



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1

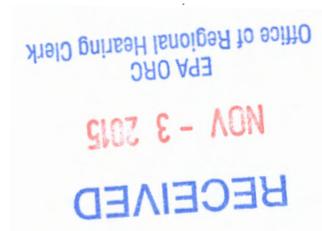
5 Post Office Square, Suite 100

Boston, MA 02109-3912

BY HAND

NOV - 3 2015

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



Re: In The Matter of Sunapee, NH
EPA Docket No. CWA-01-2016-0006

Dear Ms. Santiago:

Enclosed for filing in the above-referenced action, please find the original and one copy of an Administrative Complaint and Notice of Opportunity to Request a Hearing.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Tonia Bandrowicz".

Tonia Bandrowicz
Senior Enforcement Counsel

Enclosure

cc: David Baily, Superintendent
Donna Nashawaty, Town Manager



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1

5 Post Office Square, Suite 100

Boston, MA 02109-3912

NOV - 3 2015

David Baily, Superintendent
Town of Sunapee
23 Edgemont Road
Sunapee, NH 03782-0717

Donna Nashawaty, Town Manager
Town of Sunapee
23 Edgemont Road
Sunapee, NH 03782-0717

Re: In The Matter of Sunapee, NH
EPA Docket No. CWA-01-2016-0006

RECEIVED
NOV - 3 2015
EPA ORC
Office of Regional Hearing Clerk

Dear Mr. Baily and Ms. Nashawaty:

Enclosed is an administrative Complaint and Notice of Opportunity for Hearing (hereinafter referred to as the "Complaint") which the New England Office of the U.S. Environmental Protection Agency ("EPA") is issuing to the Town of Sunapee, New Hampshire, as a result of our determination, following review of relevant documentation including the Town's response to EPA information requests, that the Town has violated the Clean Water Act ("CWA"). Specifically, EPA has determined that the Town: (1) discharged sewage sludge from its wastewater treatment facility into a navigable water of the United States without authorization of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342; and (2) improperly operated its wastewater treatment facility in noncompliance with its NPDES permit, both violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a). The violations pertain to incidents occurring at the Town's wastewater treatment facility in September 2013, November 2014, and January 2015.

The statutory authorities for EPA's enforcement action and the specific nature of the alleged violations are set forth in the attached Complaint. Pursuant Section 309(g)(1)(B) of the CWA, as amended, the Complaint does not seek a specific penalty amount but rather a penalty not exceeding the statutory maximum penalty (which is \$16,000 per day of violation, up to a maximum of \$177,500, for alleged violations occurring after January 12, 2009 through December 6, 2013, and \$16,000 per day, up to a maximum of \$187,500, for violations occurring after December 6, 2013).

Please be advised that you have the right to request a hearing regarding the violations alleged in the complaint and any appropriate penalty. If you wish to request a hearing, you must submit, within 30 days of receiving this letter, a written request to the Regional Hearing Clerk at the address set forth in the enclosed complaint. Such written request must be submitted with an answer to the complaint and must follow the requirements of the Consolidated Rules of Practice Governing the Administrative Assessment of Penalties, set forth at 40 C.F.R. Part 22. A copy of 40 C.F.R. Part 22 is enclosed. **Failure to submit a request for a hearing within 30 days may result in default, as further explained in the complaint.**

The Town has the right to be represented by an attorney at any stage of the proceeding, including any informal discussions with EPA. If you wish to explore the possibility of settlement, or have any questions regarding this action, please contact, or have your attorney contact, Tonia Bandrowicz, EPA's legal counsel in this matter, at (617) 918-1734. Ms. Bandrowicz is designated to receive service in this action.

Sincerely,



Susan Studlien, Director
Office of Environmental Stewardship

Enclosures

1. Complaint
2. Consolidated Rules of Practice (40 C.F.R. part 22)
3. Copy letter to Hearing Clerk

cc: Tonia Bandrowicz, EPA
Doug Corb, EPA



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region 1

5 Post Office Square, Suite 100
Boston, MA 02109-3912

NOV - 3 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Gretchen Hamel
New Hampshire Department of Environmental Services
29 Hazen Drive
Concord, NH 03301
ghamel@des.state.nh.us

Re: Notice of Administrative Complaint
Docket No. CWA-01-2016-0006
Issued to Town of Sunapee, NH

Dear Ms. Hamel:

This is to inform you that the New England Office of the U.S. Environmental Protection Agency ("EPA") has filed an administrative penalty complaint against the Town of Sunapee, NH for NPDES permit noncompliance at its wastewater treatment facility. Specifically EPA alleges that the Town: (1) discharged sewage sludge from its wastewater treatment facility into a navigable water of the United States without authorization of a NPDES permit issued pursuant to Clean Water Act Section 402; and (2) improperly operated its wastewater treatment facility in noncompliance with its NPDES permit, both violations of Clean Water Act Section 301(a).

