



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

MAY 13 2009

WC-15J

CERTIFIED MAIL 7001 0320 0005 8922 5541
RETURN RECEIPT REQUESTED

Mr. Mike Collins
Chief Operating Officer
Sharp Homes
852 North Sharp Drive
Shorewood, Illinois 60404

Re: Notice of Proposed Administrative Penalty
Pursuant to Section 309(g) of the Clean Water Act,
Docket No. **CWA-05-2009-0006**

Dear Mr. Collins:

Enclosed is a copy of an "Administrative Complaint", which I have issued against Charles D. Sharp & Associates, Inc. d/b/a/ Sharp Homes Hunter's Ridge Development (Sharp Homes), under the authority of Section 309(g) of the Clean Water Act ("Act"), 33 U.S.C. § 1319(g). In the Complaint, the U.S. Environmental Protection Agency (EPA) alleges that you and your company violated Section 301, 308 and 402 of the Act. The Complaint describes the alleged violations in Counts I, II, III, IV, V, VI, and VII.

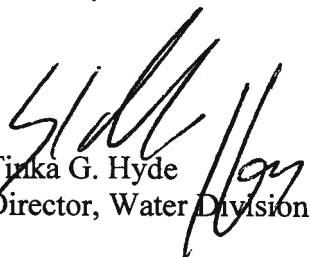
You may request a hearing regarding the violations alleged in the Complaint and the proposed administrative civil penalty. I invite you to pay particular attention to the section of the Complaint entitled "Notice of Opportunity to Request a Hearing." If you do not request a hearing within 30 days of receipt of the Complaint, you waive the right to a hearing and may become liable for the entire proposed civil penalty. If you request a hearing, you may seek the representation of an attorney, or represent yourself at any point in the proceedings.

The rules governing the proceedings are 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," 40 C.F.R. Part 22. I have enclosed a copy for your reference.

Whether or not you or your company requests a hearing, I invite you to confer informally with EPA concerning the alleged violations and the amount of the proposed penalty. You may be represented by an attorney at any conference, whether the meeting occurs in person or by telephone. EPA encourages all parties to pursue settlement during an informal conference. If the parties reach a satisfactory settlement, a mutually negotiated and executed Consent Agreement will resolve this matter. The issuance of such a Consent Agreement will constitute a waiver by both you and your company of a right to a hearing on, and judicial appeal of, the agreed civil penalty.

A request for an informal conference does not extend the 30 days during which Sharp Homes may request a hearing on the proposed penalty assessment. You may pursue the two procedures simultaneously. If Sharp Homes has any questions or wishes to discuss settlement of this matter, please contact Felicia Chase, Water Division (WC-15J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, or telephone Ms. Chase at (312) 886-0240. For questions regarding legal issues, please contact John Tielsch, Associate Regional Counsel, at (312) 353-7447.

Sincerely,



Tinka G. Hyde
Director, Water Division

Enclosures

cc: Mr. Michael Garretson, IEPA
Mr. Bruce Yurdin, IEPA
Richard R. Elledge, Esq.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED
MAY 13 2009

IN THE MATTER OF:)
)
Charles D. Sharp & Associates, Inc.,)
d/b/a/ Sharp Homes, Hunter's Ridge)
Development)
)
)
)
)
Respondent.)
)
_____)

Docket No.

CWA-05-2009-0006

Proceeding to Assess a
Class II Civil Penalty
under Section 309(g)
of the Clean Water Act,
33 U.S.C. § 1319(g).

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

ADMINISTRATIVE COMPLAINT

I. AUTHORITY

1. This is an administrative action commenced by the U.S. Environmental Protection Agency pursuant to Section 309(g) of the Clean Water Act (Act or CWA), 33 U.S.C. § 319(g), and Sections 22.01(a)(6) and 22.38 of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits* (Consolidated Rules), 40 C.F.R. § 22.1(a)(6) and 22.38. The Administrator of EPA (Administrator) has delegated the authority to take this action to the Regional Administrator of Region 5, who has re-delegated the authority to the Water Division Director.

II. STATUTORY AND REGULATORY REQUIREMENTS

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants to waters of the United States by any person except in compliance with a permit issued under Section 402 of the Act, 33 U.S.C. § 1342.

3. Section 402(p) of the Act, 33 U.S.C. § 1342(p), provides that any storm water discharge associated with industrial activity requires a National Pollutant Discharge Elimination System (NPDES) permit.

