



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 Post Office Sq., Suite 100
BOSTON, MASSACHUSETTS 02109-3912

Add

March 9, 2011

BY HAND

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Sq., Suite 100
Mail Code: ORA18-1
Boston, MA 02109-3912

RECEIVED

MAR 09 2011

EPA ORC WS
Office of Regional Hearing Clerk

RE: **In the Matter of: Charles River Pollution Control District**
Docket No. CWA-01-2011-0020

Dear Ms. Santiago,

Enclosed for filing in the above-referenced action, please find this Administrative Complaint proposing to assess a civil penalty under Section 309(g) of the Clean Water Act.

Also, I have included a copy of the letter to the Commonwealth of Massachusetts providing it notice of this action pursuant to Section 309(g) of the Clean Water Act.

Thank you for your attention to this matter.

Sincerely,

Jeffrey Kopf
Senior Enforcement Counsel
EPA Region 1

Enclosure

cc: Ms. Cheri Cousens, P.E., Executive Director,
Charles River Pollution Control District



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 Post Office Sq., Suite 100
BOSTON, MASSACHUSETTS 02109-3912

MAR 9 - 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Pamela Talbot
Massachusetts Department of Environmental Protection
1 Winter Street
Boston, MA 02108

RE: Issuance of Administrative Complaint to Charles River Pollution Control District,
Docket No. CWA-01-2011-0020

Dear Ms. Talbot:

The U.S. Environmental Protection Agency Region 1 ("EPA") wishes to notify you of its intention to assess a civil penalty against the Charles River Pollution Control District for violations of Section 301(a) of the Clean Water Act ("CWA"). This notification provides you with the opportunity to consult with EPA pursuant to Section 309(g) of the CWA regarding this matter before assessment of the penalty.

Details of the alleged violations are in the Administrative Complaint enclosed with this letter. Questions concerning this action may be addressed to Doug Koopman, Environmental Engineer, at 617-918-1747. Legal questions may be addressed to Jeffrey Kopf, the attorney assigned to this case, at 617-918-1796.

Sincerely,

Susan Studlien

Susan Studlien, Director
Office of Environmental Stewardship

cc: Doug Koopman, EPA Region 1
Jeffrey Kopf, EPA Region 1

RECEIVED

MAR 09 2010

EPA ORC WJ
Office of Regional Hearing Clerk

RECEIVED
MAR 09 2010
EPA ORC WJ
Office of Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

)
)
In the Matter of:)
)
)
CHARLES RIVER POLLUTION)
CONTROL DISTRICT)
)
)
66 Village Street)
Medway, Mass. 02053)
)
)
)
Respondent.)

Docket Number:
CWA-01-2011-0020

**ADMINISTRATIVE COMPLAINT AND
NOTICE OF OPPORTUNITY FOR HEARING**

Proceeding Under Section 309(g)(2)(B)
of the Clean Water Act

I. STATEMENT OF AUTHORITY

1. The United States Environmental Protection Agency (“EPA”) issues this Administrative Complaint and Notice of Opportunity for Hearing (“Complaint”) pursuant to Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g). The Complainant is the Director of the Office of Environmental Stewardship, EPA Region 1.
2. The Complaint notifies the Charles River Pollution Control District (“District” or “Respondent”), that EPA intends to assess penalties for discharging pollutants into navigable waters of the United States in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

3. The Notice of Opportunity for a Hearing describes Respondent's option to file an Answer to the Complaint and to request a formal hearing.

II. APPLICABLE STATUTES AND REGULATIONS

4. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into the navigable waters of the United States except in compliance with, among other things, a National Pollutant Discharge Elimination System ("NPDES") permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.
5. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines "discharge of pollutants" to include "any addition of any pollutant to navigable waters from any point source." Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines a "point source" as "any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged."
6. Section 309(g) of the CWA, 33 U.S.C. § 1319, provides for the assessment of penalties for violations of Section 301 of the CWA 33 U.S.C. §§ 1311, and for violating any permit condition or limitation issued under Section 402 of the CWA, 33 U.S.C. § 1342.

III. FACTUAL ALLEGATIONS

7. The District is located in Medway, Massachusetts and is a municipality as defined in Section 502(4) of the Act, 33 U.S.C. § 1362(4), established under the laws of the Commonwealth of Massachusetts.
8. The District is a person under Section 502(5) of the Act, 33 U.S.C §1362(5). The District is the owner and operator of Publicly-Owned Treatment Works (the "POTW") that

includes a wastewater treatment facility (“WWTF”) from which it discharges pollutants, as defined in Section 502(6) and (12) of the Act, 33 U.S.C. §§ 1362(6) and (12), from a point source, as defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14), to the Charles River, a class B waterway. The WWTF is designed to discharge an average monthly flow of 5.7 million gallons per day (“MGD”) of treated wastewater to the Charles River. The Charles River flows into Boston Harbor, which in turn flows into the Atlantic Ocean. All are waters of the United States as defined in 40 CFR § 122.2 and navigable waters under Section 502(7) of the Act, 33 U.S.C. § 1362(7).

