

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

In the Matter of:	:	
	:	Docket No. CWA-03-2010-0405
City of Baltimore,	:	
	:	Proceeding to Assess Class II
	:	Administrative Penalty Under
Respondent	:	Section 309(g) of the Clean Water Act

**ANSWER TO ADMINISTRATIVE PENALTY COMPLAINT  
AND REQUEST FOR HEARING**

Respondent, Mayor and City Council of Baltimore ("the City"), by its undersigned counsel, submits the following Answer, responding in like-numbered paragraphs to the allegations in the Administrative Penalty Complaint filed by the United States Environmental Protection Agency, Region III, Water Protection Division.

1. The allegations state legal conclusions as to which no answer is required. To the extent a response is required, paragraph 1 is denied.
2. The allegations state legal conclusions as to which no answer is required. To the extent a response is required, paragraph 2 is denied.
3. The City admits that it is a political subdivision of the State of Maryland. The remaining allegations of paragraph 3 state legal conclusions that do not require a factual response. To the extent a response is required, paragraph 7 is denied.
4. The City admits that it owns and operates a municipal separate storm sewer system. The remaining allegations of paragraph 4 state legal conclusions that do not require a factual response. To the extent such a response is required, paragraph 4 is denied.
5. The City admits that its municipal separate storm sewer system is located in Baltimore, Maryland.

6. The allegations state legal conclusions as to which no answer is required. To the extent a response is required, paragraph 6 is denied.

7. The allegations state legal conclusions as to which no answer is required. To the extent a response is required, paragraph 7 is denied.

8. The allegations state legal conclusion that does not require a response. To the extent a response is required, paragraph 8 is denied.

9. The City admits that it was issued NPDES Permit No. MD00068292 and further answers that the NPDES MS4 Permit speaks for itself. The City lacks sufficient knowledge or information to admit or deny the remaining allegations.

10. The City admits that it submitted an application for renewal of the MS4 Permit. The City lacks sufficient knowledge or information to admit or deny the remaining allegations.

11. The City admits that the City's stormwater discharges associated with industrial activities are covered by Maryland's General Discharge Permit for Stormwater Associated with Industrial Activities, Permit No. 02-SW/MDR.

12. The City admits the allegations stated in paragraph 12.

**Count 1: Failure to Develop and Implement Written Maintenance Inspection Procedures**

13. Paragraph 13 constitutes a series of legal conclusions that do not require a factual response. To the extent such a response is required, paragraph 13 is denied.

14. The City lacks sufficient knowledge or information to admit or deny the allegations contained in paragraph 14.

15. The City denies the allegations contained in Paragraph 15.

**Count 2: Failure to Report and Eliminate Illicit Connections**

16. The City admits that it was issued MS4 Permit No. MD00068292 and further answers that the MS4 Permit speaks for itself.

17. The City denies the allegations contained in Paragraph 17. The following statements are a portion of the City's 2007 Annual Report on illicit discharge activities:

- Stream impact sampling and ammonia screening: routine, regular chemical tests at designated stream and outfall stations during dry weather which are used to possibly find illicit discharges;
- Pollution source tracking investigations which are conducted by Water Quality Monitoring and Inspections Sections staff to try to find the source after seeing a high chemical result or receiving a complaint;
- Exterior lead paint removal waste control inspections conducted by staff from the Pollution Control Section who check sites that have received permits from the City's Department of Housing to do exterior lead paint removal to make sure these commercial companies are following protocol to keep that waste from entering the City's storm drain system.

Based on the above the City reported on illicit discharge detection and elimination activities in the 2007 annual report for the MS4 permit program. In a letter dated June 7, 2010 to the City's Department of Public Works, the Maryland Department of the Environment (MDE) stated:

"The City consistently discovers and resolves between 30 and 50 illicit discharges per year using its sampling and PST programs. These programs require large investments of resources and persistence and the City is commended for managing a very successful illicit discharge and elimination program."

18. Paragraph 18 states a legal conclusion that does not require a factual response. To the extent such a response is required, Paragraph 18 is denied.

**Count 3: Failure to Obtain NPDES Industrial Stormwater Permit Coverage at City Facilities**

19. The City admits that it was issued MS4 Permit No. MD00068292 and further answers that the MS4 Permit speaks for itself.

20. On April 17, 2009, the City submitted to MDE a Notice of Intent (NOI) for the George L. Winfield Central Garage located at 3800 East Biddle Street, Baltimore Maryland 21213 (the "Central Garage"). By letter dated May 15, 2009, the MDE accepted the NOI for the Central Garage.

21. Paragraph 21 states a legal conclusion that does not require a factual response. To the extent such a response is required, Paragraph 21 is denied.

**Count 4: Failure to develop and implement adequate pollution prevention plans**

22. The City admits the allegations stated in paragraph 22.

23. A stormwater pollution prevention plan (SWPPP) for the Northwest Transfer Station was developed and implemented in December 2009.

24. Paragraph 24 states a legal conclusion that does not require a factual response. To the extent such a response is required, Paragraph 24 is denied.

25. Paragraph 25 states a legal conclusion that does not require a factual response. To the extent such a response is required, paragraph 25 is denied.

26. Paragraph 26 states a legal conclusion that does not require a factual response. To the extent such a response is required, paragraph 26 is denied.

27. Paragraph 27 states a legal conclusion that does not require a factual response. To the extent such a response is required, paragraph 27 is denied.

