



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

BY HAND

April 14, 2007

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 1
One Congress Street, Suite 1100 (RAA)
Boston, Massachusetts 02114-2023

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2008 APR 14 P 2:13

EPA OPC
OFFICE OF
REGIONAL HEARING CLERK

Re: In the Matter of Stephen Lowe, Docket No. CWA-01-2008-0048

Dear Ms. Santiago:

Enclosed for filing in the above-referenced matter please find the original and one copy of an Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty and Notice of Opportunity to Request a Hearing Thereon.

Thank you for your attention to this matter.

Sincerely,

Michael Wagner
Senior Enforcement Counsel

cc: Mr. Stephen Lowe
Angelo Catanzaro, Esq.

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

RECEIVED

2008 APR 14 P 2:13

IN THE MATTER OF)

Stephen Lowe)
5 Warren Avenue)
Westborough, Massachusetts)

DOCKET NO. CWA-01-2008-0048

Proposal to Assess)
Administrative Penalty)
Under Section 309(g) of)
the Clean Water Act)

REGIONAL HEARING CLERK

**ADMINISTRATIVE COMPLAINT,
FINDINGS OF VIOLATION,
NOTICE OF PROPOSED ASSESSMENT OF
A CIVIL PENALTY, AND NOTICE OF OPPORTUNITY
TO REQUEST A HEARING THEREON**

I. STATUTORY AUTHORITY

The following Findings are made and Notices given under the authority vested in the U.S. Environmental Protection Agency ("EPA") by Section 309(g) of the Clean Water Act (the "Act"), 33 U.S.C. § 1319(g). The Complainant is the Enforcement Manager of the Office of Environmental Stewardship, EPA, Region 1.

II. FINDINGS OF VIOLATION

1. Respondent, Stephen Lowe, is a person within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
2. The Respondent engaged in the clearing and excavation of real property located at 226 Gardner Road in Hubbardston, Massachusetts (the "Site").
3. Section 308(a) of the Act, 33 U.S.C. § 1318(a), authorizes EPA to require the submission of information whenever necessary for the purpose of carrying out the objectives of the Act.

4. Pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a), on September 13, 2007, EPA requested, in writing, that the Respondent submit information pertaining to his clearance and excavation activities at the Site within 30 days of receipt of the written request (the "Information Request"). The Respondent received the Information Request on or about September 21, 2007; therefore a response was due no later than October 21, 2007. The Respondent failed to provide the requested information by this date in violation of Section 308 of the Act, 33 U.S.C. § 1318.

5. On January 31, 2008, EPA sent a letter to the Respondent informing him that EPA had not received a written response to its Information Request and reminding Respondent that compliance with the requirements of the Information Request is mandatory.

6. To date, the Respondent has failed to provide the requested information, in violation of Section 308 of the Act, 33 U.S.C. § 1318.

7. Section 309(g)(1)(A) of the Act, 33 U.S.C. § 1319(g)(1)(A), authorizes EPA to assess Class I administrative penalties for violations of Section 308 of the Act, 33 U.S.C. § 1318.

III. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

Based on the forgoing Findings of Violation, and pursuant to the authority of Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. § 19.4, the Complainant proposes that a Final Order assessing administrative penalties be issued against Respondent in an amount not to exceed \$11,000 per day for each day during which its violations continued, up to a maximum of \$32,500, taking into account the seriousness of the violation, the economic benefit to the violator, if any, resulting from the violation, the degree of culpability involved, any other penalty for the same incident, any history of prior violations, the nature, extent, and degree of

success of any efforts of the violator to minimize or mitigate the effects of the discharge, the economic impact of the penalty on the violator, and any other matters as justice may require.

The Respondent's failure to provide the information requested by EPA has interfered with EPA's efforts to carry out the objectives of the Act and represents a significant violation of the Act. Respondent has violated Section 308 of the Act, 33 U.S.C. § 1318, on each day from October 22, 2007 to the date of the filing of this complaint.

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), Respondent may request a hearing on the proposed penalty assessment and, at the hearing, may contest any material fact contained in the Findings of Violation set forth in Section II above and the appropriateness of the proposed penalty amount.

The requirements for requesting a hearing, and the procedures for the hearing, if one is requested, are set forth in the July 23, 1999 Consolidated Rules of Practice, found at 40 C.F.R. Part 22, a copy of which is enclosed herewith.

