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**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

IN RE:

J. WILLIS SMITH AND BROTHER, INC.
and A. SMITH AND SONS SHIPYARD
Respondents

DOCKET No. CWA-03-2009-0217

COMPLAINT AND NOTICE OF
OPPORTUNITY FOR HEARING

Facility Address:

6211 Pennington Avenue
Baltimore, Maryland 21226

I. STATUTORY AUTHORITY

1. The following Complaint and Notice of Opportunity for Hearing are issued pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, and the authority vested in the Administrator of the Environmental Protection Agency ("EPA" or "Agency") under the authorities cited below.
2. This Administrative Complaint is issued under the authority vested in the Administrator of EPA by:
 - A. Section 311(b)(6) of the Clean Water Act, as amended, (CWA), 33 U.S.C. § 1321(b)(6). The authority to issue this Administrative Complaint has been delegated by the Administrator of EPA to the Regional Administrator of EPA, Region III, and further delegated to Complainant; and
 - B. Section 309(g) of the CWA, 33 U.S.C. § 1319(g). The Administrator of EPA has delegated this authority under the CWA to the Regional Administrators of EPA, and this authority has been further delegated to Complainant.

II. NOTICE

3. EPA has given the Maryland Department of Environment prior notice of this proposed action in accordance with Section 309(a) of the CWA, 33 U.S.C. § 1319(a).

III. RESPONDENTS

4. J. Willis Smith and Brother, Inc. and A. Smith and Sons Shipyard, (collectively "Respondents"), are Maryland corporations with their principal offices at 6211 Pennington Avenue, Baltimore, Maryland, 21226.

5. Each Respondent is a person within the meaning of:
 - A. Section 311(a)(7) of the CWA, 33 U.S.C. § 1321(a)(7), and 40 C.F.R. § 112.2; and
 - B. Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
6. Respondents are, and were at the time of the violations alleged in this Complaint, the owners and/or operators of the facility located at 6211 Pennington Avenue, Baltimore, Maryland 21226, which is adjacent to Curtis Bay.
7. The Respondents' facility is a ship building and repair facility that has been in operation since circa 1905.
8. Respondents are the "owner or operator" of the facility, (hereinafter "Smith facility"), as that term is defined at Section 311(a)(6) of the CWA, 33 U.S.C. § 1321(a)(6), and 40 C.F.R. § 112.2.
9. On September 23, 2008, a team of inspectors from EPA's Office of Enforcement, Compliance and Environmental Justice conducted a multi-media inspection of the Smith facility.

IV. CWA STATUTORY AND REGULATORY BACKGROUND

10. Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1), provides that the President shall issue regulations, *inter alia*, "establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil . . . from vessels and from onshore and offshore facilities, and to contain such discharges . . .".
11. On December 11, 1973, EPA promulgated Oil Pollution Prevention regulations set forth at 40 C.F.R. Part 112 to implement Section 311(j)(1) of the CWA, 33 U.S.C. § 1321(j)(1). Such regulations took effect on January 10, 1974.
12. Pursuant to 40 C.F.R. § 112.1(b), with certain exceptions not relevant here, regulations set forth at 40 C.F.R. Part 112 apply to owners or operators of non-transportation-related onshore or offshore facilities engaged in, *inter alia*, storing or consuming oil or oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities within the meaning of 40 C.F.R. Part 110, into or upon the navigable waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1, or the adjoining shorelines.
13. "Oil" is defined in Section 311(a)(1) of the CWA, 33 U.S.C. § 1321(a)(1), and 40 C.F.R. § 112.2 to include any kind of oil in any form, including petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil.
14. 40 C.F.R. § 110.3(b) defines "harmful quantity" for purposes of Section 311 of the CWA, 33 U.S.C. § 1321, to include discharges that "cause a film or sheen upon . . . the surface of the water or adjoining shorelines."
15. Section 311(a)(2) of the CWA, 33 U.S.C. § 1321(a)(2), defines "discharge" to include any spilling, leaking, pumping, pouring, emitting, or dumping other than federally permitted discharges pursuant to a permit under 33 U.S.C. § 1342.

