



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 Post Office Sq., Suite 100
BOSTON, MASSACHUSETTS 02109-3912

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MAR 09 2010

EPA ORC WS
Office of Regional Hearing Clerk

March 9, 2011

BY HAND

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Sq., Suite 1100
Mail Code: ORA18-1
Boston, MA 02109-3912

RE: **In the Matter of: Danbury, Connecticut**
Docket No. CWA-01-2010-0079

Dear Ms. Santiago,

Enclosed for filing in the above-referenced action, please find this Administrative Complaint proposing to assess a civil penalty under Sections 309(g) and 311(b) of the Clean Water Act.

Also, I have included a copy of the letter to the State of Connecticut providing it notice of this action pursuant to Section 309(g) of the Clean Water Act.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey Kopf".

Jeffrey Kopf
Senior Enforcement Counsel
EPA Region 1

Enclosure

cc: Mayor Mark D. Boughton



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 Post Office Sq., Suite 100
BOSTON, MASSACHUSETTS 02109-3912

March 9, 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Nicole Lugli
Connecticut Department of Environmental Protection
79 Elm St.
Hartford, CT 06106
Nicole.lugli@po.state.ct.us

Via email

Commander Wyman Briggs
First Coast Guard District
Captain John Foster Williams Building
408 Atlantic Avenue
Boston, MA 02210-2209
Wyman.w.briggs@uscg.mil

Via email

RE: Issuance of Administrative Complaint to Danbury, Connecticut
Docket No. CWA-01-2010-0079

Dear Ms. Lugli and Commander Briggs:

The U.S. Environmental Protection Agency Region 1 ("EPA") wishes to notify you of its intention to assess a civil penalty against the City of Danbury, Connecticut for violations of its National Pollutant Discharge Elimination System ("NPDES") permit and Section 301 of the federal Clean Water Act ("CWA"). This notification provides you with the opportunity to consult with EPA pursuant to Section 309(g) of the CWA regarding this matter before assessment of the penalty.

This also provides notice to you that that City failed to fully implement a Spill Prevention Control and Countermeasure ("SPCC") plan in violation of Section 311(j) of the Clean Water Act ("CWA").

Details of the alleged violations are in the Administrative Complaint enclosed with this letter. Questions related to the City's failure to report bypasses, and unauthorized discharges, may be addressed to Mike Fedak, Senior Enforcement Coordinator, at 617-918-1766. Questions concerning SPCC violations should be directed to Janis Tsang, On-

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Scene Coordinator, at 617-918-1231. Legal questions may be addressed to Jeffrey Kopf, the attorney assigned to this case, at 617-918-1796.

Sincerely,



Susan Studlien, Director
Office of Environmental Stewardship

cc: Mike Fedak, EPA Region 1
Janis Tsang, EPA Region 1
Jeffrey Kopf, EPA Region 1
Neil Torres, Oil and Chemical Response Division, CT DEP (via email)
LTJG Moser, USCG (via email)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

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Office of Regional Hearing Clerk

In the Matter of)

DANBURY, CONNECTICUT)

155 DEER HILL AVENUE)

DANBURY, CT 06810)

Respondent.)

Docket No. CWA 01-2010-0079

ADMINISTRATIVE COMPLAINT

To Assess a Civil Penalty Under
Sections 309(g) and 311(b) of the
Clean Water Act

I. STATUTORY AND REGULATORY AUTHORITY

1. This Administrative Complaint (“Complaint”) is issued under the authority vested in the U.S. Environmental Protection Agency (“EPA” or “Complainant”) by Sections 309(g)(1) and 311(b)(6)(B)(ii) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1319(g)(1) and 1321(b)(6)(B)(ii), 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. §§ 22.1-22.52 (the “Consolidated Rules of Practice”).

2. Pursuant to Sections 309(g)(1) and 311(b)(6)(B)(ii) of the CWA, and in accordance with the Consolidated Rules of Practice, Complainant hereby provides notice of a proposal to assess a civil penalty against the City of Danbury, Connecticut (“City” or “Respondent”) for: a) failing to report to the State of Connecticut, Department of Environmental Protection (“CTDEP”) bypasses from its wastewater collection system on at least 27 separate occasions in violation of its National Pollutant Discharge Elimination

System (“NPDES”) permit; b) unauthorized bypasses from its wastewater collection system on at least 15 separate occasions in violation of its NPDES permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a); and, c) failing to comply with the Oil Pollution Prevention regulations set forth at 40 C.F.R. part 112, promulgated under the authority of Section 311(j) of the Act, 33 U.S.C. § 1321(j), and other provisions of the Act, 33 U.S.C. §§ 1251 *et seq.* Complainant also provides notice of Respondent’s opportunity to request a hearing on the proposed penalty assessment.

