

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

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In the Matter of: )  
)  
)  
)  
Peter Galuszka )  
P.O. Box 622 )  
130 Sheffield Street )  
Belchertown, MA 01007 )  
)  
                  **Respondent** )  
)  
\_\_\_\_\_)

EPA Docket No. CWA-01-2008-0089

**Administrative Complaint  
Proposing to Assess a Civil Penalty  
Under Section 309(g) of the  
Clean Water Act**

**I. STATEMENT OF AUTHORITY**

1. The United States Environmental Protection Agency (“EPA”) issues this Complaint to Peter Galuszka (“Respondent”), pursuant to Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. §1319(g), and in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits” (“Consolidated Rules”), 40 C.F.R. Part 22.

2. Pursuant to Section 309(g) of the CWA, 33 U.S.C. §1319(g), and in accordance with the Consolidated Rules, Complainant hereby notifies Respondent of EPA’s intention to assess a civil penalty for: 1) discharging pollutants into navigable waters of the United States without a National Pollutant Discharge Elimination System (“NPDES”) permit in violation of Section 301(a) of the CWA, 33 U.S.C. §1311(a); 2) failing to apply in a timely manner for a NPDES permit in violation of Section 308(a) of the CWA, 33 U.S.C. § 1318(a); 3) discharging pollutants into navigable waters of the United States in violation of the NPDES General Permit for Storm Water Discharges

from Construction Activities, issued to Respondent under Section 402 of the CWA, 33 U.S.C. §1342; and 4) failing to respond to an EPA Request for Information issued pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a), in violation of Section 308(a) of the CWA, 33 U.S.C. § 1318(a).

3. As set forth in Section 101(a) of the CWA, 33 U.S.C. §1251(a), the CWA is designed to restore and maintain the chemical, physical, and biological integrity of the nation's waters.

4. In order to accomplish the objectives of the CWA, Section 301(a) of the CWA, 33 U.S.C. §1311(a), prohibits the discharge of pollutants by any person, except in certain circumstances, including compliance with a permit issued pursuant to Section 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344.

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."

6. Section 502(6) of the CWA, 33 U.S.C. §1362(6), defines "pollutant" to include, *inter alia*, dredged spoil, garbage, rock, silt and cellar dirt.

7. Section 502(7) of the CWA, 33 U.S.C. §1362(7), defines "navigable waters" as "the waters of the United States, including the territorial seas."

8. Section 502(14) of the CWA, 33 U.S.C. §1362(14), defines "point source" to include "any discernible, confined, and discrete conveyance...from which pollutants are or may be discharged."

9. Section 502(5) of the CWA, 33 U.S.C. §1362(5), defines "person" to include "an individual, corporation, [or] partnership."

10. Section 308(a) of the CWA, 33 U.S.C. §1318(a), authorizes EPA to require the owner or operator of any point source to provide such information as EPA may reasonably require to carry out the objectives of the CWA, including the issuance of NPDES permits pursuant to Section 402 of the CWA, 33 U.S.C. §1342.

11. Section 402(p)(2)(B) of the CWA, 33 U.S.C. §1342(p)(2)(B), requires any storm water discharge “associated with industrial activity” to be authorized by a NPDES permit.

12. Pursuant to Sections 308 and 402 of the CWA, 33 U.S.C. §§ 1318 and 1342, EPA promulgated storm water discharge regulations at 40 C.F.R. §122.26.

13. According to 40 C.F.R. §122.26(c), dischargers of storm water associated with “industrial activity” and “storm water discharges associated with small construction activities” must apply for an individual permit or seek coverage under a promulgated general permit.

14. According to 40 C.F.R. §122.26(b)(14)(x), the definition of “storm water discharge associated with industrial activities” includes storm water discharges from construction activities, including clearing, grading, and excavation, that result in a disturbance of five or more acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.