4. 40 C.F.R. § 122.26(b)(14)(x) defines “storm water discharges associated with industrial activity” to include discharges associated with construction activity, including clearing, grading, and excavation resulting in the disturbance of at least five acres of total land area.

5. Section 308(a) of the Act, 33 U.S.C. § 1318(a), authorizes EPA to require the owner or operator of any point source to provide such information as may be reasonably required in carrying out Section 402 of the Act. Pursuant to Section 308(a), EPA has promulgated a number of NPDES permit application requirements. Among these application requirements is the requirement set forth in 40 C.F.R. § 122.26(c) that “[d]ischargers of storm water associated with industrial activity...are required to apply for an individual permit or seek coverage under a promulgated storm water general permit.”

6. The State of Illinois, through its Environmental Protection Agency (IEPA), is a state approved under section 402(b) of the Act to administer the NPDES program, including the issuance of NPDES permits.

7. Section 309(g) of the Act, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a Class II civil penalty under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), after

consultation with the State, when the Administrator finds, on the basis of any information available, that a person has violated Section 301 of the Act, 33 U.S.C. § 1311, Section 308 of the CWA, 33 U.S.C. § 1318, or has violated any condition or limitation in a permit issued under section 402 of the Act, 33 U.S.C. § 1342.

III. GENERAL ALLEGATIONS

8. The Complainant is the Director of the Water Division, EPA, Region 5.

9. The Respondent, Charles D. Sharp & Associates, Inc. (Sharp Homes) is a corporation organized under the laws of the State of Illinois.

10. Sharp Homes is therefore a "person" as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2, and is thus subject to its requirements.

11. Respondent at all times relevant to this complaint has owned and operated a construction site located in Joliet, Illinois. This site is known as the Sharp Homes Hunter's Ridge construction site in Joliet, Illinois (hereinafter, "the Site" or "Site").

12. Respondent's construction activity at the Site commenced on or about February 2006 and Respondent has cleared, graded and/or excavated more than five acres.

13. As of November 20, 2007, the entire Site had been cleared and graded, homes had been constructed on ten of 140 lots, and all construction had temporarily ceased.

14. As of March 20, 2008, no construction on the Site had occurred since November 20, 2007.

15. Respondent's construction activity has resulted in discharges of storm water via storm sewers, surface water run off and discharge pipes to a perennial stream which is a tributary to the East Aux Sable Creek, a permanently flowing tributary to Aux Sable Creek.

16. Aux Sable Creek is a permanently flowing tributary to the Illinois River and other surface waters, all of which are "navigable waters" as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7), and "waters of the United States" as defined by EPA regulations in 40 C.F.R. § 122.2.

17. Under the authority of Section 402(b) of the Act, 33 U.S.C. § 1342(b), and the Illinois Environmental Protection Act the IEPA issued NPDES Permit No. ILR10C404 to Respondent effective on March 17, 2005 (the Permit). NPDES Permit No. ILR10C404 establishes certain conditions governing the discharge of storm water from Respondent's construction Site.

18. Part VI. A. of the Permit requires Respondent to comply with all conditions of the Permit. Noncompliance is grounds for an enforcement action under the Clean Water Act (CWA).

IV. VIOLATIONS

Count I - Failure to Comply with Permit Condition: Erosion and Sediment Controls

19. Paragraphs 1 through 18 are re-alleged here as if set forth in full.

20. Part IV. of the Permit requires Respondent to develop a storm water pollution prevention plan (SWPPP) and to implement its provisions as a condition of the Permit.

21. Respondent developed a SWPPP for the Site in 2006 which includes a description of

controls as required by Part IV. D. of the Permit.

22. Permit No. ILR10C404, Part IV.D.2. a. (i), Stabilization Practices, provides that “Except as provided in paragraphs (A) and (B) below, stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case later than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased. (A) Where the initiation of stabilization measures by the 14th day after construction activity temporary or permanently cease is precluded by snow cover, stabilization measures shall be initiated as soon as practicable. (B) Where construction activity will resume on a portion of the site within 21 days from when activities ceased (e.g. the total time period that construction activity is temporarily ceased is less than 21 days) then stabilization measures do not have to be initiated on that portion of the site by the 14th day after construction activity temporarily ceased.” Additionally, Part IV.D.2.(a)(i) states that “Stabilization practices may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures.”

23. Respondent’s SWPPP, paragraph 2. describes permanent seeding as one of the stabilization practices, at a minimum, to be initiated within 14 days where construction activity has temporarily ceased or as soon as practicable where precluded by snow cover.