28. The City lacks knowledge or information to admit or deny the allegations of Paragraph 28.

29. The City lacks knowledge or information to admit or deny the allegations of Paragraph 29.

30. Paragraph 30 states a legal conclusion that does not require a factual response. To the extent such a response is required, paragraph 30 is denied.

31. The City lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 31.

32. Paragraph 32 states a legal conclusion that does not require a factual response. To the extent such a response is required, paragraph 32 is denied.

33. Paragraph 33 states legal conclusions and do not require a factual response.

34. Paragraph 34 states legal conclusion and do not require a factual response.

35. Paragraph 35 states legal conclusions that do not require a factual response. To the extent such a response is required, paragraph 35 is denied.

36. The allegations of paragraph 36 state legal conclusions that do not require a response. To the extent a response is required, paragraph 36 is denied.

37. The allegations of paragraph 37 state legal conclusions that do not require a response. To the extent a response is required, paragraph 37 is denied.

38. Paragraph 38 states legal conclusions that do not require a factual response. To the extent a response is required, paragraph 38 is denied.

39. Paragraph 39 states a legal conclusion that does not require a factual response. To the extent a response is required, paragraph 33 is denied.

40. Paragraph 40 states legal conclusions that do not require a factual response. To the extent a response is required, paragraph 40 is denied.

41. The allegations of paragraph 41 states legal conclusions that do not require a factual response. To the extent a response is required, paragraph 41 is denied.

42. Paragraph 42 states a legal conclusion that does not require a factual response. To the extent such a response is required, paragraph 42 is denied.

43. The allegations of paragraph 43 state legal conclusions that do not require a response. To the extent the paragraph alleges facts, the City denies such facts.

44. The City lacks sufficient knowledge or information to admit or deny the allegations stated in paragraph 44.

45. The City lacks sufficient knowledge or information to admit or deny the allegations of Paragraph 45.

46. Paragraph 46 states legal conclusions that do not require a factual response. To the extent such a response is required, paragraph 46 is denied.

47. The City lacks knowledge or information sufficient to form a belief as to admit or deny the allegations of paragraph 47.

48. Paragraph 48 states legal conclusions that do not require a factual response. To the extent such a response is required, paragraph 48 is denied.

49. The City lacks sufficient knowledge or information to admit or deny the allegations stated in Paragraph 49.

50. The first part of Paragraph 50 states legal conclusions that do not require a factual response. As to the remaining allegations, the City lacks sufficient knowledge or information to admit or deny.

51. Paragraph 51 states legal conclusions that do not require a factual response. To the extent a response is required, paragraph 51 is denied.

52. The City lacks sufficient knowledge or information to admit or deny the allegations stated in paragraph 52.

53. Paragraph 53 states legal conclusions that do not require a factual response. To the extent such a response is required, paragraph 53 is denied.

54. The City is without sufficient knowledge or information to admit or deny the allegations contained in paragraph 54 and therefore denies these allegations.

55. Paragraph 55 states a legal conclusion that does not require a factual response. To the extent such a response is required, paragraph 55 is denied.

56. Paragraph 56 states legal conclusions that do not require a factual response. To the extent such a response is required, paragraph 56 is denied.

#### **FIRST DEFENSE**

The Administrative Penalty Complaint fails to state a claim upon which relief can be granted.

#### **SECOND DEFENSE**

The Complaint is barred in whole or in part by the applicable statute of limitations.

#### **THIRD DEFENSE**

The Complaint is barred in whole or in part by the doctrine of waiver and/or estoppel.

#### **FOURTH DEFENSE**

The Complaint is barred in whole or in part by res judicata.

**FIFTH DEFENSE**

The claims raised in the Complaint are moot given that the City already has and is continuing to implement a program that has and will continue to resolve the alleged permit violations.

**SIXTH DEFENSE**

The Complaint is barred in whole or in part on the grounds that some or all of the alleged violations of applicable permits were caused in whole or in part by acts of God, intervening acts of parties other than the City, or by circumstances otherwise beyond the reasonable control of the City.

**OPPOSITION TO PROPOSED CIVIL PENALTY**

The EPA requests civil penalty in the amount of ninety thousand dollars (\$90,000). The City opposes the imposition of such a penalty. The penalty is excessive and the Complaint provides no explanation as to how the penalty amount was calculated.

**RESERVATION OF ADDITIONAL DEFENSES**

The City reserves the right to make and does not waive additional defenses, including those which may become apparent from further investigation and discovery.

**REQUEST FOR HEARING**

The City hereby requests an administrative hearing on the issues raised by the Administrative Penalty Complaint and this Answer.

Respectfully submitted,

George A. Nilson  
City Solicitor

By:

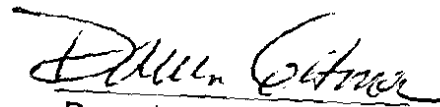
  
Dawn S. Lettman, Esquire  
Assistant Solicitor

City Hall, Room 160  
100 Holliday Street  
Baltimore, MD 21202  
410.396.3948

Attorneys for Mayor and City  
Council of Baltimore

**CERTIFICATE OF SERVICE**

HEREBY CERTIFY that on this 5<sup>th</sup> day of November 2010, a copy of the foregoing Answer to Administrative Penalty Complaint and Request for Hearing was sent via facsimile and mailed first class, postage prepaid to: Deane H. Barlett, Senior Assistant Regional Counsel (3RC20), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.



Dawn Lettman  
Assistant Solicitor