15. According to 40 C.F.R. §122.26(b)(15), the definition of “storm water discharge associated with small construction activity” includes storm water discharges

from construction activities, including clearing, grading, and excavation, that result in a disturbance of equal to or greater than one acre and less than five acres.<sup>1</sup>

16. According to 40 C.F.R. §122.26(b)(13), the definition of “storm water” includes storm water runoff, snow melt runoff, and surface runoff and drainage.

### **Construction General Permit**

17. In February 1998, EPA issued the NPDES General Permit for Storm Water Discharges from Construction Activities (“1998 CGP”), 63 Fed. Reg. 7858 (Feb. 17, 1998). The 1998 CGP became effective on February 17, 1998 and expired on February 17, 2003. EPA reissued the 1998 CGP in July 2003 (“CGP”), 68 Fed. Reg. 39087 (July 1, 2003). The reissued CGP became effective on July 1, 2003 and was set to expire on July 1, 2008.<sup>2</sup> EPA reissued the 2003 CGP in July 2008. The reissued permit expires on July 1, 2010. The CGP authorizes, subject to conditions contained therein, the discharge of pollutants in storm water runoff associated with construction activities, including construction activities within the Commonwealth of Massachusetts.

18. To obtain coverage under the CGP, Part 2 of the CGP requires “operators” to submit a notice of intent (“NOI”). The CGP defines “operator” as “any party associated with a construction project” that maintains either “operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications,” or “day-to-day operational control of those activities at a

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<sup>1</sup> Note that the same substantive requirements as those under 40 C.F.R. §122.26(b)(14)(x) apply to sources subject to 40 C.F.R. §122.26(b)(15).

<sup>2</sup> The reissued CGP did not become effective in Massachusetts until August 4, 2003. *See* 68 Fed. Reg. 45817 (Aug. 4, 2003). Additionally, the 2003 CGP was modified on December 22, 2004, effective on January 21, 2005. *See* 69 Fed. Reg. 76743 (Dec. 22, 2004). On July 14, 2008 the 2003 CGP was extended for a period not to exceed two years. *See* 73 Fed. Reg. 40388 (July 14, 2008)

project which are necessary to ensure compliance with a storm water pollution prevention plan for the site or other permit conditions.”

19. Part 2.3.A of the CGP requires operators of new projects to submit a complete and accurate NOI prior to commencement of construction activities.

20. Part 3 of the CGP requires operators to prepare an adequate storm water pollution prevention plan (“SWPPP”) addressing the portions of the project for which they are operators. The SWPPP must meet specific requirements and include certain information, such as the soil type; a description of the drainage patterns at the site; an identification of sensitive resources, including endangered species and historic buildings; and which person maintains responsibility for implementing each portion of the plan. Part 3.12. D. of the 2003 CGP requires that the SWPPP be signed and certified.

21. The central aspect of the SWPPP involves the selection of best management practices (“BMPs”), designed to eliminate, to the extent feasible, the migration of pollution from construction sites into the nation’s waters. These practices include measures to prevent erosion, such as the scheduling of the project to minimize the amount of land being graded at any particular time, and measures to capture sediment before it leaves the site, such as silt fences and sedimentation basins. The CGP imposes additional requirements, including those for inspection of the site during construction; maintenance of the SWPPP, and potentially other records, at the site; and final stabilization of the site, followed by termination of permit coverage.

22. Part 3.1.D of the CGP requires that operators implement the SWPPP as written from commencement of construction activity until completion of final stabilization.

## II. ALLEGATIONS

23. The Oasis Drive at Stonegate Farms development constitutes a residential development, located near Munsell Street in Belchertown, Massachusetts (“the Site”).

24. The Site consists of more than 5 acres, and is also part of a larger common plan of development which involved the disturbance of 5 or more acres of land. In the alternative, the Site consists of equal to or greater than one acre and less than 5 acres of land.

25. More than five acres have been disturbed during construction at the Site. In the alternative, equal to or greater than one acre has been disturbed during construction at the Site.