II. GENERAL ALLEGATIONS

General Allegations: Failure to Report Bypasses and Unauthorized Discharges

3. The City of Danbury, Connecticut is a municipality as defined in Section 502(4) of the Act, 33 U.S.C. § 1362(4), organized under the laws of the State of Connecticut.

4. The City is a person under Section 502(5) of the Act, 33 U.S.C. § 1362(5). The City is the owner and operator of a Publicly Owned Treatment Works (“POTW”) that includes a wastewater collection system consisting of approximately 19 pump stations and 140 miles of sewer lines (“Collection System”), and a Water Pollution Control Plant (“WPCP”), from which pollutants, as defined in Section 502(6) and (12) of the Act, 33 U.S.C. §§ 1362(6) and (12), are discharged from point sources, as defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14), to Limekiln Brook.

5. The WPCP is a 15.5 million gallon per day (“MGD”) advanced treatment facility serving a population of approximately 75,000, including the City of Danbury and the towns of Brookfield, Bethel, Ridgefield and portions of private systems. The towns of Brookfield, Bethel, Ridgefield and the private systems each own and operate their own wastewater collection systems.

6. Section 301(a) of the Act, 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 an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

7. Section 402(b) of the Act, 33 U.S.C. § 1342(b), provides that the Administrator of EPA may authorize a state to issue NPDES permits in accordance with the requirements of the Act. On September 26, 1973, the Administrator granted the State of Connecticut, through the CTDEP, the authority to issue NPDES permits pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b).

8. On February 13, 2003, the City was issued NPDES Permit No. CT01000145 (“NPDES Permit”) by the CTDEP under the authority of Section 402 of the Act, 33 U.S.C. § 1342. The NPDES Permit became effective on signature. It expired on February 12, 2008 and is administratively continued based upon the City’s timely re-application.

9. The NPDES Permit authorizes the City to discharge pollutants from the WPCP outfall to Limekiln Brook subject to the terms and conditions of the NPDES Permit.

10. Limekiln Brook is a relatively permanent water that flows into the Still River, which flows into the Housatonic River, which flows into the Long Island Sound, and ultimately into the Atlantic Ocean. All these waterbodies are “waters of the United States” under the definition set forth in 40 C.F.R. § 122.2, and therefore are “navigable waters” under Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

11. Kissen Brook is a relatively permanent water that flows into the Still River, and is a “waters of the United States” under the definition set forth in 40 C.F.R. § 122.2, and therefore is a “navigable water” under Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

12. Padanaram Brook is a relatively permanent water that flows into the Still River, and is a “waters of the United States” under the definition set forth in 40 C.F.R. § 122.2, and therefore is a “navigable water” under Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

13. Wetlands adjacent to the waterbodies described in paragraphs 10-12 are also “waters of the United States” under the definition set forth in 40 C.F.R. § 122.2.

General Allegations: Oil Pollution Prevention Regulations

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

15. Under the authority of Section 311(j)(1) of the Act, the Oil Pollution Prevention regulations, at 40 C.F.R. Part 112, establish procedures, methods, and requirements for preventing the discharge of oil. These requirements apply to owners or operators of non-transportation-related facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil or oil products that, due to their location, could reasonably be expected to discharge oil in harmful quantities (as defined in 40 C.F.R. Part 110) to navigable waters of the United States or adjoining shorelines. 40 C.F.R. § 112.1(b).

16. Under 40 C.F.R. § 112.3(a), the owner or operator of a regulated onshore facility must prepare a Spill Prevention Control and Countermeasure (“SPCC”) Plan in writing and in accordance with 40 C.F.R. § 112.7, and any other applicable sections of Part 112. If the facility became operational prior to August 16, 2002, the owner or operator must maintain and implement its SPCC plan.

17. Respondent is a “municipality” within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4), and, therefore, is a “person” within the meaning of Sections 311(a)(7) and 502(5) of the Act, 33 U.S.C. §§ 1321(a)(7), 1362(5).

18. The City is the “owner or operator” within the meaning of Section 311(a)(6) of the Act, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2, of the City of Danbury Department of Public Works Complex located at 53 Newton Road, Danbury, Connecticut (the “Facility”).

19. Respondent stores “oil” or oil products at the Facility within the meaning of Section 311(a)(1) of the Act, 33 U.S.C. § 1321(a)(1) and 40 C.F.R. § 112.2.

20. The Facility is an “onshore facility” within the meaning of Section 311(a)(10) of the Act, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2 and is a “non-transportation-related” facility within the meaning of Appendix A of 40 C.F.R. § 112.

21. The Facility is located approximately ½ mile west of Limekiln Brook and approximately 1/3 mile east of the Still River. Storm drains from the facility discharge into Limekiln Brook and the Still River. Due to the location of the Facility with respect to the storm drains that empty into Limekiln Brook and the Still River and the topography of the area, the Facility could reasonably be expected to discharge oil into Limekiln Brook, the Still River, and downstream bodies of water.

