

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Miller's Son Shine Acres, Inc.
1280 Bennett Road
Corfu, New York 14036

Respondent

SPDES Permit No. NYA000458

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-02-2017-3308

**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 of the 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, a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against Miller's Son Shine Acres, Inc. ("Respondent"), as a result of Complainant's determination that the Respondent violated Section 301 of the Act, 33 U.S.C. § 1311, by failing to comply with certain terms of the New York State Department of Environmental Conservation's ("NYSDEC") State Pollutant Discharge Elimination System ("SPDES") General Permit for Concentrated Animal Feeding Operations ("CAFOs"), issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, at a CAFO that the Respondent owns and operates.

II. APPLICABLE LEGAL REQUIREMENTS

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into navigable waters, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342.
2. “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.
3. “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 and agricultural waste discharged into water.
4. “Person” is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include, among other things, an individual, corporation, partnership, association or municipality.
5. “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.
6. “Navigable waters” is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), as the waters of the United States, including the territorial seas, and further defined by 40 C.F.R. § 122.2, to include: all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; all interstate waters, including interstate “wetlands;” all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, “wetlands,” sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce, including tributaries thereto.
7. “Storm water” is defined by 40 C.F.R. § 122.26(b)(13) as storm water runoff, snow melt runoff, and surface runoff and drainage.
8. “Owner or operator” is defined by 40 C.F.R. § 122.2 as the owner or operator of any facility or activity subject to regulation under CWA Section 402.
9. “Process wastewater” is defined by 40 C.F.R. § 122.23(b)(7) as water directly or indirectly used in the operation of the animal feeding operation (“AFO”) for any or all of the following: spillage or overflow from animal or poultry watering systems; washing or cleaning or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes in contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

10. An AFO is defined by 40 C.F.R. § 122.23(b)(1) as a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.
11. A “concentrated animal feeding operation” or “CAFO” is defined by 40 C.F.R. § 122.23(b)(2) as an AFO that is, inter alia, a medium CAFO.
12. A “medium CAFO” is defined by 40 C.F.R. § 122.23(b)(6) as, inter alia, an animal feeding operation that stables or confines 200-699 mature dairy cows, whether milked or dry, and which, as relevant here, discharges pollutants into waters of the United States through a man-made ditch, flushing system, or other similar man-made device.
13. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), authorizes the Administrator to issue a National Pollutant Discharge Elimination System (“NPDES”) permit for the discharge of any pollutant, or combination of pollutants, notwithstanding the prohibition in Section 301(a) of the CWA, upon the condition that any such discharges will meet the requirements of the CWA and its implementing regulations.
14. The Administrator of EPA has promulgated regulations, at 40 C.F.R. § 122.23, which require owners or operators of concentrated animal feeding operations to obtain and comply with a NPDES permit to control discharges of pollutants from the CAFO.
15. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), allows any State, upon application to and approval by EPA, to directly administer the NPDES permitting program. EPA has authorized the New York State Department of Environmental Conservation (“NYSDEC”) to directly administer the NPDES program in New York. Accordingly, any person who will discharge pollutants from a point source to waters of the United States within New York State must first obtain a New York State Pollutant Discharge Elimination System (“SPDES”) permit, and must comply with all of its terms.
16. Pursuant to Section 402(b) of the CWA, the New York State Department of Environmental Conservation issued a SPDES General Permit for Concentrated Animal Feeding Operations (GP-04-02) (“CAFO General Permit”), on June 24, 2004. The CAFO General Permit became effective on July 1, 2004, expired on June 30, 2009, and has been administratively extended. The current CAFO General Permit supersedes the previous one (GP-99-01) which was issued on June 18, 1999 with an effective date of July 1, 1999 and an expiration date of June 30, 2004.
17. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes the Administrator, upon a finding that any person has violated, among other things, Section 301(a) of the Act, or has violated any permit condition or limitation implementing such section in a permit issued under Section 402 of the Act, to assess a civil penalty, and Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), as adjusted by 40 C.F.R. § 19.4, authorizes the assessment of a penalty of up to \$16,000 per violation, but not exceeding \$37,500.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent, Miller's Son Shine Acres, Inc., is a domestic business corporation, formed under the laws of New York state, and is, therefore, a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
2. According to the Notice of Intent ("NOI") filed with the NYSDEC by the Respondent on November 16, 1999, the Respondent owns and operates Miller's Son Shine Acres, Inc. ("Facility"), which consists of four farmsteads located at the following locations:
 - a) Home Farm, 1280 Bennett Road, Corfu, New York 14036
 - b) Sierk Farm, 1765 Broadway Road, Darien, New York 14040
 - c) Czapeczka Farm, 9590 Simonds Road, Corfu, New York 14036
 - d) Gildner Farm, Bennett Road, Corfu, New York 14036