9. On September 29, 2000, the District was reissued NPDES Permit No. MA0102598 (the “NPDES Permit”) by the Director of the Office of Ecosystem Protection of EPA, Region I (the “Director of OEP”) under the authority of Section 402 of the Clean Water Act, 33 U.S.C. § 1342. This authority has been delegated to EPA’s Regional Administrators and has in turn been delegated to the Director of OEP.
10. On April 22, 2002 the District was issued a modification to the NPDES Permit by the Director of OEP under the authority of Section 402 of the Act, 33 U.S.C. § 1342. The modification changed the measurement frequency for five-day carbonaceous biological oxygen demand (“CBOD5”), total suspended solids (“TSS”) and total Ammonia Nitrogen.
11. The NPDES Permit authorizes the District to discharge pollutants, including phosphorus, from a point source (outfall serial number 001) at the WWTF to the Charles River subject

to the effluent limitations, monitoring requirements and other conditions specified in the NPDES Permit.

12. Section 301(a) of the Act, 33 U.S.C. § 1311(a), makes unlawful the discharge of pollutants to waters of the United States except in compliance with, among other things, the terms and conditions of an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. §1342.

IV. CWA VIOLATIONS

Count 1

13. Part I.A.1. of the NPDES Permit establishes effluent limitations and monitoring requirements for the discharge of treated wastewater from outfall serial number 001. The effluent limitations include, among other things, water-quality based monthly average concentration limits for total phosphorus.
14. The NPDES Permit establishes seasonal limits for the discharge of total phosphorous. The monthly average concentration limit for the period from April 1st to October 31st is 0.2 milligrams per liter (mg/l).
15. Since April 2006, the Permittee has discharged wastewater containing total phosphorus in excess of the concentration limit contained in the NPDES Permit as shown in more detail on Table 1.
16. The Permittee's discharges of a pollutants from the WWTF to the Charles River in excess of the limits contained in the NPDES Permit violates the NPDES Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

17. Pursuant to Section 309(g)(2)(B) of the Act and 40 C.F.R. § 19.4, Respondent is liable for civil penalties up to \$16,000 per day for each day during which the violations continue, up to a maximum of \$177,500.

Count 2

18. Part I.A.1. of the NPDES Permit establishes effluent limitations and monitoring requirements for the discharge of treated wastewater from outfall serial number 001. The effluent limitations include, among other things, water-quality based monthly average concentration limits for TSS.
19. The NPDES Permit establishes seasonal limits for the discharge of total suspended solids. The monthly average concentration and mass limits for the period from May 1st to October 31st are 7.0 mg/l and 265 lbs/day, respectively. The monthly average concentration and mass limits for the period from November 1st to April 30th are 15 mg/l and 570 lbs/day, respectively. The weekly average concentration and mass limits for the period from May 1st to October 31st are 10.0 mg/l and 380 lbs/day, respectively. The weekly average concentration and mass limits for the period from November 1st to April 30th are 25 mg/l and 950 lbs/day, respectively.
20. Since April 2006, the Permittee has discharged wastewater containing total suspended solids in excess of the concentration and mass limits contained in the NPDES Permit as shown in more detail on Table 1.

21. The Permittee's discharges of pollutants from the WWTF to the Charles River in excess of the limits contained in the NPDES Permit violates the NPDES Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).
22. Pursuant to Section 309(g)(2)(B) of the Act and 40 C.F.R. § 19.4, Respondent is liable for civil penalties up to \$16,000 per day for each day during which the violations continue, up to a maximum of \$177,500.

V. PROPOSED CIVIL PENALTY

23. Based on the forgoing CWA Violations, and pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. §§ 1319(g), and 40 C.F.R. § 19.4, the Complainant proposes that a Final Order assessing administrative penalties be issued against Respondent in an amount not to exceed \$11,000 per day for each day during which its violations continued, for violations occurring between March 15, 2004 and January 12, 2009, and \$16,000 per day for each day during which violations continued, up to a maximum of \$177,500, for violations occurring after January 12, 2009.
24. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty for the CWA violations and explaining how the proposed penalty was calculated, as required by the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation, Termination or Suspension of Permits; Final Rule," 40 C.F.R. Part 22 (the "Consolidated Rules of Practice"), a copy of which is enclosed with this Complaint.

