided by the roof, adjacent to standing water.
 - iii. Lack of containment BMPs for multiple soil and rock stockpiles at the Town Highway Garage. The EPA audit team observed lack of perimeter control barriers at stockpiles at the Town Highway Garage located adjacent to the bank of the West Fork of the Little Snake Creek.
 - iv. General lack of BMPs. The EPA audit team observed a hose at the Town Highway Garage used to fill Town trucks with liquid deicing product directly adjacent to a storm drain inlet which is connected to an outfall pipe located approximately 125 feet north along the West Fork of the Little Snake Creek.

Therefore, the Town of Binghamton failed to fully implement a pollution prevention/good housekeeping program that addresses municipal operations and facilities that contribute or potentially contribute pollutants of concern to the Town’s MS4 system, in violation of Part VII.A.6.a.i of the Permit.

- k. Part VII.A.6.a.ii of the Permit requires that the Town perform and document a self assessment of all municipal operations addressed by the SWMP at a minimum frequency of once every three years. During the review of the Town’s 2010-2011 Annual Report, the Town stated that self assessments had been completed for eleven of fourteen listed operations/activities/facilities, including “Municipal Buildings and Vehicle and Fleet

Maintenance.” However, during the audit, it was observed that the Town failed to conduct self assessments of its municipal operations as required. Therefore, the Town of Binghamton failed to conduct and document self assessments of municipal operations as required, in violation of Part VII.A.6.a.ii of the Permit.

- l. Part VII.A.6.a.iii of the Permit requires that the Town develop (*for newly authorized MS4s*) and implement a pollution prevention/good housekeeping program for municipal operations and facilities that determines management practices, policies, procedures, etc. that will be developed and implemented to reduce or prevent the discharge of (potential) pollutants. During the audit, it was observed that the Town had not developed management practices, policies or procedures to reduce or prevent the discharge of pollutants. Specifically, during the audit, it was observed that there was no procedure or policy in place for vehicle washing. The audit team observed a street sweeper being washed outside of the Town Highway Main Garage in a gravel area adjacent to the West Fork of Little Snake Creek. Wash water was flowing north overland approximately ten feet and actively discharging into the West Fork of Little Snake Creek. The Town Highway Superintendent stated that employees wash vehicles and equipment at this location and do not wash vehicles inside the main garage building. Therefore, the Town of Binghamton failed to develop and implement management practices, policies, procedures, etc. to reduce or prevent discharges of pollutants, in violation of Part VII.A.6.a.iii of the Permit.
 - m. 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. During the review of the Town’s 2010-2011 Annual Report, the Town stated that two trainings had been provided to employees during the reporting period and that the last training occurred on March 31, 2009. The Town also stated in its 2010-2011 Annual Report that two employees had been trained during the reporting period and that 2% of employees in relevant positions and departments had received stormwater training. However, during the audit, the Town stated that no employees had received training. Therefore, the Town of Binghamton failed to develop an employee pollution prevention and good housekeeping training program, in violation of Part VII.A.6.a.vi of the Permit.
10. On December 18, 2012, EPA issued an Administrative Compliance Order, Docket No. CWA-02-2013-3001, which was mailed to the Respondent along with a copy of the MS4 Audit report. The Administrative Compliance Order directed the Respondent to correct the above violations and come into compliance with the Act.
11. Based on the foregoing Findings of Fact and Conclusions of Law, the Respondent is liable for seven thousand two hundred and eighty-five (7,285) days of violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

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 the Respondent assessing a penalty of **\$21,500**. EPA determined the proposed penalty after taking into account the applicable factors identified at Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). EPA has taken account of the nature, circumstances, extent, and gravity of the violations, and Respondent’s prior compliance history, degree of

culpability, economic benefit or savings accruing to the Respondent by virtue of the violations, and the Respondent's ability to pay the proposed penalty. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after Respondent's receipt of this Notice, unless Respondent files an Answer to 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 to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of a defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a Hearing.

B. Opportunity To Request A Hearing

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

Any Hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A Hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 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 the 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, the Respondent may comment on the charges made in this Complaint and the 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 the Respondent's ability to continue in business and/or (4) any other special facts or circumstances the 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. The Respondent is referred to 40 C.F.R. § 22.18.

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

Cynthia L. Psoras, Esq.
Water and General Law Branch
Office of Regional Counsel
290 Broadway, 16th Floor
New York, NY 10007-1866

Telephone (212) 637-3169
Fax: (212) 637-3202
psoras.cynthia@epa.gov

The parties may engage in settlement discussions regardless of whether the Respondent has requested a Hearing. 40 C.F.R. § 22.18(b)(1). Respondent's request for a formal Hearing does not prevent the 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 the 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, the Respondent waives any right to contest the allegations in the Complaint and waive any right to appeal the Final Order. 40 C.F.R. § 22.18(b)(2). 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 the Respondent. Entering into a settlement agreement would 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. EPA retains its authority to initiate a new enforcement action based on evidence of new or continued violations.

VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, the Respondent may choose to pay the total amount of the proposed penalty **\$21,500** within 30 days after receipt of the Complaint, provided that the 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 addressee:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Docket No. CWA-02-2017-3305

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 the 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. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of the Respondent's right both to contest the allegations made in the Complaint and to appeal said Final Order to a 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:

Ms. Cynthia L. Psoras
Water and General Law Branch
Office of Regional Counsel
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone (212) 637-3169
psoras.cynthia@epa.gov

IX. GENERAL PROVISIONS

1. The 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 the 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 15th DAY OF March, 2017.



Kathleen Anderson, Acting 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:

Town of Binghamton
279 Park Avenue
Binghamton, New York 13903

SPDES Permit No. NYR20A009

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-02-2017-3305

CERTIFICATE OF SERVICE

I certify that on **MAR 17 2017**, 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. Tim Whitesell, Town Supervisor
Town of Binghamton
279 Park Avenue
Binghamton, New York 13903

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 – 4th Floor
Albany, New York 12233-3506

Dated: 3/17/17


Marie St. Germain, Branch Secretary
New York, NY