



1085 Van Voorhis Road, Suite 400
P.O. Box 1616
Morgantown, WV 26507-1616
(304) 598-8000 (304) 598-8116 Fax
www.steptoe-johnson.com

Writer's Contact Information
(304)598-8107
Timothy.Stranko@steptoe-johnson.com

December 5, 2011

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

RE: Docket No. CWA-03-2011-0235
City of Huntington, West Virginia

Dear Clerk:

Enclosed for filing on behalf of the City of Huntington, please find an original Answer, Request for Hearing, Motion for Stay and Affirmative Defenses in the above-captioned proceeding.

Thank you for your assistance with this matter. Please call me should you have any questions or comments.

Best Regards,

Timothy P. Stranko

TPS/rde
Enclosure
cc (w/enc.): Zachary Moor (3RC43)
Assistant Regional Counsel

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EPA REGION III, PHILA, PA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

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In the Matter of:

City of Huntington, West Virginia

Respondent.

Docket No. CWA-03-2011-038

**ANSWER, REQUEST FOR HEARING, MOTION FOR STAY AND AFFIRMATIVE
DEFENSES BY RESPONDENT
CITY OF HUNTINGTON, WEST VIRGINIA**

The Respondent, the City of Huntington, West Virginia, by and through its attorney, Steptoe & Johnson, PLLC, hereby responds to the Administrative Penalty Complaint in the above styled administrative action as follows:

ANSWER

In response to the averments contained in the Administrative Penalty Complaint ("the Complaint") filed at this docket, and in accordance with 40 CFR § 22.15, Respondent City of Huntington, West Virginia ANSWERS THAT:

I. Statutory Authority

1. Respondent admits that the Administrator of the Environmental Protection Agency and her delegates have the authority under 33 USC § 1319(g) to bring this administrative action.

II. Factual and Legal Allegations

2. Respondent admits the averments included in Paragraphs 3 through 16 of the Administrative Penalty Complaint (hereafter, "the Complaint").

III. Findings of Violation

3. Respondent admits the averments contained in Paragraph No. 17 of the Complaint.

4. Respondent admits in part and denies in part the averments contained in Paragraph No. 18 of the Complaint.

(a) The required mapping is under development, subject to funding and staffing constraints (discussed in Section IV, below).

(b) Article 969 of the Huntington City Code, enacted on October 25, 2010, prohibits non-stormwater discharges into the City's MS4. (See: Exhibit A, attached)

(c) Article 969 of the Huntington City Code includes sanction for the introduction of non-stormwater discharges into the City's MS4. (See: Exhibit A, attached)

(d) Public information, outreach and participation campaigns are postponed because of fiscal constraints suffered by the City (discussed in Section IV, below).

5. Paragraph No. 19 of the Complaint is not a factual allegation that requires an answer by Respondent (See: 40 CFR § 22.15 (b)). To the extent that an answer may be required, Respondent denies the legal conclusions in this paragraph.

6. Respondent admits the averments contained in Paragraph No. 20 of the Complaint.

7. Respondent admits in part and denies in part the averments contained in Paragraph No. 21 of the Complaint.

(a) Article 970 of the Huntington City Code, enacted on December 28, 2010, requires erosion and sediment controls for all land disturbances over five thousand square feet and includes sanctions for non-compliance. (See: Exhibit B, attached)

(b) Article 970.02 of the Huntington City Code requires construction site operators to employ best management practices for erosion and sediment control. (See: Exhibit B, attached)

(c) Article 970.02 of the Huntington City Code requires site plan review by the Director of Public Works for all land disturbances over five thousand square feet. (See: Exhibit B, attached)

(d) Funding for inspection and enforcement is included in the Public Works budget.

(e) Admitted. However, resources for this training are subject to the demographic and economic constraints of the City (discussed in Section IV, below).

8. Paragraph 22 of the Complaint is not a factual allegation that requires an answer by Respondent (See: 40 CFR § 22.15 (b)). To the extent that an answer may be required, Respondent denies the legal conclusions in this paragraph.

9. Respondent admits the averments contained in Paragraph No. 23 of the Complaint.

10. Respondent admits in part and denies in part the averments contained in Paragraph No. 24 of the Complaint.

(a) A fully compliant ordinance, including standards for post-construction runoff from new and redevelopment sites, is developed as a result of a two-year effort undertaken by the City and the Huntington Sanitary Board, a municipal corporation of the City. This ordinance (See: Exhibit C) was presented to the Finance Committee of the Huntington City Council in April 2008. Implementation of the ordinance was postponed because of fiscal constraints (discussed in Section IV, below).

(b) Admitted.

(c) A fully compliant ordinance, including requirements for adequate long-term operation and maintenance of BMPs, is developed as a result of a two-year effort undertaken by the City and the Huntington Sanitary Board, a municipal corporation of the City.

This ordinance (See Exhibit C) was presented to the Finance Committee of the Huntington City Council in April 2008. Implementation of the ordinance was postponed because of fiscal constraints (discussed in Section IV, below).

(d) Admitted. However, resources are subject to the demographic and economic constraints of the City (discussed in Section IV, below).