Therefore, the Respondent is an owner and operator within the meaning of 40 C.F.R. § 122.2.

3. The Facility confines and feeds or maintains approximately 660 mature dairy cows on-site for a total of forty-five (45) days or more in any twelve-month period, and neither crops, vegetation, forage growth, nor post-harvest residues are sustained in the normal growing season over any portion of the lot or facility. Therefore, the Facility is a Medium AFO as defined by 40 C.F.R. § 122.23(b)(1) and (6).
4. The Facility discharges stormwater into a tributary to Murder Creek, Ellicott Creek and Huron Creek, all of which are waters of the United States, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.
5. Respondent applied for coverage for the Facility under the CAFO General Permit on November 16, 1999. Permit coverage was effective starting on December 1, 1999. When the CAFO General Permit was reissued on June 24, 2004 with an effective date of July 1, 2004, the Facility's permit coverage was automatically renewed.
6. On May 21, 2014, the EPA conducted a Federal lead Compliance Evaluation Inspection ("CEI") at the Site and EPA identified violations of the Facility's CAFO General Permit (NYA000458) and subsequently issued an Administrative Order ("AO" or "Order") (Docket No. CWA-02-2015-3001) on October 14, 2014. The Order was mailed to the Respondent along with a copy of the CEI Report. That Order directed the Respondent to correct their violations and come into compliance with the Clean Water Act. The EPA's inspection identified the following violations of the Facility's CAFO General Permit (NYA000458):
 - 1) Section VII.A of the CAFO General Permit requires permittees to develop CNMPs to assure compliance with the limitations and conditions of the CAFO General Permit, and Section VI.A of the permit prohibits the discharge of process wastewater pollutants to the surface waters of the State. Section VII.A of the permit specifically requires permitted facilities to be designed, constructed and operated in accordance with the Natural Resources Conservation Service ("NRCS") Conservation Practice Standard No. NY312, which includes, among other things, requirements to control silage leachate. During the inspection, the EPA inspector observed evidence of a discharge from the Home Farm Vegetated Treatment Area ("VTA") to a tributary of Murder Creek, which is both a surface

water of New York State and a water of the United States. Therefore, the Respondent failed to design, construct and operate its facility in accordance with NRCS Conservation Practice Standard No. NY312 and in violation of Sections VI.A and VII.A of the CAFO General Permit. This violation occurred for five hundred thirty-eight (538) days and was corrected on November 10, 2015 when the Respondent submitted documentation stating that modifications to the VTA at the Home Farm were complete.

- 2) Section VIII.C.xi of the CAFO General Permit requires that “[c]ollection, storage, and disposal of liquid and solid waste should be managed in accordance with NRCS standards.” Specifically, NRCS Conservation Practice Standard No. NY312 “Waste Management System” states that “waste” includes polluted runoff such as that from a barnyard, silo, and that all farms with silage will address silage leachate control.” In addition, Section X.G of the CAFO General Permit requires the permittee, to 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 permit. At the time of the inspection, the EPA inspector observed inadequate operation and maintenance in the following areas:
 - i) Ponding leachate on the south side of the bunk silo at the Home Farm;
 - ii) Home Farm VTA had not been mowed since spring of 2013, according to the Respondent;
 - iii) Considerable ponding of leachate observed to the southwest of the bunk silo at Sierk Farm. However, the EPA inspector did not observe a discharge as runoff flowed to a nearby pasture; and,
 - iv) Lack of site-specific operation and maintenance plan for the silage leachate control system at the Home Farm.

