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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY **MAY 11 2009**
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Office of Regional Hearing Clerk

_____)
 In the Matter of)
)
BAILIN & ASSOCIATES, INC.)
 727 Salisbury Street)
 Worcester, MA 01609)
 Respondent)
 _____)

Docket No.: CWA-01-2009-0046

**ANSWER TO ADMINISTRATIVE
COMPLAINT PROPOSING TO ASSESS
A CIVIL PENALTY UNDER SECTION
309(g) OF THE CLEAN WATER ACT
AND REQUEST FOR HEARING**

The Respondent, Bailin and Associates, Inc. ("Bailin") hereby answers the correspondingly numbered paragraphs of the Administrative Complaint Proposing to Assess a Civil Penalty Under Section 309(g) of the Clean Water Act (the "Complaint") filed by the U.S. Environmental Protection Agency (the "EPA") as follows:

STATUTORY AND REGULATORY AUTHORITY

1. Paragraph 1 of the Complaint sets forth conclusions of law and a description of the case to which no response is required. To the extent a response is required, the allegations are denied.
2. Paragraph 2 of the Complaint sets forth conclusions of law and a description of the case to which no response is required. To the extent a response is required, the allegations are denied.
3. Paragraph 3 of the Complaint sets forth conclusions of law and a description of the case to which no response is required. To the extent a response is required, the allegations are denied.

4. Paragraph 4 of the Complaint sets forth conclusions of law and a description of the case to which no response is required. To the extent a response is required, the allegations are denied.
5. Paragraph 5 of the Complaint sets forth conclusions of law and a description of the case to which no response is required. To the extent a response is required, the allegations are denied.
6. Paragraph 6 of the Complaint sets forth conclusions of law and a description of the case to which no response is required. To the extent a response is required, the allegations are denied.
7. Paragraph 7 of the Complaint sets forth conclusions of law and a description of the case to which no response is required. To the extent a response is required, the allegations are denied.
8. Paragraph 8 of the Complaint sets forth conclusions of law and a description of the case to which no response is required. To the extent a response is required, the allegations are denied.
9. Paragraph 9 of the Complaint sets forth conclusions of law and a description of the case to which no response is required. To the extent a response is required, the allegations are denied.
10. Paragraph 10 of the Complaint sets forth conclusions of law and a description of the case to which no response is required. To the extent a response is required, the allegations are denied.

11. Paragraph 11 of the Complaint sets forth conclusions of law and a description of the case to which no response is required. To the extent a response is required, the allegations are denied.
12. Paragraph 12 of the Complaint sets forth conclusions of law and a description of the case to which no response is required. To the extent a response is required, the allegations are denied.
13. Paragraph 13 of the Complaint sets forth conclusions of law and a description of the case to which no response is required. To the extent a response is required, the allegations are denied.
14. Paragraph 14 of the Complaint sets forth conclusions of law and a description of the case to which no response is required. To the extent a response is required, the allegations are denied.

ALLEGATIONS

15. Bailin admits the allegations contained in paragraph 15 of the Complaint.
16. Paragraph 16 of the Complaint sets forth a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.
17. Bailin admits the allegations contained in paragraph 17 of the Complaint.
18. Bailin admits that the Development is located at 727 Salisbury Street in Worcester, Massachusetts, but denies the remaining allegations contained in paragraph 18 of the Complaint. Further answering, Bailin states that the Development, as presently permitted, occupies approximately 86 acres of land in Worcester and Holden, Massachusetts.
19. Bailin denies the allegations contained in paragraph 19 of the Complaint.