16. For purposes of Section 311(b)(3) of the CWA, 33 U.S.C. § 1321(b)(3), “navigable water” is defined by 40 C.F.R. §§ 110.1 and 112.2 to include, among other things, tributaries to waters that could be used for industrial purposes or interstate commerce.
17. The Smith facility has the capacity to store greater than 1,320 gallons of oil in the following containers:
 - A. One metal storage tank with an estimated capacity of 2,000 gallons under a two-sided structure and exposed to the elements near an oil storage shed;
 - B. Two metal storage tanks with an estimated capacity of 1,000 gallons each at an outside area used for storing steel plates and pipes;
 - C. Two metal storage tanks with an estimated capacity of 500 gallons each at an outside area used for storing steel plates and pipes;
 - D. One metal storage tank labeled “OILY WATER ONLY” with an estimated capacity of 500-550 gallons outside;
 - E. One metal storage tank labeled “WASTE OIL ONLY” with an estimated capacity of 500-550 gallons outside;
 - F. One portable metal tank with an estimated capacity of 200 gallons outside near an oil storage shed;
 - G. One lube oil tank with an estimated capacity of 250 gallons inside an oil storage shed; and
 - H. Approximately 6-10 drums with capacities of 55 gallons.
18. The Smith facility is an “onshore facility” within the meaning of Section 311(a)(10) of the CWA, 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2.
19. The Smith facility is a “non-transportation” facility within the meaning of 40 C.F.R. § 112.2, Appendix A thereto.
20. The Smith facility is engaged in storing or consuming oil or oil products.
21. Pursuant to 40 C.F.R. § 112.3(a), owners or operators of onshore facilities that became operational before August 16, 2002, and that could reasonably be expected to discharge oil in harmful quantities, as described in 40 C.F.R. Part 110, into or upon the navigable waters of the United States or adjoining shorelines, shall prepare a Spill Prevention Control and Countermeasure (“SPCC”) Plan and maintain and amend such Plan as necessary.
22. The Smith facility has been in operation as an onshore facility within the meaning of 40 C.F.R. Part 112 since prior to August 16, 2002.
23. The Smith facility is adjacent to Curtis Bay which empties into the Patapsco River which empties into the Chesapeake Bay.
24. Due to the facility’s location, all oil storage tanks and drums are in close proximity to Curtis Bay which empties into the Patapsco River which empties into the Chesapeake Bay.

25. Curtis Bay, Patapsco River and Chesapeake Bay, are navigable waters of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. §1362(7), and 40 C.F.R. § 112.2.
26. Due to their locations, the oil storage tanks and drums at the Smith facility can be expected to discharge oil in harmful quantities within the meaning of 40 C.F.R. Part 110 into or upon the navigable waters of the United States or adjoining shorelines.
27. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source to waters of the United States except in compliance with, among other things, a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
28. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. The discharges are subject to specific terms and conditions as prescribed in the permit.
29. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.1 and 122.26 provide that facilities that have "storm water discharges associated with industrial activity" are "point sources" subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).

V. ADMINISTRATIVE COMPLAINT

COUNT I

(CWA - Spill Prevention Control and Counter-Measure Plan)

30. The allegations contained in Paragraphs 1 through 29 of this Complaint are incorporated herein by reference.
31. Based on the available oil storage capacity, Respondents can store more than 1,320 gallons of oil in above-ground storage tanks at the Smith facility.
32. The Smith facility is subject to the spill prevention control and counter-measure plan requirements (SPCC) of 40 C.F.R. §§ 112.1-112.7.
33. From at least the date of the inspection on September 23, 2008, Respondents had not prepared an SPCC plan for the Smith facility, as required by 40 C.F.R. § 112.3(a).
34. From at least the date of the inspection on September 23, 2008, Respondents had not implemented an SPCC plan for the Smith facility, as required by 40 C.F.R. § 112.3(a).
35. Respondents' failure to comply with 40 C.F.R. § 112.3(a) by preparing and implementing an SPCC plan for the Smith facility constitutes a violation of the CWA for which a civil penalty may be assessed pursuant to Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii).