Any request for a hearing must be incorporated into the Respondent's Answer to this Complaint, which must be filed with the Regional Hearing Clerk at the following address within thirty (30) days of receipt of the Complaint:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region I
One Congress Street, Suite 1100 (RAA)
Boston, Massachusetts 02114-2023

The Answer must comply with Section 22.15 of the enclosed Consolidated Rules of Practice.

Members of the public, to whom the 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 comment on the proposal and to be heard and present evidence at the hearing.

Be advised that if the Respondent does not file a timely Answer to this Complaint, Respondent may be found in default. Default constitutes, for purposes of this action, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to a hearing on such factual allegations.

V. QUICK RESOLUTION

Under Section 22.18(a) of the Consolidated Rules of Practice, the Respondent has the option of resolving this matter at any time by paying the penalty proposed in this Complaint in full. Please be advised, however, that because this case requires public notice pursuant to Section 22.45, the Respondent must wait until ten (10) days after the period for public comment has closed before submitting a penalty payment under the Quick Resolution provisions of the Consolidated Rules of Practice.

Payment of the penalty must be made by submitting a bank, cashier's or certified check payable to the "Treasurer, United States of America," to:

U.S. Environmental Protection Agency
Fines and Penalties
P.O. Box 979077
St. Louis, MO 63197-9000

Copies of the check must also be mailed to the Regional Hearing Clerk at the address above and to:

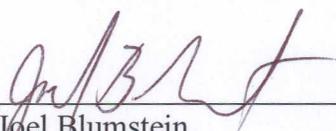
Michael Wagner
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region I
One Congress Street, Suite 1100 (SEL)
Boston, MA 02114-2023

The penalty payment check must reference the title of this proceeding ("In the Matter of Stephen Lowe") and its Docket Number ("CWA-01-2008-0048").

If the Respondent pays the proposed penalty in full within thirty (30) days after receiving this Complaint, then the Respondent need not file an Answer to the Complaint. If the Respondent wishes to resolve this matter without having to file an Answer but needs additional time in which to do so, the Respondent may file a written statement with the Regional Hearing Clerk at the address above within thirty (30) days of receiving the Complaint. The written statement must specify that the Respondent agrees to pay the penalty within sixty (60) days of receipt of the Complaint. Failure to make such a payment within the sixty (60) days may subject the Respondent to a default action.

Neither assessment nor payment of an administrative penalty pursuant to this section of the Act shall affect the Respondent's continuing obligation to comply with the outstanding Request for information, any other terms of the Act, State or local wastewater discharge permits and other requirements, and with any separate Compliance Order(s) issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a).

Date: 4/11/08



Joel Blumstein
Enforcement Manager
Office of Environmental Stewardship
U.S. Environmental Protection Agency,
Region I
One Congress Street, Suite 1100 (SEL)
Boston, Massachusetts 02114-2023

In the Matter of Stephen Lowe
Docket No. CWA-01-2008-0048

CERTIFICATE OF SERVICE

I certify that the foregoing Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of a Civil Penalty, and Notice of Opportunity to Request a Hearing Thereon was transmitted to the following persons, in the manner specified, on the date below:

Original and one copy
hand-delivered:

Wanda I. Santiago
Regional Hearing Clerk
U.S. EPA, Region I
One Congress Street, Suite 1100 (RAA)
Boston, Massachusetts 02114-2023

Copy by certified mail,
return receipt requested:

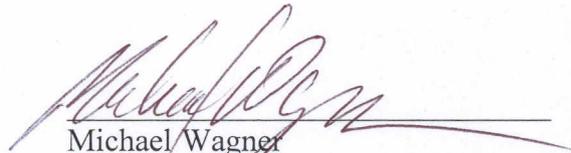
Stephen Lowe
5 Warren Avenue
Westborough, Massachusetts 01581

Copy by first class mail:

Angelo Catanzaro, Esq.
Catanzaro and Allen
100 Waverly Street
Ashland, Massachusetts 01721

Dated:

April 14, 2008



Michael Wagner
Senior Enforcement Counsel
U.S. EPA, Region 1
One Congress Street, Suite 1100 (SEL)
Boston, MA 02114-2023
Phone: (617) 918-1735
Fax: (617) 918-0735