26. Peter Galuszka owns the Site and controls all development activity at the Site.

27. Peter Galuszka is a “person,” as defined in Section 502(5) of the CWA, 33 U.S.C. §1362(5).

28. Peter Galuszka maintains day-to-day operational control of activities necessary to ensure compliance with the SWPPP for the Site, rendering him an “operator” of the Site, as defined by 40 C.F.R. §122.2 and Appendix A of the CGP.

29. Respondent submitted to EPA a NOI, dated March 19, 2007, for coverage under the CGP for construction at the Site.

30. Construction commenced on the Site on or about sometime in 2004, at times better known to Respondent. Respondent was discharging pollutants to waters of the United States without a permit from that time until Respondent’s submission of the March 2007 NOI referenced in the preceding paragraph.

31. When Respondent commenced clearing, grading, and excavation at the Site, Respondent engaged in the “commencement of construction activities,” as defined by Appendix A of the CGP.

32. During certain storm events that occurred between the time Respondent commenced clearing, grading, and excavation at the Site in 2004 and October 2007, storm water from the Site flowed into an unnamed tributary which flows into Hop Brook, which flows into the Fork River, which flows into the Connecticut River, which flows into the Long Island Sound, each of which constitute “waters of the United States,” as defined by 40 C.F.R. §122.2, and, thereby, “navigable waters,” as defined by Section 502(7) of the CWA, 33 U.S.C. §1362(7).

33. During EPA’s October 2007 inspection of the Site, EPA inspectors observed significant amounts of silt in the storm water from the Site entering catch basins on the Site along Oasis Drive. The storm water entering the catch basins was then conveyed by pipes into a structure intended to be a detention basin. The structure was incomplete and failed to detain storm water for any length of time, and therefore did not remove silt from the storm water entering and then exiting the structure. The storm water flowed from the structure into an unnamed tributary to Hop Brook.

34. The storm water discharges from the Site constitute “storm water discharges associated with industrial activity,” as defined by 40 C.F.R. §122.26(b)(14)(x), to waters of the United States, or, in the alternative, were storm water discharges associated with small construction activities, as defined by 40 C.F.R. § 122.26(b)(15) .

35. Respondent directed or participated directly in construction activities, including clearing, grading, and excavation, at the Site, which resulted in the disturbance of greater than five acres of total land area, making Respondent's actions "industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14)(x).

36. In the alternative, Respondent directed or participated directly in construction activities, including clearing, grading, and excavation, at the Site, which resulted in the disturbance of at least one acre of total land area, making Respondent's actions "small construction activity" within the meaning of 40 C.F.R. § 122.26(b)(15).

37. The storm water discharges from the Site resulted in the "discharge of pollutants," as defined by Section 502(12) of the CWA, 33 U.S.C. §1362(12).

38. The silt discharged from the Site into waters of the United States is a "pollutant" within the meaning of Section 502(6) of the CWA, 33 U.S.C. §1362(6).

39. The detention basin at the Site that discharged pollutants is a "point source" within the meaning of Section 502(14) of the CWA, 33 U.S.C. §1362(14).

40. As "operator" of the Site, Peter Galuszka was required to obtain NPDES permit coverage for the construction activities and then comply with all requirements and conditions for operation under the CWA, its regulations, the applicable permit and the SWPPP.

**COUNT 1: DISCHARGE OF STORM WATER CONTAINING  
POLLUTANTS WITHOUT AN NPDES PERMIT**

41. Complainant hereby incorporates Paragraphs 1 through 40 above by reference.



42. By discharging storm water containing pollutants at the Site during storm events from sometime in 2004, at times better known to Respondent, until March 2007, without authorization under any NPDES permit, Respondent was in violation of Section 301(a) of the CWA, 33 U.S.C. §1311. Respondent was in violation of this requirement for at least 61 days.

**COUNT 2: FAILURE TO APPLY FOR A NPDES PERMIT**

43. Complaint hereby incorporates Paragraphs 1 through 42 above by reference.

44. By failing to timely apply for an individual permit or to timely submit an NOI for coverage under the CGP, Respondent was in violation of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), from sometime in 2004, at times better known to Respondent, until March 2007. Respondent was in violation of this requirement for at least 820 days.