COUNT II

(CWA - Storm Water)

36. The allegations contained in Paragraphs 1 through 35 of this Complaint are incorporated herein by reference.

37. Respondents' facility discharges storm water directly into Curtis Bay, which is a "water of the United States," as that term is defined at 40 C.F.R. § 122.2.
38. Respondents filed a permit application for a General Permit for Discharges from Marinas with the Maryland Department of the Environment, ("MDE"), and MDE received Respondents' application on or about November 6, 2003.
39. Respondents were subsequently issued General Permit No. 02MA For Discharges From Marinas ("Permit") by MDE for the Smith facility and the Permit became effective on January 20, 2004.
40. The Permit contains certain terms and conditions, *inter alia*, the requirement that Respondents develop a Storm Water Pollution Prevention Plan, under Section B of Part V of the Permit, with the minimum contents listed in Section C of Part V of the Permit.
41. Among the minimum contents of a Storm Water Pollution Prevention Plan listed in Section C of Part V of the Permit are the following requirements:
 1. "Inventory of Exposed Materials. An inventory of the types of materials handled at the site that potentially may be exposed to precipitation." Permit V(C)(4).
 2. "Risk Identification and Summary of Potential Pollution Sources. A narrative description of the potential pollutant sources from the following activities, if applicable: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities (i.e., abrasive blasting, sanding, painting); and onsite waste disposal practices." Permit V(C)(7).
 3. Each facility covered under the Permit shall develop a description and implementation schedule of Storm Water Management Controls appropriate for the facility and shall implement the described Storm Water Management Controls. The following list includes some the areas where Storm Water Management Controls are to be described, scheduled and implemented under the Permit V(C)(8).
 - A. "Material Storage Areas. All stored and containerized materials (fuels, paints, solvents, waste oil, antifreeze, batteries) must be plainly labeled and stored in a protected, secure location away from drains. The plan must describe measures that prevent or minimize contamination of the storm water runoff from such storage areas. . . . Above-ground storage tanks, drums, and barrels permanently stored outside must be delineated on the site map with a description of the containment measures in place to prevent leaks and spills. . . . Those facilities where abrasive blasting is performed must specifically include a discussion on the storage and disposal of spent abrasive materials generated at the facility." Permit V(C)(8)(a)(iii).
 - B. "Preventative Maintenance. A preventative maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators and sediment traps to ensure that oil, spent abrasives, paint chips, and solids will be intercepted and retained prior to entering the storm drainage system) as well as inspecting and testing facility equipment and systems to uncover conditions that

could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.” Permit V(C)(8)(b).

C. “Inspections. Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility on a monthly basis. The following areas shall be included in all inspections: pressure washing area; blasting, sanding, and painting areas; material storage areas; engine maintenance and repair areas; material handling areas; bilge water treatment areas and general yard area. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of the inspections shall be maintained.” Permit V(C)(8)(d).