If you wish to confer further on this matter or if you have any additional comments or questions, please call me at (617) 918-1734, or Doug Corb, EPA's technical support in this case, at (617) 918-1565.

Sincerely,

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

Enclosure

cc: Wanda Santiago, Regional Hearing Clerk

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1**

IN THE MATTER OF)	Docket No. CWA 01-2016-0006
SUNAPEE, TOWN OF)	ADMINISTRATIVE
22 Edgemont Road)	COMPLAINT AND NOTICE
Sunapee, New Hampshire 03782)	OF OPPORTUNITY FOR HEARING
Respondent.)	Proceeding to Assess Class II
)	Civil Penalties Under Section 309(g)
)	of the Clean Water Act

I. STATEMENT OF AUTHORITY

1. Pursuant to Section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B), and in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. Part 22 (“*Consolidated Rules*”), and applicable delegations of authority, the United States Environmental Protection Agency, Region I (“EPA”) issues this Administrative Complaint to the Town of Sunapee, New Hampshire (“Respondent”).

2. EPA takes this action based on its allegations that Respondent: (1) discharged sewage sludge from its wastewater treatment facility into a navigable water of the United States without authorization of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342; and (2) improperly operated its wastewater treatment facility in noncompliance with its NPDES permit, both violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

II. STATUTORY AND REGULATORY BACKGROUND

3. The CWA is designed “to restore and maintain the chemical, physical, and biological integrity of the nation’s waters.” Section 101(a) of the CWA, 33 U.S.C. § 1251(a).

4. To accomplish the objectives of the CWA, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into navigable waters except in compliance with, among other things, the terms and conditions of a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and EPA’s implementing regulations, found at 40 C.F.R. Part 122.

5. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines “person” to include a “municipality . . . [or] political subdivision.”

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, among other things, “sewage” and “sewage sludge.”

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.

10. Section 309(g)(1)(B) of the CWA, 33 U.S.C. § 1319(g)(1)(B), provides for the assessment of penalties for violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

III. VIOLATIONS

General Allegations

11. Respondent is a municipality in the State of New Hampshire and, therefore, a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

12. Respondent owns and operates the Sunapee Wastewater Treatment Plant located on Treatment Plant Road, Sunapee, New Hampshire (the “Facility”) from which pollutants, as defined in Section 502(6) and (12) of the CWA, 33 U.S.C. §§ 1362(6) and (12), are discharged from point sources, as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to the Sugar River, a navigable water, as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

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

14. On February 21, 2007, under the authority of Section 402 of the Act, 33 U.S.C. § 1342, EPA reissued NPDES Permit No. NH0100544 to the Town of Sunapee, New Hampshire (the “NPDES Permit”), which was effective on May 1, 2007 and expired on April 30, 2012. Though expired, the NPDES Permit remains administratively continued until issuance of a new permit.

15. The NPDES Permit authorizes the City to discharge pollutants from the Facility’s outfall to Sugar River subject to the terms and conditions of the NPDES Permit.

16. Sugar River and its adjacent wetlands, including Wendell Marsh, are “waters of the United States,” and, therefore, “navigable waters,” as defined in Section 502(7) of the CWA,

33 U.S.C. § 1362(7), and its implementing regulations.

COUNT 1: UNAUTHORIZED DISCHARGE OF UNTREATED WASTEWATER

17. Paragraphs 1 through 16 are incorporated herein by reference.

18. On the morning of January 7, 2015, Town of Sunapee employees reported to EPA that the Facility's sludge holding tank had overflowed because the sludge pump had mistakenly been left on overnight and both the overflow pipe (which would have redirected the flow to the head of the treatment plant), and the high level float switch (which would have triggered an alarm), were inoperative, the latter having been disconnected.