**COUNT 3: DISCHARGE OF STORM WATER CONTAINING POLLUTANTS IN VIOLATION OF CONSTRUCTION GENERAL PERMIT**

45. Complaint hereby incorporates Paragraphs 1 through 44 above by reference.

46. During EPA's October 2007 inspection of the Site, EPA inspectors reviewed a SWPPP for the Site, prepared by Respondent or his contractor.

47. The CGP contains a variety of terms and conditions designed to ensure implementation of practices to reduce the pollutants in storm water discharges associated with construction activities.

48. Respondent failed to comply with the following CGP requirements.

### **Respondent Failed to Document Routine Facility Inspections**

49. Section 3.10 of the CGP requires that qualified personnel conduct routine inspections of all areas of the site disturbed by construction activity and of all areas used for storage of materials that are exposed to precipitation. The CGP also requires that an inspection report be completed for each required inspection. A record of each inspection, as well as of any actions taken in accordance with Section 3.10 of the CGP, must be retained as part of the SWPPP for at least three years from the date that permit coverage expires or becomes terminated.

50. From on or about March 2007 through September 2007, Respondent failed to complete inspection reports and maintain records of those inspections, in violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. §1342, and, therefore, was in violation of Section 301(a) of the CWA, 33 U.S.C. §1311(a). Respondent was in violation of this requirement for at least 180 days.

### **Respondent failed to implement and maintain best management practices as required by the construction general permit**

51. Section 3.1.D and 3.4.A. of the CGP, and the Site SWPPP, require compliance with the CGP and SWPPP from commencement of construction activity until completion of final stabilization.

52. Section 3.6 of the CGP, and the Site SWPPP, require that erosion and sediment controls and other protective measures be maintained in effective operating condition.

53. From April 2007 through September 2008, Respondent failed to maintain effectively operating BMPs, in violation of the terms and conditions of a permit issued

pursuant to Section 402 of the CWA, 33 U.S.C. §1342, and, therefore, was in violation of Section 301(a) of the CWA, 33 U.S.C. §1311(a). Respondent was in violation of at least some of the specific requirements of the CGP and SWPPP relating to BMPs for at least 150 days.

**COUNT 4: FAILURE TO RESPOND TO A REQUEST FOR INFORMATION ISSUED UNDER SECTION 308 OF THE CWA**

54. Section 308(a) of the CWA, 33 U.S.C. §1318(a), authorizes EPA to require the owner or operator of any point source to provide such information as EPA may reasonably require to carry out the objectives of the CWA, including the issuance of NPDES permits pursuant to Section 402 of the CWA, 33 U.S.C. §1342.

55. On November 15, 2007, EPA issued to Respondent a Request for Information under Section 308 of the CWA, 33 U.S.C. §1318, requiring Respondent to submit the requested information within fifteen (15) calendar days of his receipt of the written request.

56. On January 28, 2008 an EPA inspector spoke personally with Mr. Galuszka and once again requested that he respond to the November 15, 2007 Request for Information. On January 31, 2008, Respondent still had not responded to the November 15, 2007 Request for Information and consequently EPA sent a letter to Respondent reminding him that his response to the November 15, 2007 Request for Information was due within fifteen (15) calendar days of November 15, 2007. The January 31, 2008 letter also informed Respondent that his failure to respond or to adequately justify his failure to respond to the November 15, 2007 Request for Information could subject him to enforcement action under the CWA, including penalties up to \$32,500 per day of violation.

57. The January 31, 2008 letter to Respondent was mailed by certified mail and was returned to EPA by the United States Post Office with a notation that the mail was “unclaimed.” Other notations on the returned envelope indicate that the United States Post Office attempted without success to deliver the January 31, 2008 letter on February 2, 2008, February 13, 2008 and February 17, 2008.

58. As of the date this Complaint was issued, Respondent had not responded to the November 15, 2007 Request for Information, and, therefore, Respondent is in violation of Section 308 of the CWA, 33 U.S.C. §1308. Respondent has been in violation of this requirement for at least three hundred (300) calendar days.