22. Limekiln Brook flows into the Still River, which flows into the Housatonic River, which flows into the Long Island Sound, and ultimately into the Atlantic Ocean.

23. Limekiln Brook, the Still River, the Housatonic River, the Long Island Sound, and the Atlantic Ocean are “navigable waters” as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 110.1, and are, therefore, subject to the jurisdiction of Section 311 of the Act, 33 U.S.C. § 1321.

Count I
Failure to Report Bypasses

24. The Complaint incorporates Paragraphs 1-23 above by reference.

25. Section 1.B. of the NPDES Permit incorporates Section 22a-430-3(a)(3) of the Regulations of Connecticut State Agencies (“RCSA”) which defines “Bypass” as the diversion of wastes from any portion of the wastewater collection system or treatment facilities.

26. Section 8(C) of the NPDES Permit incorporates Section 22a-430-3(k)(4) of the RCSA which requires reporting of all instances of Bypass including the bypass of the WPCP or any component of the Collection System to the CTDEP within two hours of the bypass, by telephone, and within five days of the bypass in writing.

27. Between April 1, 2006 and the date of the filing of this Complaint, the City failed to report at least 27 Bypasses from its Collection System to the CTDEP, in violation of Section 8(C) of its NPDES Permit.

28. The City’s failure to report Bypasses violates Section 8(C) of its NPDES Permit, issued pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b); and therefore, the City may be assessed a penalty under Section 309(g)(1)(A) of the CWA, 33 U.S.C.

§ 1319(g)(1)(A).

29. Pursuant to Section 309(g)(2)(B) of the Act and 40 C.F.R. § 19.4, the City is liable for civil penalties up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

Count II
Unauthorized Discharges

30. The Complaint incorporates Paragraphs 1-29 above by reference.

31. Section 1(B)(k) of the NPDES Permit incorporates Section 22a-430-3(k)(4) of the RCSA which prohibits bypasses of the Collection System or treatment facilities or any part thereof, except under specifies circumstances.

32. Between April 1, 2006, and the date of the filing of this Complaint, Respondent bypassed its Collection System resulting in the discharge of untreated wastewater to Limekiln Brook, Padanaram Brook, Kissen Brook, the Still River, and into wetlands adjacent to such waterbodies, on at least 15 occasions.

33. The City's bypasses were not authorized by its NPDES Permit, and, therefore, violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a); and therefore, the City may be assessed a penalty under Section 309(g)(1)(A) of the CWA, 33 U.S.C. § 1319(g)(1)(A).

34. Pursuant to Section 309(g)(2)(B) of the Act and 40 C.F.R. § 19.4, the City is liable for civil penalties up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

Count III
Failure to Maintain and Implement an SPCC Plan at the Facility

35. Paragraphs 1 through 33 are incorporated by reference as if fully set forth herein.

36. On July 19, 2006, an EPA inspector inspected the Facility and found that the Facility did not have an SPCC plan.

37. On or about November 20, 2006, the City finalized an SPCC plan for the Facility.

38. On June 18, 2007, the City agreed to pay a civil penalty to resolve the CWA violations for failure to have an SPCC plan and certified in the Expedited SPCC Settlement Agreement that “the violations identified . . . have been corrected and that the facility is now in full compliance with the Oil Pollution Prevention regulations.”

39. On May 7, 2010, an EPA inspector inspected the Facility.

40. At the time of the inspection, the Facility had an aboveground storage tank capacity of approximately 22,000 gallons, subjecting it to the requirements of the Oil Pollution Prevention regulations, at 40 C.F.R. Part 112.

41. During the May 7, 2010 inspection, the EPA inspector requested the SPCC plan for the Facility and was provided with the November 20, 2006 SPCC plan.

42. The EPA inspector reviewed the SPCC plan and found that the City had failed to maintain and fully implement the SPCC plan. In particular, some of the failures to comply with 40 C.F.R. Part 112 included, but were not limited to the following:

a) failure to conduct Facility inspections and maintain records of such inspections with the SPCC plan; b) failure to provide oil-handling personnel with training regarding operation and maintenance of equipment to prevent oil discharges and to maintain records of such training; c) failure to amend the SPCC plan within six months of a change at the Facility that materially affects the potential for an oil discharge; and, d) failure to include in the SPCC plan an accurate and complete description and diagram of the Facility including all the requirements of 40 C.F.R. § 112.7(a)(3).