19. As a result of the overflowing of the sludge holding tank, Town of Sunapee employees reported by phone on January 7, 2015, and in subsequent correspondence with EPA, that sewage sludge had been discharged through a culvert directly to Wendell Marsh, a wetland adjacent to the Sugar River.

20. On January 7, 2015, the Respondent discharged sewage sludge, a "pollutant" under Section 502(6) of the CWA, 33 U.S.C. § 1362, through a culvert, a "point source" under Section 502(14) of the CWA, 33 U.S.C. § 1362, to Wendell Marsh, a "navigable water of the U.S." under Section 502(7) of the CWA, 33 U.S.C. § 1362(7), without authorization of a NPDES permit, or any other federal or state permit or license.

21. By discharging a pollutant through a point source into a navigable water of the United States without authorization of an NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

22. Section 309(g)(1)(B) of the CWA, 33 U.S.C. § 1319(g)(1)(B), authorizes EPA to assess Class II administrative penalties for violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

23. Respondent is therefore subject to an assessment of penalties under Section 309(g)(1)(B) of the CWA, as amended by the Debt Collection Improvement Act of 1996, and 40 C.F.R. Part 19.4 (Civil Monetary Penalty Inflation Adjustment). Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continued, up to a maximum of \$177,500 for violations occurring after January 12, 2009 through to December 6, 2013, and liable for civil penalties of up to \$16,000 per day for each day during which the violation continued, up to a maximum of \$187,500, for violations occurring after December 6, 2013.

**COUNT 2: VIOLATION OF PROPER OPERATION AND MAINTENANCE
CONDITIONS OF NPDES PERMIT**

24. Paragraphs 1 through 23 are incorporated herein by reference.

25. Part I.C (“Operation and Maintenance of the Sewer System”) of the NPDES Permit provides that “[o]peration and maintenance of the sewer system shall be in compliance with the General Requirements of Part II and the following terms and conditions [including] ...provid[ing] an adequate staff to carry out the operation, maintenance, repair, and testing functions required to ensure compliance with the terms and conditions of this permit [and] ...maintain[ing] an ongoing preventative maintenance program to prevent overflows and bypasses caused by malfunctions or failures of the sewer system infrastructure ...”

26. Part II.B. (“Operation and Maintenance of Pollutant Controls”) of the NPDES Permit requires that the Respondent “shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution plans ... This provision requires the operation of back-up or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the

conditions of the permit.”

27. On or about September 24 and 25, 2013, as reported by Town of Sunapee personnel by phone and in subsequent correspondence, sludge solids passed from the Facility’s secondary clarifier to the chlorine contact tank creating the potential for exceedance of the total settleable solids (“TSS”) and/or biochemical oxygen demand (“BOD”) effluent limits in Respondent’s NPDES Permit. The incident was due to Respondent’s employee’s failure to reopen a valve on the return sludge pipe from one of the clarifiers.

28. On or about November 28 and 29, 2014, as reported by Town of Sunapee personnel by phone and in subsequent correspondence, sludge solids again passed from the Facility’s secondary clarifier to the chlorine contact tank creating the potential for exceedance of the TSS and/or BOD effluent limits in Respondent’s NPDES Permit. This incident was due to one of Respondent’s employees mistakenly coming into work on a holiday, turning off the sludge pumps (which is normally done for a few hours at the start of the day), then realizing it was a holiday and leaving work without remembering to turn the sludge pumps back on.

29. On January 7, 2015, as reported by Sunapee personnel by phone and in subsequent correspondence, an overflow of sludge discharged to Wendell Marsh. This incident was due to one of Respondent’s employees mistakenly leaving the sludge pump on overnight and both the overflow pipe (which would have redirected the flow to the head of the treatment plant), and the high level float switch (which would have triggered an alarm), were inoperative, the latter having been disconnected.

30. Respondent has failed to comply with the proper operation and maintenance conditions provisions in Parts I.C. and II.B of its NPDES Permit at least in the respects identified in the preceding paragraphs.