4. “Employee Training. Employee training programs shall inform personnel, responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible at all levels for storm water management, of the components and goals of the storm water pollution prevention plan. . . . The pollution prevention plan shall identify how often training will take place, but in all cases training must be held at least twice per calendar year. Employee training must, at a minimum, address the following areas when applicable to a facility: used oil management; spent solvent management; proper disposal of spent abrasives; proper disposal of vessel wastewaters; spill prevention and control; fueling procedures; general good housekeeping practices; proper painting and blasting procedures; and used battery management.” Permit V(C)(9).
 5. “Record-keeping and Internal Reporting Procedures: Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.” Permit V(C)(10).
 6. “Non-Storm Water Discharges. The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges, other than those authorized in Part I Section B of this permit or flows from fire fighting systems. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the on-site drainage points that were directly observed during the test.” Permit V(C)(11).
 7. “Comprehensive Site Compliance Evaluation. A site inspection shall be conducted annually by appropriate responsible personnel to verify that the description of potential pollutant sources required under Part V Section C2 is accurate, the drainage map has been updated to reflect current conditions, and the controls to reduce pollutants identified in the storm water pollution prevention plan are being implemented and are adequate. Records documenting significant observations made during the site inspection shall be retained as part of the storm water pollution prevention plan for three years.” Permit V(C)(13).
42. At the time of the inspection on September 23, 2008, Respondents failed to have an appropriate Storm Water Pollution Prevention Plan at the Smith facility as required by the Permit.

43. At the time of the inspection on September 23, 2008, Respondents' Storm Water Pollution Prevention Plan did not include the lead acid batteries in the Inventory of Exposed Materials as required by the Permit V(C)(4).
44. At the time of the inspection on September 23, 2008, Respondents' Storm Water Pollution Prevention Plan did not include a narrative description of storage areas for lead acid batteries and spent abrasive blasting materials that are a potential source of pollutants as required by the Permit V(C)(7).
45. At the time of the inspection on September 23, 2008, Respondents' Storm Water Pollution Prevention Plan did not include a description or implementation schedule for Storm Water Management Controls for paint storage areas, lead acid battery storage areas or a specific discussion of the storage and disposal of spent abrasive blasting materials as required by the Permit V(C)(8)(a)(iii).
46. At the time of the inspection on September 23, 2008, Respondents' Storm Water Pollution Prevention Plan did not include a description or implementation schedule for the timely inspection and maintenance of storm water management devices and other preventative maintenance of facility equipment and systems as required by the Permit V(C)(8)(b).
47. For the time period beginning at least as early as the start of 2005 until the time of the inspection on September 23, 2008, Respondents' did not have a record of monthly inspections as required by the Permit V(C)(8)(d).
48. At the time of the inspection on September 23, 2008, Respondents' Storm Water Pollution Prevention Plan did not identify how often employee training on implementing storm water pollution plan activities occurs as required by the Permit V(C)(9).
49. At the time of the inspection on September 23, 2008, Respondents were not documenting inspections and maintenance activities and incorporating records of these activities into the Storm Water Pollution Prevention Plan as required by the Permit V(C)(10).
50. At the time of the inspection on September 23, 2008, Respondents' Storm Water Pollution Prevention Plan did not include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges other than those authorized by the Permit or flows from fire fighting systems as required by the Permit V(C)(11).
51. For the time period beginning at least as early as the start of 2005 until the time of the inspection on September 23, 2008, Respondents' Storm Water Pollution Prevention Plan did not contain records documenting significant observations from the Annual Comprehensive Site Compliance Evaluations for the previous three years as required by the Permit V(C)(13).
52. Respondents' Storm Water Pollution Prevention Plan failed to contain the Permit requirements listed above in paragraph 50 and thereby, Respondents have violated Section 402 of the CWA, 33 U.S.C. § 1342, for which a penalty may be assessed pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d).

VII. PROPOSED CIVIL PENALTY CALCULATIONS

53. In accordance with 40 C.F.R. § 22.14(a)(4)(i), Complainant is proposing a total specific civil penalty of \$119,485.00 for Counts I and II, which are discussed below.

54. Based on the foregoing allegations, a penalty may be assessed pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g).
55. In accordance with 40 C.F.R. § 22.14(a)(4)(ii), for each violation alleged in this Complaint there is an indication (where applicable) of the days of violation, a brief explanation of the severity of each violation, and a recitation of the statutory penalty authority applicable for each violation. This does not constitute a demand as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.
56. To the extent that facts or circumstances unknown to Complainant at the time of issuance of the Complaint become known after the issuance of the Complaint, such facts and circumstances may also be considered as a basis for calculating a specific civil penalty pursuant to 40 C.F.R. § 22.19(a)(4).