43. The City’s failure to maintain and implement the SPCC plan for its Facility in accordance with the requirements of 40 C.F.R. §§ 112.3, 112.5, 112.7 and 112.8 violated

40 C.F.R. § 112.3(a), and Section 311(j) of the Act, 33 U.S.C. § 1321(j). The City has violated at least one of these requirements for each day since November 21, 2006, and continuing through October 27, 2010 for a total of 1437 days of violation; and therefore, the City may be assessed a penalty under Section 311(j)(6)(A) of the CWA, 33 U.S.C. § 1321(j)(6)(A).

44. Pursuant to Section 311(b)(6)(B) of the CWA, 33 U.S.C § 1321(b)(6)(b) and 40 C.F.R. § 19.4, the City is liable for civil penalties up to \$16,000 per day for each day during which the violation continues, up to a maximum of \$177,500.

III. NOTICE OF PROPOSED ASSESSMENT OF CIVIL PENALTY

45. Based on the foregoing allegations and pursuant to the authority of Sections 309(g) and 311(b)(6)(B)(ii) of the Act, 33 U.S.C. §§ 1319(g) and 1321(b)(6)(B)(ii); the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, *et seq.*; the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, *et seq.*; and the Civil Monetary Penalty Inflation Adjustment Rule, 73 FR 75340 (Dec. 11, 2008) (codified at 40 C.F.R. Part 19), Complainant proposes that a Final Order assessing civil penalties be issued against Respondent of up to eleven thousand dollars (\$11,000) per day for each day during which the violations continued through January 12, 2009 and up to sixteen thousand dollars (\$16,000) per day for each day during which the violations continued after January 12, 2009, up to a maximum of one hundred and seventy-seven thousand and five hundred dollars (\$177,500), 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.

46. The City's violations related to the failure to report bypasses alleged above represent significant violations of the CWA because failure to report bypasses to regulatory agencies prevents such agencies from having an accurate representation of the frequency of the bypasses, the size of such bypasses and the potential impacts on human health and the environment.

47. Complainant will pursue penalties for CWA violations on 27 separate days of violation for the failure to report bypasses.

48. The City's violations related to the unauthorized bypasses represent significant violations of the CWA because sewage contains oxygen-depleting pollutants, particulate matter, toxic pollutants and pathogens which may threaten public health and/or the environment.

49. Complainant will pursue penalties for CWA violations on 15 separate days of violation for these unauthorized bypasses.

50. The City's violations of the Oil Pollution Prevention regulations alleged above represent significant violations of the CWA because failure to fully maintain and implement an adequate SPCC plan both leave a facility unprepared to deal with an oil spill and to prevent the spill from having potentially serious environmental consequences.

51. Complainant will pursue penalties for CWA violations on separate days of violation for the failure to fully implement its SPCC plan for each day from November 21, 2006, through October 27, 2010 for a total of 1437 days of violation.

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

52. The City 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 the City'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.

53. In its Answer, the City may also: (a) dispute any material fact in the Complaint; (b) contend that the proposed penalty is inappropriate; and, (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 the City has any knowledge. If the City 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.

54. 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

55. The City should also send a copy of the Answer, as well as a copy of all other documents that Respondents file in this action, to Jeffrey Kopf, the attorney assigned to

represent EPA and who is designated to receive service in this matter, at:

ADMINISTRATIVE COMPLAINT
In re Danbury, CT
Docket No. CWA-01-2010-0079

- 11 -

US EPA, REGION 1
5 Post Office Sq. Ste. 100
Boston, MA 02109-3912

Jeffrey Kopf, 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) 918-1796
Kopf.jeff@epa.gov

56. If the City 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.

V. CONTINUED COMPLIANCE OBLIGATION

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

Date: 03/9 /11

Susan Studlien
Susan Studlien
Director, Office of Environmental Stewardship
U.S. Environmental Protection Agency
Region I

In the Matter of: Stamford, Connecticut
Docket No. CWA-01-2010-0079

CERTIFICATE OF SERVICE

I certify that the foregoing ADMINISTRATIVE COMPLAINT (Docket No. CWA-01-2010-0079) was sent to the following persons, in the manner specified on the date below:

Original and one copy
hand delivered:

Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Sq., Suite 1100
Mail Code: ORA18-1
Boston, MA 02109-3912

Copy, via Certified Mail,
Return Receipt Requested,
and a copy of 40 C.F.R. Part 22

The Honorable Mayor Mark D. Boughton
City of Danbury
155 Deer Hill Avenue
Danbury, CT 06810-7726

Copy, via Certified Mail,
Return Receipt Requested,
and a copy of 40 C.F.R. Part 22

Laszlo L. Pinter
Deputy Corporation Counsel
Counsel for the City of Danbury, CT
155 Deer Hill Avenue
Danbury, CT 06810-7726

Date: _____

3/9/11



Jeffrey Kopf, Senior Enforcement Counsel
Office of Environmental Stewardship (SEL)
U.S. Environmental Protection Agency
Region I
5 Post Office Sq., Suite 100
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