24. No permanent seeding described in the SWPPP was initiated on approximately 13 acres of the Site within 14 days after construction activity temporarily ceased , or as soon as practicable after reduction of snow cover.

In addition, a silt fence shown in the SWPPP on the western portion of the site was not implemented.

25. Permit No. ILR10C404, Part IV.D.2.a.(ii), Structural Practices, states that “A description of practices to the degree attainable, to divert flows from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site. Such practices may include silt fences, earth dikes, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet protection, rock drainage protection, reinforced soil retaining systems, gabions, and temporary or permanent basins. Structural practices should be placed on upland soils to the degree attainable. The installation of these devices may be subject to Section 404 of the CWA.”

26. Respondent’s SWPPP, paragraph 2. describes “silt filter fence” and “barrier filter” as controls to be implemented and provides descriptions of the plans and locations for the “silt fence” and “inlet protection straw bale barrier”.

27. From November 20, 2007, to at least March 20, 2008, Respondent failed to install inlet protection straw bale barriers at 154 locations identified in the SWPPP.

28. From November 20, 2007, to at least March 20, 2008, Respondent failed to install 540 feet of silt fence required by the SWPPP to run across the southwest corner of the Site.

29. Respondent’s failure to comply with Part IV.D.2 a.(i) and (ii) of its Permit constitute violations of Section 301 of the Act, 33 U.S.C. § 1311 and of part IV.D.2a.(i) and (ii) of the Permit, which is a condition of a Permit issued by a State pursuant to section 402 of the CWA, 33 U.S.C. § 1342. These violations consequently authorize the Administrator to assess an administrative civil penalty under section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

Count II – Failure to Comply with Permit Condition: Improper Operation and Maintenance

30. Paragraphs 1 through 18 are re-alleged here as if set forth in full.

31. Part VI. P. of the Permit requires that “The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control which are installed or used by the permittee to achieve compliance with the conditions of the permit and with the requirements of the SWPPP.”

32. The SWPPP, paragraph 3., operation and maintenance states: “The following is a description of procedures that will be used to maintain, in good and effective operating conditions, vegetation, erosion and sediment control measures and other protective measures identified in this plan and standard specifications...Silt Filter Fence: The damaged silt fence shall be restored to meet the standards or removed and replaced as needed.” “Temporary sediment fence...shall be maintained throughout the construction period...”“The straw bale barrier filter shall be inspected frequently and shall be repaired and removed and replaced as needed.” The straw bale barrier plans in the SWPPP are in accordance with the Illinois Urban Manual showing specifics for embedding and anchoring the bales in the soil and indicate where bales were to be used for inlet protection.

33. At the time of the inspections on November 20, 2007, and March 20, 2008, damaged silt fencing on the western, northern and southern portions of the Site was not restored or removed and replaced. On June 3, 2008, silt fences appeared to have been partially repaired; however, additional maintenance was required to fully repair them to meet the specifications in

the SWPPP. On June 3, 2008, the straw bales on site for barrier inlet protection were not installed in accordance with the plans provided in the SWPPP.

34. Respondent's failure to comply with Part VI. P. of its Permit constitute violations of Section 301 of the Act, 33 U.S.C. § 1311 and of part VI. P. of the Permit, which is a condition of a Permit issued by a State pursuant to section 402 of the CWA, 33 U.S.C. § 1342. These violations consequently authorize the Administrator to assess an administrative civil penalty under section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

Count III – Failure to Comply with Permit Condition: Violations of Water Quality Standards

35. Paragraphs 1 through 18 are re-alleged here as if set forth in full.

36. Permit No. ILR10C404, Part III.C requires that discharges covered by the permit, alone or in combination with other sources, shall not cause or contribute to a violation of any applicable water quality standard outlined in 35 Ill. Adm. Code 302.

37. 35 Ill. Adm. Code 302 states, in part, that there shall be no sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin. Section 12(a) and (f) of the Act, 415 ILCS 5/12(a) and (f)(2004), 35 Ill. Adm. Code 302.203 (General use water quality standards).

38. On November 20, 2007, EPA conducted an inspection of the Site. The inspector observed, that the Site discharges to a tributary to the East Aux Sable Creek and has discharged pollutants into the tributary in the past as evidenced by the large amount of sediment observed in the outfall pipe, located in the northern portion of the Site.

39. On June 3, 2008, an EPA inspection of the Site found that the receiving stream in the

area of lot 134 contained bottom deposits of other than natural origin.