20. Bailin admits the allegations contained in paragraph 20 of the Complaint.
21. Bailin admits the allegations contained in paragraph 21 of the Complaint.
22. Bailin denies the allegations contained in paragraph 22 of the Complaint and further states that for periods of time during construction, the site was operated by general contractors engaged by Bailin to perform construction activities.
23. Bailin denies the allegations in Paragraph 23 as stated and further states that although no box was checked on the NOI indicating that a SWPPP had been prepared, this was a clerical error. In fact, original plans for the project had included construction erosion and sediment control plans since 2001.
24. Bailin admits the allegations contained in paragraph 24 of the Complaint.
25. Bailin denies the allegations of paragraph 25 as stated and further states that in conversations with EPA regarding the filing of a revised SWPPP as requested by EPA, respondents agents did respond but did not state that a SWPPP had not been in place prior to 2008.
26. Bailin admits that is was the owner of the land but denies that it had day to day operational control of the premises as alleged.
27. Bailin admits the allegations contained in paragraph 27 of the Complaint.
28. Paragraph 28 of the Complaint sets forth a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.
29. Paragraph 29 of the Complaint sets forth conclusions of law and a description of the case to which no response is required. To the extent a response is required, the allegations are denied.

30. Bailin admits that the allegations contained in paragraph 30 of the Complaint are generally true.
31. Bailin denies the allegations in paragraph 31.
32. Bailin admits the allegations in paragraph 32 of the Complaint.
33. Bailin admits that the allegations in Paragraph 33 concerning the detention basin are generally correct except that the pumps are on floats and pump from the surface or top of the water column so as to discharge clean water, and that the described drainage channel is not a well defined channel as implied by the Complaint.
34. Bailin is without information and therefore neither admits nor denies the allegations in Paragraph 34.
35. Bailin denies the allegations contained in paragraph 35 of the Complaint.
36. Bailin denies the allegations contained in paragraph 36 of the Complaint.
37. Paragraph 37 of the Complaint sets forth a conclusion of law and a description of the case to which no response is required. To the extent a response is required, the allegations are denied.
38. Paragraph 38 of the Complaint sets forth a conclusion of law and a description of the case to which no response is required. To the extent a response is required, the allegations are denied.
39. Paragraph 39 of the Complaint sets forth a conclusion of law and a description of the case to which no response is required. To the extent a response is required, the allegations are denied.

40. Paragraph 40 of the Complaint sets forth a conclusion of law and a description of the case to which no response is required. To the extent a response is required, the allegations are denied.

COUNT 1: UNAUTHORIZED DISCHARGE OF STORM WATER ASSOCIATED WITH INDUSTRIAL ACTIVITY

41. Bailin repeats herein its answers to the allegations contained in paragraphs 1 through 40 of the Complaint.

42. Bailin denies the allegations contained in paragraph 42 of the Complaint.

43. Bailin denies the allegations contained in paragraph 43 of the Complaint.

44. Paragraph 44 of the Complaint sets forth a conclusion of law and a description of the case to which no response is required. To the extent a response is required, the allegations are denied.

COUNT 2: FAILURE TO APPLY FOR A NPDES PERMIT

45. Bailin repeats herein its answers to the allegations contained in paragraphs 1 through 44 of the Complaint.

46. Bailin denies the allegations contained in paragraph 46 of the Complaint.

47. Paragraph 47 of the Complaint sets forth a conclusion of law and a description of the case to which no response is required. To the extent a response is required, the allegations are denied.