COUNT I

(CWA - Spill Prevention Control and Counter-Measure Plan)

57. Based on the foregoing allegations and pursuant to the authority of Section 311(b)(6)(B)(ii) of the CWA, 33 U.S.C. § 1321(b)(6)(B)(ii), and the Civil Monetary Penalty Inflation Adjustment Rule, (“Penalty Inflation Rule”), 40 C.F.R. Part 19 (Penalty Inflation Rule), Complainant proposes that the Regional Administrator assess an administrative penalty against Respondent in the amount of \$19,485.00.
58. Section 311(b)(8) of the CWA, 33 U.S.C. § 1321(b)(8), provides that any penalty to be assessed must take into account the seriousness of the violation(s), the economic benefit to the violator, if any, the degree of culpability, 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.
59. As set forth in Count I, the Smith facility stores a large quantity of oil onsite in a number of different containers located in environmentally-sensitive areas, that are ultimately connected to the Chesapeake Bay. A major oil spill in such an area would be extremely serious in terms of its impact on navigable waters.

COUNT II

(CWA - Storm Water)

60. Based on the foregoing allegations and pursuant to the authority of Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and the Penalty Inflation Rule, 40 C.F.R. Part 19, Complainant proposes that the Regional Administrator assess an administrative penalty against Respondents in the amount of \$100,000.00.
61. In determining the amount of any penalty assessed under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA is required to take into account the nature, circumstances, extent and gravity of the violation, or violations, and with respect to the violator, the ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such matters as justice may require. Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3).
62. As set forth in Count II, the Smith facility’s storm water discharges ultimately enter the waters of the Chesapeake Bay. The failure to develop a Storm Water Pollution Prevention Plan in accordance with its Permit requirements further endangers the Chesapeake Bay since materials that are detrimental to the environment may be swept

into the Chesapeake Bay by storm water discharges at the facility.

IX. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Respondents may request, within thirty (30) days of receipt of this Complaint, a hearing before an EPA Administrative Law Judge on the Complaint and at such hearing may contest any material fact and the appropriateness of any penalty amount. To request a hearing, Respondent must file a written answer (Answer) within thirty (30) days of receipt of this Complaint. The Answer should comply with the requirements of 40 C.F.R. § 22.15. The Answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which the Respondents have any knowledge. Where Respondents have no knowledge of a particular factual allegation and so state, the allegation is deemed denied. The Answer shall also state: the circumstances or arguments which are alleged to constitute the grounds of any defense; the facts which Respondents dispute; the basis for opposing any proposed relief; and whether a hearing is requested.

If Respondents fail to file a written Answer or statement within thirty (30) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to a hearing. Failure to file a written Answer or statement may result in the filing of a Motion for Default Order and the possible issuance of a Default Order imposing the penalties proposed herein without further proceedings.

Any hearing requested by Respondents will be conducted in accordance with EPA's Consolidated Rules of Practice. Hearings will be held in a location to be determined at a later date pursuant to the Consolidated Rules of Practice at 40 C.F.R. § 22.21(d).

Respondent's Answer and all other documents that Respondent files in this action should be sent to the following address:

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

and a copy should be sent to T. Chris Minshall, Assistant Regional Counsel, the attorney assigned to represent EPA in this matter, at the following address:

U.S. EPA, Region III (3EC00)
1650 Arch Street
Philadelphia, PA 19103

X. SETTLEMENT CONFERENCE

EPA encourages settlement of the proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the CWA. Whether or not a hearing is requested, Respondents may confer with Complainant regarding the allegations of the Complaint and the amount of the proposed civil penalty.

In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his delegatee. Settlement conferences shall not affect the requirement to file a timely Answer to the Complaint.