### **III. NOTICE OF PROPOSED ASSESSMENT OF CIVIL PENALTY**

59. Based on the foregoing allegations, and pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. §1319(g), the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. §2461, et seq., the Debt Collection Improvement Act of 1996, 31 U.S.C. §3701, et seq., and the Rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§19.1-19.4 (61 Fed. Reg. 69360, 69 (Dec. 31, 1996); 69 Fed. Reg. 7121, 7 (Feb. 13, 2004)), Complainant proposes the issuance of a Final Order against Respondent assessing a civil penalty of up to eleven thousand dollars (\$11,000) per day per violation for each day during which the violations continued, up to a maximum of one hundred fifty-seven thousand five hundred dollars (\$157,500).

60. In determining the amount of the penalty to be assessed under Section 309(g)(2)(B) of the CAA, 33 U.S.C. §1319(g)(2)(B), EPA takes into account the statutory factors listed in Section 309(g)(3) of the CAA, 33 U.S.C. §1319(g)(3), including the nature, circumstances, extent and gravity of the violation, or violations;

Respondent's prior compliance history; the degree of culpability for the cited violations; any economic benefit or savings accruing to Respondent resulting from the violations; Respondent's ability to pay the proposed penalty; and such other matters as justice may require.

61. The violations alleged represent significant violations of the CWA because of the extent and duration of the violations and because compliance with the federal storm water program is important for ensuring that storm water runoff does not contribute to the impairment of water quality. Furthermore, Respondent's intentional and willful failure to respond to EPA's Request for Information reveals Respondent's lack of concern for complying with the law and protecting human health and the environment.

62. Prior to any hearing on this case, EPA will file a document specifying a proposed penalty for the CWA violations and explaining how EPA calculated the proposed penalty, as required by the Consolidated Rules.

#### **IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

63. Pursuant to Section 309(g) of the CWA, 33 U.S.C. §1319(g), and 40 C.F.R. §22.14, Complaint hereby notifies Respondent of his 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.

64. 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  
One Congress Street, Suite 1100 (RAA)  
Boston, MA 02114-2023

65. Respondent should also send a copy of his Answer, as well as a copy of all other documents that Respondent files in this action, to Gregory Dain, the attorney assigned to represent EPA in this case, who is authorized to receive service in this matter, at:

Gregory Dain  
Enforcement Counsel  
U.S. EPA, Region 1  
One Congress Street, Suite 1100 (SEL)  
Boston, MA 02114-2023

66. If Respondent fails to file a timely Answer to this Complaint, he 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.

#### **V. CONTINUED COMPLIANCE OBLIGATION**

67. 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: 9-3-08

*Sam Silverman, acting for*  
Susan Studlien  
Director, Office of Environmental Stewardship  
U.S. Environmental Protection Agency, Region 1

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 1  
BEFORE THE ADMINISTRATOR**

In the Matter of: )  
Peter Galuszka ) Docket No. CWA-01-2008-0089  
Respondent. )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

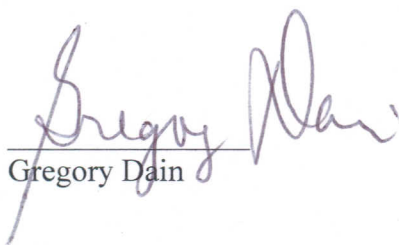
I hereby certify that the foregoing Administrative Complaint has been distributed on the date indicated below, in the following manner:

Original and One Copy,  
Hand Delivered:

Ms. Wanda Santiago  
Regional Hearing Clerk (RAA)  
U.S. EPA, Region 1  
One Congress Street  
Suite 1100  
Boston, MA 02114-2023

Copy by Certified Mail, Return  
Receipt Requested, and by FEDEX:

Peter Galuszka  
P.O. Box 622  
130 Sheffield Street  
Belchertown, MA 01007

  
\_\_\_\_\_  
Gregory Dain

9/4/08  
\_\_\_\_\_  
Date