25. In determining the amount of the CWA penalty to be assessed under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), EPA will take into account the statutory factors listed in Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3). These factors include the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent, its ability to pay, history of prior violations, degree of culpability, any economic benefit or savings resulting from the violations, and other such factors as justice may require.
26. EPA seeks a penalty from Respondent for the violations alleged in this Complaint of up to \$16,000 for each day of violation, amounting to at least 26 months and two weeks, or 734 days of violation, up to a maximum of \$177,500.
27. The individual NPDES permit violations alleged are significant because excess phosphorus and TSS discharges can cause significant harm to the aquatic ecosystem. In particular, excessive phosphorus discharges to the Charles River allow aquatic weeds to grow in abundance, altering the natural balance of the aquatic ecosystem.

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

28. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.14, the Complaint notifies Respondent of its right to request a hearing on any material fact alleged in this Complaint and on the appropriateness of the proposed penalty. Any such hearing will be conducted in accordance with the Consolidated Rules, a copy of which is enclosed with this Complaint. Members of the public, to whom EPA must give notice of this proposed action, have a right, under Section 309(g)(4)(B) of the CWA, 33 U.S.C.

§ 1319(g)(4)(B), to comment on any proposed penalty, as well as be heard and present evidence at the hearing. Respondent must include any request for a hearing in a written Answer to this Complaint.

29. Respondent's Answer must comply with 40 C.F.R. § 22.15. The original and one copy of the Answer, as well as a copy of all other documents that Respondent files in this action, must be sent to:

Wanda Santiago
Regional Hearing Clerk
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Mail Code: ORA18-1
Boston, MA 02109

30. Respondent should also send a copy of its Answer, as well as a copy of all other documents that Respondent files in this action, to Jeffrey Kopf, the attorney assigned to represent EPA, who is authorized to receive service in this matter, at:

Jeffrey Kopf
Senior Enforcement Counsel
U.S. Environmental Protection Agency
5 Post Office Square, Suite 100
Mail Code: OES0404
Boston, MA 02109-3912

31. If Respondent fails to file a timely Answer to this Complaint, it may be found in default, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing.

VII. CONTINUED COMPLIANCE OBLIGATION

32. Neither assessment, nor payment, of a civil penalty pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), shall affect Respondent's continuing obligation to comply with the CWA, the regulations promulgated thereunder, or any other applicable federal, state, or local law.

Date: 03/9/11

Susan Studlien
Susan Studlien
Director, Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1

Table I

Phosphorus Exceedances

Month/Year	Permit limit (mg/l)	Value (mg/l)	% over permit limit
4/06	.2	.32	60
6/06	.2	2.9	1,350
9/06	.2	1.2	500
4/07	.2	.51	155
5/07	.2	.33	65
6/07	.2	.39	95
7/07	.2	.26	30
5/08	.2	.21	5
9/08	.2	.59	195
5/09	.2	.31	55
6/09	.2	2.07	935
7/09	.2	.75	275
10/09	.2	.39	95
4/10	.2	.25	25
10/10	.2	.65	225

Total Suspended Solids Exceedences

Month/Year	Permit limit (monthly Average)	Value	% over permit limit
1/06	570 (lbs/day)	1008 (lbs/day)	77
6/06	265 (lbs/day)	4880 (lbs/day)	1,742
4/07	570 (lbs/day)	727 (lbs/day)	28
5/07	10 (mg/l)*	13.6 (mg/l)	36
2/08	570 (lbs/day)	815 (lbs/day)	43
12/08	570 (lbs/day)	1380 (lbs/day)	142
2/09	570 (lbs/day)	588 (lbs/day)	3
3/09	570 (lbs/day)	576 (lbs/day)	1
6/09	265 (lbs/day)	492 (lbs/day)	86
3/10	570 (lbs/day)	1403 (lbs/day)	146
10/10	10 (mg/l)*	11.8 (mg/l)	18

* Denotes weekly average violation

In the Matter of: Charles River Pollution Control District
Docket No. CWA-01-2011-0020

CERTIFICATE OF SERVICE

I certify that the foregoing ADMINISTRATIVE COMPLAINT (Docket No. CWA-01-2011-0020) and administrative compliance order (No. 11-006) was sent to the following persons, in the manner specified on the date below:


Original and one copy
hand delivered:

Regional Hearing Clerk
U.S. EPA, Region I
5 Post Office Sq., Suite 1100
Mail Code: ORA18-1
Boston, MA 02109-3912

Copy, via Certified Mail,
Return Receipt Requested,
and a copy of 40 C.F.R. Part 22

Ms. Cheri Cousens, P.E., Executive Director
Charles River Pollution Control District
66 Village Street
Medway, MA 02053

Date: March 9, 2011



Jeffrey Kopf, Senior Enforcement Counsel
Office of Environmental Stewardship (SEL)
U.S. Environmental Protection Agency
Region I
5 Post Office Sq., Suite 100
Mail Code: OES04-4
Boston, MA 02109-3912
tel: (617) 918-1796
fax: (617) 918-0796
email: Kopf.jeff@epa.gov