11. Paragraph 25 of the Complaint is not a factual allegation that requires an answer by Respondent (See: 40 CFR § 22.15 (b)). To the extent that an answer may be required, Respondent denies the legal conclusions in this paragraph.

12. Respondent admits the averments contained in Paragraph No. 26 of the Complaint.

13. Respondent admits in part and denies in part the allegations included in Paragraph 27 of the Complaint. Good housekeeping focused upon water quality protection is practiced at municipal facilities of Respondent. Training for and inspection of these practices is conducted informally by supervisory personnel.

14. Paragraph 28 of the Complaint is not a factual allegation that requires an answer by Respondent (See: 40 CFR § 22.15 (b)). To the extent that an answer may be required, Respondent denies the legal conclusions in this paragraph.

IV. Proposed Civil Penalty

Respondent objects to the civil penalty proposed in Paragraph 32 of the Complaint, and presents the following facts in support of this objection:

15. The City of Huntington is suffering serious and sustained problems of shrinking population and rising poverty. The City lost 4.5% of its population between 2000 and 2010. Between 2005 and 2009, 30% of its population is classified as living in poverty, up from 24.7% reported in the 2000 census. (See: 2000, 2010 U.S. Census)

16. These demographic and economic problems are reflected and amplified in the administration of the City budget. Between FY 2009-2010 and FY 2010-2011, the City lost \$3,390,349 in revenues (from \$43,171,446 to \$39,781,077), including a loss of \$1,925,614 in property and business tax revenues. In the same period, the City raised from their citizens and businesses an additional \$350,000 in municipal service fees to offset some of these losses.

17. Between FY 2009-2010 and FY 2010-2011, the Federal government reduced its support to the City by \$989,536. The State government imposed an even greater reduction of \$1,117,300.

18. Between FY 2009-2010 and FY 2010-2011, the City reduced its police department budget by \$525,300, its fire department budget by \$103,499, and its street department budget by \$444,382. In addition, the City is faced with a \$4.4 Million pension shortfall.

19. Obviously, the City is struggling through difficult times. The Administration is aggressively seeking more and different revenue streams while ensuring Huntington remains a pleasant, affordable and safe place to live and conduct business. In addition, City Staff has been significantly reduced and subject to reduced work hours and "rolling layoffs".

20. Given these ever-increasing constraints and challenges, the City opposes the proposed relief as unreasonable and counterproductive. Assessing this monetary fine is akin to taking a poor man's last penny, then punishing him because he is broke. Improved implementation of the MS4 program will not be promoted by taking the proposed \$156,000 administrative civil penalty from the City but will drive the City further into fiscal distress and make it even more difficult to meet the unfunded mandates of the federal storm water regulations and implementing MS4 permit.

21. For these reasons, the City respectfully requests that the Agency find that the proposed administrative penalty is excessive and would be counterproductive, and accordingly withdraw the proposed penalty in favor of a consent order requiring the City to remedy any program and compliance shortcomings by a deadline date.

22. This proposed outcome is further supported by the fact that the October 2010 inspection was the first MS4 compliance or assistance visit provided by either federal or state agencies, and that the annual MS4 compliance reports submitted by the City were received by the state authority with no comment or suggestion of non-compliance.

REQUEST FOR HEARING

23. Pursuant to 33 U.S.C. § 1319(g)(2)(B), the City requests a hearing on the proposed civil penalty.

REQUEST FOR ALTERNATIVE MEANS OF DISPUTE RESOLUTION AND

MOTION FOR STAY

24. Pursuant to 5 U.S.C. § 581, et seq. and 40 CFR § 22.18(d), the City requests that the Agency join in voluntary settlement efforts regarding these matters. The City further requests a Stay of these administrative proceedings pending further report by the parties regarding progress of settlement efforts.

AFFIRMATIVE DEFENSES

25. Respondent reserves the right to assert any and all defenses arising under any source of law, which may be available to it, including without limitation all those pursuant to Federal Rule of Civil Procedure 8(c), and those which may be revealed by the course of discovery in and further investigation of this matter.

**THE CITY OF HUNTINGTON,
WEST VIRGINIA**

By Counsel



Timothy P. Stranko (WVSB No. 7236)

Marc C. Bryson (WVSB No. 10589)

P.O. Box 1588

Charleston, WV 25326-1588

Tel. No. 304-353-8149

Fax No. 304-353-8180

Timothy.Stranko@steptoe-johnson.com

(Direct Dial 304-598-8107)

Marc.Bryson@steptoe-johnson.com

(Direct Dial 304-353-8149)

**STEPTOE & JOHNSON, PLLC
OF COUNSEL**

CERTIFICATE OF SERVICE

I, Timothy P. Stranko, Esq., hereby state and affirm that the foregoing ANSWER, REQUEST FOR HEARING, MOTION FOR STAY AND AFFIRMATIVE DEFENSES BY RESPONDENT CITY OF HUNTINGTON, WEST VIRGINIA, has been served upon the following person by First Class United States Mail, postage paid, on December 5, 2011.

Zachary Moor (3RC43)
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029



Timothy P. Stranko