Therefore, the Respondent failed to manage the collection, storage and disposal of its liquid and solid waste, and ensure proper operation and maintenance in accordance with NRCS Conservation Practice No. NY312 and in violation of Sections VIII.C.x.i and X.G of the CAFO General Permit. The aforementioned violations occurred for five hundred thirty-eight (538) days each for items i – iii, and one hundred ninety-six (196) days for item iv. Items i - iii were corrected on November 10, 2015 when the Respondent submitted documentation stating that modifications to the VTA at the Home Farm were complete and a silage leachate system had been installed at the Sierk Farm. Item iv was corrected on December 3, 2014 when the Respondent submitted a copy of a site-specific operation and maintenance plan for the silage leachate control system at the Home Farm.

7. Based on the foregoing Findings of Fact and Conclusions of Law, the Respondent is liable for one thousand, eight hundred seven (1,807) 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, 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 **\$15,000**. 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 the Respondent’s prior compliance history, degree of culpability, economic benefit or savings accruing to the Respondent by virtue of the violations, and any information that the Respondent has provided regarding their ability to pay the

proposed penalty. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after the Respondent's receipt of this Notice, unless the Respondent files an Answer to this Complaint within that time and request 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 the 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 the Respondent is entitled to judgment as a matter of law, the 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**

The 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). The 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 have any knowledge. 40 C.F.R. § 22.15(b). Where the 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 intend to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether the Respondent requests a Hearing. 40 C.F.R. § 22.15(b).

The Respondent's failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of a defense may preclude the 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 the Respondent in an Answer, a Hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If, however, the 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 the CROP, at 40 C.F.R. §§ 22.21-22.26.

Should the Respondent request a Hearing, 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)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), to be heard and to present evidence on the appropriateness of the penalty assessment. Should the 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 the 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 the 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)], the Respondent may be found in default upon motion by Complainant. 40 C.F.R. § 22.17(a). Default by the Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of the Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by the 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 the 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 the 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 they believe to be relevant to the disposition of this matter, including: (1) actions the Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to the amount 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 wish to raise. Note that no penalty reduction will be made simply because an informal settlement conference is held.

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., Assistant Regional Counsel
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). The 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.

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 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). 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).

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 would terminate this administrative litigation and these civil proceedings against the Respondent. Entering into a settlement agreement would not extinguish, waive, satisfy or otherwise affect the Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance, and EPA would retain 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, **\$15,000**, within thirty (30) days after receipt of the Complaint, provided that the Respondent files 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-02-2017-3308

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 pursuant to 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 the 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 federal court. Such payment does not extinguish, waive, satisfy or otherwise affect the Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance, and EPA may initiate a new enforcement action based on evidence of new or continued violations.

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

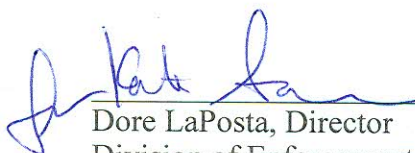
A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Cynthia L. Psoras, Esq., Assistant Regional Counsel
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

IX. GENERAL PROVISIONS

1. 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 _____ DAY OF **JUN 14**, 2017.



Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U. S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Miller's Son Shine Acres, Inc.
1280 Bennett Road
Corfu, New York 14036

Respondent,

SPDES Permit No. NYA000458

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-02-2017-3308**

I certify that on JUN 15 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:

Miller's Son Shine Acres, Inc.
1280 Bennett Road
Corfu, NY 14036

Copy by Certified Mail
Return Receipt Requested:

Joseph DiMura, P.E., Director
Bureau of Water Compliance Programs
Division of Water
NYSDEC
625 Broadway
Albany, New York 12233-3506

Dated: 6/15/17


Branch Secretary
New York, New York