40. Respondent's discharges constitute violations of Section 301 of the Act, 33 U.S.C. § 1311 and of Part III. C. of the Permit, which is a condition of a Permit issued by a State pursuant to section 402 of the CWA, 33 U.S.C. § 1342. These violations consequently authorize the Administrator to assess an administrative civil penalty under section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

Count IV – Failure to Inspect

41. Paragraphs 1 through 18 are re-alleged here as if set forth in full.

42. Permit No. ILR10C404 Part IV.D.4., Inspections, requires that "Qualified personnel (provided by the permittee) shall inspect disturbed areas of the construction site that have not been finally stabilized, structural control measures, and locations where vehicles enter or exit the site at least once every seven calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater or equivalent snowfall."

43. On June 3, 2008, EPA conducted an inspection of the Site and found the Respondent had not performed any inspections between the November 20, 2007, EPA inspection and at least May 29, 2008.

44. Respondent's failure to inspect the Site every seven days and within 24 hours of the end of a storm that is 0.5 inches or greater constitute violations of Section 308(a) of the Act, 33 U.S.C. § 1318(a), and of Part IV.D.4. of the Permit, which is a condition of a Permit issued by a State pursuant to section 402 of the CWA, 33 U.S.C. § 1342. These violations consequently

authorize the Administrator to assess an administrative civil penalty under section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

Count V – Failure to Keep Inspection Records

45. Paragraphs 1 through 18 are re-alleged here as if set forth in full.

46. Permit No. ILR10C404, Part IV.D.4.(c), Inspections, requires that “A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP and the actions taken...shall be made and retained as part of the SWPPP for at least three years from the date of that the permit coverage expires or is terminated.”

47. Permit No. ILR10C404, Part V.A., Retention of Records, requires that “The permittee shall retain copies of the SWPPP and all reports and notices required by this Permit, and records of all data used to complete the Notice of Intent to be covered by this Permit, for a period of time of at least three years from the date that the permit coverage expires or is terminated.”

48. On June 3, 2008, EPA conducted an inspection of the Site and found that the Respondent did not retain any records of inspections between February 2006 and November 20, 2007.

49. Respondent’s failure to retain inspection records constitute violations of Section 308(a) of the Act, 33 U.S.C. § 1318(a), and of Part IV.D.4c and V.A. of the Permit, which are conditions of a permit issued by a State pursuant to section 402 of the CWA, 33 U.S.C. § 1342.

These violations consequently authorize the Administrator to assess an administrative civil penalty under section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

Count VI – Failure to Meet Signatory Requirements

50. Paragraphs 1 through 18 are re-alleged here as if set forth in full.

51. Permit No. ILR10C404, Part VI.G.2, Signatory Requirements, requires that “All reports required by the permit and other information requested by the Agency shall be signed by a person described above (in Part VI.G.1.) or by a duly authorized representative of that person.”

52. Permit No. ILR10C404, Part VI.G.2.d, Signatory Requirements Certification, requires that “Any person signing documents under this Part shall make the following certification...”

53. Permit No. ILR10C404, Part IV.B.1, Signature, Plan Review and Notification, requires that “The plan shall be signed in accordance with Part VI.G...”

54. Permit No. ILR10C404, Part IV.F., Contractors, requires that, “All contractors...must sign a copy of the following certification statement below (in Part IV.F.3.) in accordance with Part VI.G. of this permit.”

55. On June 3, 2008, EPA conducted an inspection of the Site and found that the Respondent did not have the proper certification per Part VI.G1 and 2.

56. On June 3, 2008, EPA conducted an inspection of the Site and found that the certification statement in the plan was not signed by the contractors per Part IV.F.

57. Respondent’s failure to meet signatory requirements constitute violations of Section 308(a) of the Act, 33 U.S.C. § 1318(a), and of Parts IV.G.2 and IV.F. of the Permit, which are

conditions of a permit issued by a State pursuant to section 402 of the CWA, 33 U.S.C. § 1342. These violations consequently authorize the Administrator to assess an administrative civil penalty under section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

Count VII – Failure to Keep Plans Current

58. Paragraphs 1 through 18 are re-alleged here as if set forth in full.

59. Permit No. ILR10, Part IV.C., Keeping Plans Current, requires that “The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the Waters of the State and which has not otherwise been addressed in the plan or if the SWPPP proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under paragraph D.2. below, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with construction site activity. In addition, the plan shall be amended to identify any new contractor and/or subcontractor that will implement a measure of the SWPPP.”