31. By failing to comply with the proper operation and maintenance conditions provisions in Parts I.C. and II.B of its NPDES Permit, the Respondent violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

32. Section 309(g)(1)(B) of the CWA, 33 U.S.C. § 1319(g)(1)(B), authorizes EPA to assess Class II administrative penalties for violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

33. Respondent is therefore subject to an assessment of penalties under Section 309(g)(1)(B) of the CWA, as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, *et seq*, the Debt Collection Improvement Act of 1996, and 40 C.F.R. Part 19.4 (Civil Monetary Penalty Inflation Adjustment). Respondent is liable for civil penalties of up to \$16,000 per day for each day during which the violation continued, up to a maximum of \$177,500 for violations occurring after January 12, 2009 through to December 6, 2013, and liable for civil penalties of up to \$16,000 per day for each day during which the violation continued, up to a maximum of \$187,500, for violations occurring after December 6, 2013.

IV. NOTICE OF PROPOSED ASSESSMENT OF CIVIL PENALTY

34. Based on the foregoing allegations and pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), Complainant proposes that a Final Order assessing civil penalties be issued against Respondent in an amount not to exceed \$16,000 per day, up to a maximum of \$177,500, for violations occurring after January 12, 2009 through to December 6, 2013, and not to exceed \$16,000 per day, up to a maximum of \$187,500, for violations occurring after December 6, 2013, taking into account the nature, circumstances, extent and gravity of the violations, and the Respondent's prior compliance history, the degree of culpability for the cited violations, any economic benefit or savings accruing to the Respondent resulting from the

violations, the Respondent's ability to pay the proposed penalty, and such other matters as justice may require.

35. The alleged NPDES Permit violations represent significant violations of the CWA because without proper operation and maintenance of the wastewater treatment there is the potential for the release of pollutants that can cause harm to human health and/or the environment.

36. Complainant will pursue penalties for one day of violation for Respondent's discharge without a NPDES permit, and will pursue penalties for each day of improper operation and maintenance.

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

37. Respondent has the right to request a hearing to contest the issues raised in this Complaint. Any such hearing would be conducted in accordance with the *Consolidated Rules of Practice*. Any request for a hearing must be included in Respondent's written Answer to this Complaint and filed with the Regional Hearing Clerk at the address listed below within 30 days of receipt of this Complaint.

38. In its Answer, each Respondent may also: (a) dispute any material fact in the Complaint; (b) contend that the proposed penalty is inappropriate; or (c) 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.

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

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

40. Respondent should also send a copy of the Answer, as well as a copy of all other documents that Respondents file in this action, to Tonia Bandrowicz, the attorney assigned to represent EPA and who is designated to receive service in this matter, at:

Tonia Bandrowicz, Senior Enforcement Counsel
U.S. Environmental Protection Agency - Region I
5 Post Office Square - Suite 100
Mail Code OES04-4
Boston, MA 02109-3912
Tel: (617) 918-1734
bandrowicz.toni@epa.gov

41. If Respondent fails to file a timely Answer to this Complaint, it may be found to be in default, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing.

42. 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.

VI. CONTINUED COMPLIANCE OBLIGATION

43. Neither assessment nor payment of a civil penalty pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), shall affect Respondent's continuing obligation to comply with the CWA, the regulations promulgated thereunder, or any other applicable Federal, State or local law.

Date: 11/02/2015

Susan Studien

Susan Studien
Director, Office of Environmental Stewardship
U.S. Environmental Protection Agency

**In the Matter of Town of Sunapee, NH
EPA Docket No. CWA-01-2016-0006**

CERTIFICATE OF SERVICE

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

Original and one copy
hand-delivered:

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

Copy by certified mail,
return receipt requested:

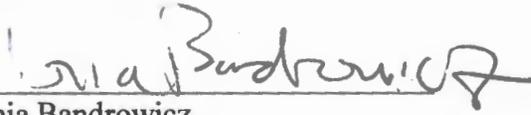
David Baily, Superintendent
Town of Sunapee
23 Edgemont Road
Sunapee, NH 03782-0717

Donna Nashawaty, Town Manager
Town of Sunapee
23 Edgemont Road
Sunapee, NH 03782-0717

Copy by certified mail,
Return receipt requested:

Gretchen Hamel
NH Department of Environmental Services
29 Hazen Drive
Concord, NH 03301

Dated: 11/3/15


Tonia Bandrowicz
Senior Enforcement Counsel
U.S. Environmental Protection Agency
5 Post Office Square, Suite 100
Mail Code OES 04-3
Boston, MA 02109
617-918-1734
617-918-0734 (Fax)