If you wish to arrange a settlement conference, please contact T. Chris Minshall, Assistant Regional Counsel, at (215) 814-2473, prior to the expiration of the thirty (30) day period following the receipt of this Complaint. Once again, however, such a request for a settlement conference does not relieve Respondents of the responsibility to file an Answer within thirty (30) days following receipt of this Complaint.

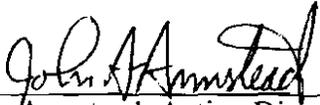
XI. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region III Office of Enforcement, Compliance and Environmental Justice; the Region III Office of Regional Counsel; the Region III Hazardous Site Cleanup Division; the Region III Water Protection Division; and the EPA Assistant Administrator for Enforcement and Compliance Assurance. Commencing from the date of the issuance this Complaint until issuance of a final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice prohibit any unilateral discussion or *ex parte* communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer after issuance of a Complaint. See Consolidated Rules of Practice at § 22.8.

XII. PUBLIC NOTICE

Pursuant to Section 311(b)(6) of the CWA, 33 U.S.C. § 1321(b)(6), and Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b) the Complainant is providing public notice of this proposed issuance of a Final Order assessing administrative penalties against Respondent. If a hearing is held on this matter, members of the public who submitted timely comments on this penalty proposal shall have the right under 309(g)(4)(A) and Section 311(b)(6) and of the Act to be heard and present evidence at the hearing. In addition, pursuant to Section 309(g)(1)(A), EPA has consulted with the State of Maryland regarding this action, and in addition will mail a copy of this document to the appropriate Maryland State official.

9.24.09
Date



John Armstead, Acting Director
Office of Enforcement, Compliance,
and Environmental Justice

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CERTIFICATE OF SERVICE¹

I certify that on the date provided below, I hand-delivered the original and one copy of the Administrative Complaint and Opportunity to Request a Hearing in the case captioned IN RE: J. WILLIS SMITH AND BROTHER, INC. and A. SMITH AND SONS SHIPYARD ("Complaint") to Lydia Guy, Regional Hearing Clerk, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029, and sent one copy of the signed original of the Complaint by certified mail, return receipt requested, together with a copy of 40 CFR Part 22, 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," to J. WILLIS SMITH AND BROTHER, INC. and A. SMITH AND SONS SHIPYARD at 6211 PENNINGTON AVENUE, BALTIMORE, MD 21226.²

Dated: 9/24/2009


Chris Minshall
U.S. EPA Region III

¹ The filing and service rules are set forth at 40 CFR § 22.5(a)(1) and (b), and a Certificate of Service for these actions is required by 40 CFR § 22.5(a)(3).

² Delivery to an Agency mail room is not equivalent to mailing at a US post office. However, a certification of delivery to an Agency mail room may be insufficient to satisfy the certification requirement of 40 CFR § 22.5(a)(3). The best practice would be for the signer of the certification to deposit the Complaint in a US mail box on the date stated in order to avoid any conflicts between the date on the Certificate of Service and the postmark on the mailing.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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SEP 24 5:23:14

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

A. Smith and Sons Shipyard
6211 Pennington Avenue
Baltimore, MD 21226

Re: Docket No. CWA-03-2009-0217
Complaint and Notice of Opportunity for Hearing

Dear Sir or Madam:

Enclosed is a Complaint which the United States Environmental Protection Agency, ("EPA"), through John Armstead, Acting Director of the Office of Enforcement, Compliance, and Environmental Justice, ("Complainant"), has filed against you alleging the following violations:

COUNT I

Failure to prepare and implement a Spill Prevention Control and Counter Measure Plan as required by 40 C.F.R. § 112.3(a) implementing Section 311(j)(1) of the Clean Water Act, as amended, ("CWA"), 33 U.S.C. § 1321(j)(1);

COUNT II

Failure to develop and implement an appropriate Storm Water Pollution Prevention Plan to comply with the discharge permit conditions authorized through Section 402 of the CWA, 33 U.S.C. § 1342; and

The Complaint requests that a civil penalty be assessed against your company in the amount of \$119,485.00, based on the total civil penalties for the above described violations as follows: \$19,485.00 for the violation described under Count I, and \$100,000.00 for the violation described under Count II.