60. On June 3, 2008, EPA conducted an inspection of the Site and observed that the SWPPP was not updated to show the location of a soil stock pile and silt fence surrounding it on the southwest portion of the Site. This change to the SWPPP has a significant effect on the potential for the discharge of pollutants to the Waters of the State and is not otherwise addressed in the SWPPP.

61. Respondent’s failure to update the SWPPP constitute violations of Section 308(a) of the Act, 33 U.S.C. § 1318(a), and of Part IV.C. of the Permit, which is a condition of a permit

issued by a State pursuant to section 402 of the CWA, 33 U.S.C. § 1342. These violations consequently authorize the Administrator to assess an administrative civil penalty under section 309(g)(1) of the CWA, 33 U.S.C.

III. PROPOSED PENALTY

62. Pursuant to section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, the Administrator may assess a civil penalty of up to \$11,000 per day for each day during which a violation occurred to a maximum of \$157, 500 for the period in which the violations alleged in this Complaint occurred.

63. Based upon the foregoing allegations, and pursuant to the authority of Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), Complainant hereby proposes to issue a Final Order Assessing Administrative Penalties to the Respondent in the amount of \$140,000.00.

64. The proposed penalty was determined after taking into account the nature, circumstances, extent and gravity of the violations (Respondent's prior compliance history, ability to pay the penalty), the degree of culpability for the cited violations, and any economic benefit or savings to Respondent because of the violations, all factors identified at Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3). To the extent that facts or circumstances unknown to Complainant at the time of issuance of this Complaint become known after issuance

of this Complaint, such facts or circumstances may also be considered as a basis for adjusting the proposed administrative penalty.

65. The Regional Administrator may issue a Final Order Assessing Administrative Penalties after the thirty (30) day public comments period unless Respondent either responds to the allegations in the Complaint and requests a hearing according to the terms of Section IV, below, or pays the civil penalty in accordance with paragraph 69 below.

66. Respondent shall pay this penalty by certified or cashier's check payable to "Treasurer, the United States of America," and shall send it by regular US Postal Service mail, with a transmittal letter identifying the Complaint, to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent shall send a copy of the payment check and the transmittal letter to:

John Tielsch
Office of the Regional Counsel (C-14J)
EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

and

Felicia Chase
Water Enforcement and Compliance Assurance
Branch (WC-15J)
EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

67. The proposed penalty may be adjusted if Respondent establishes a *bona fide* issue of ability to pay, or other affirmative defenses relevant to the determination of any final penalty. The proposed civil penalty has been determined in accordance with the Act based on the best information available to the Agency at the time, and in consideration of the nature, circumstances, extent, and gravity of the alleged violations. With respect to Respondent, other factors may mitigate calculation of the final penalty, including ability to pay, prior history of such violations, culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require.

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided in Section 309(g) of the Act, 33 U.S.C. § 1319(g), Respondent has the right to request a hearing regarding the Complaint, to contest any material fact contained in the Complaint, and/or to contest the appropriateness of the amount of the proposed penalty. In order to request a hearing, Respondent must specifically make such a request in an Answer, which is discussed below.

Any hearing that Respondent requests regarding this Complaint will be held and conducted in accordance with the provisions of The Consolidated Rules.

V. ANSWER

If Respondent wishes to avoid being found in default, Respondent must file one original and one copy of a written Answer to this Complaint with the Regional Hearing Clerk (E-19J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604, within 30 calendar days of receipt of this Complaint.

In counting the 30-day period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

In accordance with the Consolidated Rules, the Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with respect to which Respondent has any knowledge, or clearly state that Respondent has no knowledge as to particular factual allegations in the Complaint. The Answer must also state:

1. The circumstances or arguments that are alleged to constitute grounds of defense;
2. The facts which Respondent intends to place at issue; and
3. Whether Respondent requests a hearing.

Respondent's failure to deny any of the factual allegations in this Complaint constitutes admission of the un-denied allegations.

A copy of the Answer and any subsequent documents filed in this action should be sent to John Tielsch, Associate Regional Counsel, Office of the Regional Counsel (Mail Code C-14J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Mr. Tielsch may be contacted at (312) 353-7447.

If Respondent fails to file a written Answer within 30 calendar days of service of this Complaint, a Default Order may be issued by the Presiding Officer. Respondent's default constitutes a binding admission of all allegations made in the Complaint and a waiver of Respondent's right to a hearing under the Act. Such Default Order, which constitutes the initial decision of the Presiding Officer, may become the Final Order of the EPA's Environmental Appeals Board within forty-five (45) calendar days after its service. The civil penalty proposed

herein shall then become due and payable without further proceedings sixty (60) calendar days after a Final Order issued upon default. Respondent's failure to fully pay the entire proposed penalty, assessed by the Default Order, by its due date will result in a civil action to collect the assessed penalty, plus interest, attorney's fees, costs of collection proceedings and an additional quarterly nonpayment penalty pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9).

