

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II

ENFORCEMENT CONFIDENTIAL

2013 DEC 27 P 3:07

REGIONAL HEARING
CLERK

DATE: NOV 21 2013

SUBJECT: Administrative Penalty Assessment – Class I
Dan's Supreme Super Markets, Inc. DBA Key Food
(CWA-02-2014-3301)

FROM: Philip Greco, CHMM, CHME-WSO/UN ~~27~~
Enforcement Specialist, DECA-SET

TO: File

We have determined an appropriate proposed penalty for assessment against Dan's Supreme Super Markets, Inc. DBA Key Food ("Respondent") whose facility is located at 153-55 Cross Island Parkway, Whitestone, New York, through the following application of the statutory factors in §309(g) of the Act.

(A) Nature, Circumstances, Extent and Gravity of the Violation

Respondent discharged process wastewater into, a navigable water of the United States pursuant to Section 502(7) of the Act, 33 U.S.C. §1362(7). Respondent violated federal National Pollutant Discharge Elimination System (NPDES) requirements in violation of the Act and its implementing regulations pursuant to §301 of the Clean Water Act (CWA). Respondent failed to obtain and implement a State Pollutant Discharge Elimination System (SPDES) permit for the intermittent discharge of process wastewater into the East River.

Additionally, Section 303(d) of the CWA, 33 U.S.C. §1313(d) list the East River as water quality impaired due to Dissolved Oxygen/Oxygen Demand and Poly Chlorinated Biphenols (PCB's).

The Respondent is in violation of Section 301 of the Clean Water Act (CWA). Presently, there is no data to assess the violation's effect on human health.

(B) Prior History of Such Violations

Respondent has been operating at their New York facility since, at least, January 2008. Presently, there is no data indicating a prior history of violations.

(C) Degree of Culpability

The Respondent should be aware of its obligation to monitor and report in accordance with the applicable Standards, as the applicable SPDES Standards had been promulgated and subsequently revised and/or effective for many years.

(D) Recalcitrance

Presently, there is no evidence of recalcitrance.

(E) Economic Benefit

The Economic Benefit of non-compliance was incurred as a result of Respondent's failure to obtain a SPDES permit and sample and analyze the discharge as required for reporting. Cost data which was inputted into the "BEN" computer program for non-submittal and associated costs to obtain compliance were obtained from Respondent. The economic benefit was, therefore, computed to be \$858.00, and a gravity component of \$4,120.00. The total BEN and gravity equals \$4,978.00.

In conclusion, the application of the statutory factors in §309(g) fully supports the proposed penalty of \$11,500.00.

bcc: Karen Maples, Regional Hearing Clerk
Doughlas McKenna, DECA-WCB
Eduardo Gonzalez, ORC-WGL
Philip Greco, DECA-WCB
Phyllis Feinmark, ORC-WGL