You may request a hearing to contest any matter set forth in the Complaint. Whether or not a hearing is requested, you may also request an informal settlement conference to discuss resolution of this case. If you admit the allegations of violations, or they are found to be true after you have had an opportunity for a hearing on them, you have the right to contest the penalty sought by the Complainant. In this type of case, EPA follows the procedures of 40 C.F.R. Part 22 which have been enclosed and are currently available on the Internet at http://www.access.gpo.gov/nara/cfr/waisidx_08/40cfr22_08.html.

Unless you elect to resolve the proceeding set forth in the Complaint, you are required to file an Answer within 30 days after you have received the Complaint. See 40 C.F.R. § 22.15(a). You must file the original of your Answer, together with one copy, with the EPA Regional Hearing Clerk at the following address:

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

You are also required, under 40 C.F.R. § 22.5, to serve a copy of your Answer on the Presiding Officer assigned to this case and on the Complainant, at the following addresses:

Garth Connor (3EC10)
Office of Enforcement, Compliance and Environmental Justice
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

T. Chris Minshall
Assistant Regional Counsel (3EC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029.

If you do not file an Answer or settle this case with the Complainant by the applicable deadline, you may be found to be in default under 40 C.F.R. § 22.17. For purposes of this case, default constitutes an admission of all facts alleged in the Complaint and a waiver of your right to contest those allegations.

Sections 309(g)(4) and 311(b)(6)(C) of the CWA, 33 U.S.C. §§ 1321(b)(6)(C) and § 1319(g)(4), and 40 C.F.R. § 22.45 provide that non-parties have a right to notice and opportunity to participate to a limited extent in this proceeding. Consequently, the Complainant is giving notice of the Complaint to potentially interested parties by posting a Public Notice on the Internet and has provided a thirty day comment period. Any commentors must notify the Regional Hearing Clerk in writing of their interest, and any comments received by the Clerk will be available to the public. If you have any questions regarding commentor activity or potential scope of participation, please contact me at the phone number provided below.

EPA has determined that your company may be a “small business” under the Small Business Regulatory Enforcement and Fairness Act, (“SBREFA”). Please see the enclosure regarding Small Business Resources. This enclosure provides information on contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities and also provides information on compliance assistance. As noted in the enclosure, any decision to participate in such program or to seek compliance assistance does not relieve you of your obligation to respond in a timely manner to an EPA request or other enforcement action, create any new rights or defenses under law and will not affect EPA’s decision to pursue this enforcement action. To preserve your legal rights, you must comply with all rules governing the

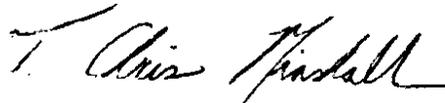


administrative enforcement process. The Ombudsman and fairness boards do not participate in the resolution of EPA's enforcement action.

In addition, your company may be required to disclose to the Securities and Exchange Commission, ("SEC"), the existence of certain administrative or judicial proceedings taken against your company under federal, state or local environmental laws. Please see the enclosed Notice of SEC Registrants' Duty to Disclose Environmental Legal Proceedings for more information about this requirement and to aid you in determining whether your company is subject to it.

You have the right to be represented by an attorney at any stage of the proceedings, including in any informal discussions with EPA. If you have any questions or wish to discuss a settlement of this matter with the EPA by an informal conference, please immediately contact me at 215-814-2473. A settlement discussion neither relieves you of your need to file an Answer to the Complaint, nor affects what you may choose to say in an Answer.

Sincerely,



T. Chris Minshall
Assistant Regional Counsel
U.S. EPA Region III

Enclosures