COUNT 3: FAILURE TO COMPLY WITH THE CONSTRUCTION GENERAL PERMIT

48. Bailin repeats herein its answers to the allegations contained in paragraphs 1 through 47 of the Complaint.

49. Bailin admits the allegations in paragraph 49 and further states that the October 21, 2001 plan is a SWPPP which met the requirements of the 1998 CGP.
50. Bailin admits that the 2003 CGP is designed to ensure the implementation of practices to reduce the pollutants in storm water discharges associated with construction activities. Bailin denies the remaining allegations contained in paragraph 50 and subparagraph 50.A.
51. Paragraph 51 of the Complaint sets forth a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.
52. Paragraph 51 of the Complaint sets forth a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.
53. Bailin admits the allegations contained in paragraph 53 of the Complaint.
54. Bailin admits the allegations contained in paragraph 54 of the Complaint.
55. Bailin admits the allegations contained in paragraph 55 of the Complaint.
56. Bailin admits the allegations contained in paragraph 56 of the Complaint.
57. Bailin admits the allegations contained in paragraph 57 of the Complaint.
58. Bailin denies the allegations contained in paragraph 58 of the Complaint.
59. Bailin denies the allegations contained in paragraph 59 and subparagraph 59.B. of the Complaint.
60. Paragraph 60 of the Complaint sets forth a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.
61. Paragraph 61 of the Complaint sets forth a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

62. Respondent admits that it filed an NOI as alleged and denies that it failed to have a SWPPP prepared before June, 2008 as alleged.

63. Bailin denies the allegations contained in paragraph 63 of the Complaint.

64. Bailin denies the allegations contained in paragraph 64 and subparagraph 64.C. of the Complaint.

65. Paragraph 65 of the Complaint sets forth a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

66. Bailin denies the allegations of paragraph 66 and states that the 2001 SWPPP was located on site.

67. Paragraph 67 of the Complaint sets forth a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

68. Paragraph 68 of the Complaint sets forth a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

PROPOSED ASSESSMENT OF CIVIL PENALTY

69. Paragraph 69 of the Complaint sets forth a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

70. Bailin admits the allegations contained in paragraph 70 of the Complaint.

71. Bailin is without sufficient knowledge to either admit or deny the allegations contained in paragraph 71 of the Complaint, but upon information and belief believes the allegations to be true.

72. Bailin denies the allegations contained in paragraph 72 of the Complaint.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

73. Paragraph 73 of the Complaint sets forth a conclusion of law to which no response is required. To the extent a response is required, the allegations are believed to be true.

74. Paragraph 74 of the Complaint sets forth a conclusion of law to which no response is required. To the extent a response is required, the allegations are believed to be true.

75. Paragraph 75 of the Complaint sets forth a conclusion of law to which no response is required. To the extent a response is required, the allegations are believed to be true.

76. Paragraph 76 of the Complaint sets forth a conclusion of law to which no response is required. To the extent a response is required, the allegations are believed to be true.

CONTINUED COMPLIANCE OBLIGATION

77. Paragraph 77 of the Complaint sets forth a conclusion of law to which no response is required. To the extent a response is required, the allegations are believed to be true.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim upon which relief can be granted and the Respondent moves the court to dismiss the Complaint.
2. The Complaint is barred by the doctrine of laches.
3. The Complaint is barred by the statute of limitations.
4. The Complaint is barred due to insufficiency of service of process.
5. The proposed penalty is unwarranted, excessive, and outside the legislative authority granted to the EPA.

Respondent reserves the right to assert further affirmative defenses at the completion of discovery.

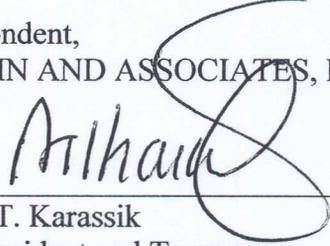
WHEREFORE, the Respondent demands that this Complaint be dismissed with prejudice and that the Respondents be awarded their costs and reasonable attorney's fees.

REQUEST FOR HEARING

Bailin hereby requests a hearing pursuant to Section 22.15(c) of the Consolidated Rules of Practice governing these proceedings.

Dated: May 6th, 2009

Respondent,
BAILIN AND ASSOCIATES, INC.

By: 
Peter T. Karassik
Its: President and Treasurer
329A Boston Post Road
Sudbury, MA 01776
(978) 443-7801

CERTIFICATE OF SERVICE

I, Peter T. Karassik, hereby certify that on May __, 2009, I served the foregoing Answer to Administrative Complaint Proposing to Assess a Civil Penalty Under Section 309(g) of the Clean Water Act and Request for Hearing upon the following persons via first class, postage prepaid, mail:

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