

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

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CLERK

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IN THE MATTER OF:	:	DOCKET NO. CWA-01-2009-0093
	:	
Town of North Providence,	:	Proposal to Assess
Department of Public Works	:	Administrative Penalty
2 Mafalda Street	:	Under Section 309(g) of
North Providence, RI 02904	:	the Clean Water Act
	:	
	:	
	:	
_____	:	

ANSWER OF THE TOWN OF NORTH PROVIDENCE TO THE 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

This paragraph states a legal conclusion as to which no response is required. To the extent that this Section I contains material factual allegations against the Town of North Providence (hereinafter, the "Town"), the Town denies such allegations.

II. FINDINGS OF VIOLATIONS

Count One

1. This paragraph states a legal conclusion as to which no response is required. To the extent that this Section II, Paragraph 1 contains material factual allegations against the Town of North Providence (hereinafter, the "Town"), the Town denies such allegations.

2. The Town admits that it owns a system of pumps and pipes the purpose of which is the collection of wastewater.

3. This paragraph states a legal conclusion as to which no response is required. To the extent that this Section II, Paragraph 3 contains material factual allegations against the Town, the Town denies such allegations.

4. The Town admits receiving the 2008 Order, as this term is defined in the Complaint. The Town denies the remaining allegations contained in this Section II, Paragraph 4.

5. The Town admits receiving the 2009 Information Request, as this term is defined in the Complaint. The Town denies the remaining allegations contained in this Section II, Paragraph 5.

6. The Town admits receiving a letter from the EPA in March of 2009. The Town denies the remaining allegations contained in this Section II, Paragraph 6.

7. The Town denies the allegations contained in this Section II, Paragraph 7.

8. This paragraph states a legal conclusion as to which no response is required. To the extent that this Section II, Paragraph 8 contains material factual allegations against the Town, the Town denies such allegations.

Count 2

9. The Town's responses to the allegations in previous paragraphs of this Administrative Complaint are incorporated herein by this reference.

10. This paragraph states a legal conclusion as to which no response is required. To the extent that this Section II, Paragraph 10 contains material factual allegations against the Town, the Town denies such allegations.

11. The Town admits that the SSO described in this Paragraph occurred, and admits ownership of the collection system. The Town has insufficient information to admit or deny the other factual allegations in this Paragraph.

12. Denied. As to geographical and hydrogeological relationships between water bodies, the Town has insufficient information to formulate a response, and leaves the agency to its proof.

13. Admit

14. Admit

15. This paragraph states a legal conclusion as to which no response is required. To the extent that this Section II, Paragraph 15 contains material factual allegations against the Town, the Town denies such allegations.

16. This paragraph states a legal conclusion as to which no response is required. To the extent that this Section II, Paragraph 16 contains material factual allegations against the Town, the Town denies such allegations.

III. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

This paragraph states a legal conclusion as to which no response is required. To the extent that this Section III contains allegations against the Town, the Town denies such allegations.

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

This paragraph states a legal conclusion as to which no response is required. To the extent that this Section IV contains allegations against the Town, the Town denies such allegations.

VI [sic]. PUBLIC NOTICE FOR CLEAN WATER ACT VIOLATION

This paragraph states a legal conclusion as to which no response is required. To the extent that this Section VI contains allegations against the Town, the Town denies such allegations.

VII [sic]. SETTLEMENT

This paragraph states a legal conclusion as to which no response is required. To the extent that this Section VII contains allegations against the Town, the Town denies such allegations.

DEFENSES

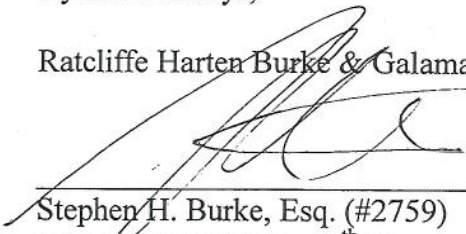
The Town has made every effort to comply with each and every requirement in the EPA's order and request for information under the Clean Water Act, and is hampered by circumstances not within its control, primarily the lack of funding required in order to provide the data necessary to provide an accurate and adequate response. Moreover, the Town has expended significant effort to expend what resources it has on the most pressing matters associated with the Town's CMOM program, more particularly described in the Town's prior responses. The proposed penalty is excessive and unreasonable in light of the above-described circumstances, the negligible gravity of the alleged violation, the minimal degree of culpability and the lack of prior compliance history. A proper consideration of the factors related to this matter would result in a de minimus penalty, if any.

REQUEST FOR HEARING

Pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g), the Town hereby requests a hearing on the proposed penalty assessment and findings of violations contained in Section II and III of this Complaint, respectively, and, at such hearing, contest the allegations contained in this Complaint.

The Town of North Providence,
By Its Attorneys,

Ratcliffe Harten Burke & Galamaga, LLP



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CERTIFICATION

I hereby certify on this 8th day of February, 2009, the foregoing was sent, in the form specified, via first class certified mail, return receipt requested to:

Original and One Copy to:
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Regional Hearing Clerk
U.S. EPA – Region I
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Boston, MA 02114-2023
(Also sent via Federal Express)

Judge Barbara A. Gunning
U.S. Administrative Law Judge
U.S. EPA
Office of Administrative Law Judges
Franklin Court Building
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One Copy to:
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