In addition, the default penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act, 31 U.S.C. § 3717. Interest shall accrue on the default penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. EPA will impose a late payment handling charge of fifteen dollars (\$15.00) after thirty (30) calendar days, with an additional charge of \$15.00 for each subsequent 30 calendar day period over which an unpaid balance remains. In addition, EPA will apply a six percent (6%) per annum penalty on any principal amount not paid within ninety (90) calendar days of the effective date of the Default Order.

Should Respondent request a hearing on the proposed penalty amount, members of the public who have exercised their right to comment and 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 present evidence on the appropriateness of the penalty assessment. If Respondent does not request a hearing, EPA will issue a Final Order assessing administrative penalties and only members of the public who commented on this proposal during the 30 calendar day period following receipt of this document will have an additional 30 calendar days to petition EPA to set aside the Final Order assessing administrative penalties and to hold a hearing thereon. EPA will grant the petition and hold the hearing only if the petitioner's

evidence is material and was not considered by EPA in the issuance of the Final Order assessing administrative penalties.

VI. SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, Respondent may request an informal conference in order to discuss the facts of this case and to arrive at a settlement. To request a settlement conference, please write to John Tielsch, Associate Regional Counsel, Office of the Regional Counsel (Mail Code C-14J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Respondent's request for an informal settlement conference will not extend the thirty (30) calendar day period during which the Respondent must submit a written Answer and may submit a Request for Hearing. Respondent may, however, pursue the informal conference procedure simultaneously with the adjudicatory hearing procedure. EPA encourages all parties against whom a civil penalty is proposed to pursue settlement through an informal conference. EPA, however, will not reduce the penalty simply because such a conference is held. Any settlement that may be reached as a result of such conference shall be embodied in a Consent Agreement and Final Order. Respondent's consent to a Consent Order shall constitute a waiver of the right to request a hearing on any matter stipulated to therein.

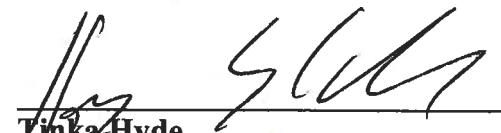
VII. NOTICE TO THE STATE AND PUBLIC

EPA has initiated consultation with the Illinois Environmental Protection Agency (IEPA) regarding this action by mailing a copy of this Complaint to Michael Garretson, P.O. Box 19276, Illinois Environmental Protection Agency, Springfield, Illinois 62794-9276, and by offering the

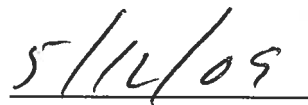
State an opportunity to comment on the proposed penalty assessment. EPA, contemporaneously with the issuance of this Complaint, a public notice on the website <http://www.epa.gov/region5/publicnotices> regarding this action.

VIII. CONTINUING OBLIGATION TO COMPLY

Neither assessment nor payment of any administrative civil penalty pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), shall affect Respondent's continuing obligation to comply with the Act, or with any other federal, state, or local law or regulation, with every term and condition of an NPDES permit, or with any Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a).



Tinka Hyde
Director, Water Division



Date

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**In the Matter of
Charles D. Sharp & Associates, Inc., d/b/a/ Sharp Homes, Hunter's Ridge, Illinois
Docket No. CWA-05-2009-0006**

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of this Administrative Complaint was filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 5, on the date below, and that true and accurate copies were sent via certified mail to:

CERTIFIED MAIL 7001 0320 0005 8922 5527
RETURN RECEIPT REQUESTED

Richard R. Elledge, Esq.
Gould & Ratner
222 North LaSalle Street,
Suite 1800
Chicago, Illinois 60601

and via Certified U.S. mail to:

CERTIFIED MAIL 7001 0320 0005 8922 5541
RETURN RECEIPT REQUESTED

Mr. Mike Collins
Chief Operating Officer
Sharp Homes
825 North Sharp Drive
Shorewood, Illinois 60404

and

CERTIFIED MAIL 7001 0320 0005 8922 5534
RETURN RECEIPT REQUESTED

Michael Garretson
Illinois Environmental Protection Agency
P.O. Box 19276
Springfield, Illinois 62794

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Denise Moore
Name

Date