



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

September 19, 2023 @4:06 pm

USEPA – Region II

Regional Hearing Clerk

September 19, 2023

Via Electronic Mail To: msmall@acnj.gov

The Honorable Marty Small, Sr.
Mayor of Atlantic City
1301 Bacharach Boulevard
Atlantic City, New Jersey 08401

**Re: Notice of Proposed Assessment of a Civil Penalty Class I
City of Atlantic City Municipal Separate Storm Sewer System (“MS4”)
NJPDES Permit No. NJG0153168
Docket No. CWA-02-2023-3319**

Dear Mayor Small:

Enclosed is a Complaint which the U.S. Environmental Protection Agency (“EPA” or “Agency”) is issuing to you as a result of our determination that the City of Atlantic City (“Respondent”) failed to comply with the terms and conditions of the New Jersey Department of Environmental Protection (“NJDEP”) New Jersey Pollutant Discharge Elimination System (“NJPDES”) R9 – Tier A Municipal Stormwater General Permit (“Permit”) for Municipal Separate Storm Sewer Systems (“MS4s”), in violation of Sections 301 and 402 of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §§ 1311 and 1342. This Complaint is filed pursuant to the authority of § 309(g) of the Act, 33 U.S.C. § 1319(g). This Complaint proposes that a penalty of **\$61,500** be assessed against Respondent for these violations.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or they are found to be true after you have had an opportunity for a hearing on them, you have the right to contest the penalty proposed in the Complaint. Enclosed a copy of “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination of Suspension of Permits” (“CROP”) (40 Code of Federal Regulations (C.F.R.) Part 22) which the Agency follows in cases of this kind. Please note the requirements for an Answer at 40 C.F.R. § 22.15. **If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file an Answer within thirty (30) days of your receipt of the enclosed Complaint to the EPA Regional Hearing Clerk at the following address:**

Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor (Room 1631)
New York, New York 10007-1866

If you do not file an Answer within thirty (30) days of receipt of this Complaint, you may be judged to have defaulted. See 40 C.F.R. § 22.17. If a default order is entered, the entire proposed penalty may be assessed without further proceedings.

Whether or not you request a formal hearing, you may informally confer with EPA concerning the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint to pursue the possibility of settlement through such informal conference with the Agency. You may represent yourself or be represented by an attorney at any stage of the proceedings, including any informal discussions, whether in person or by telephone.

Please note that a request for an informal conference does not substitute for a written Answer or affect what you may choose or say in an Answer, nor does it extend the thirty (30) days by which you must file an Answer requesting a hearing. Any hearing held in this matter will be conducted in accordance with the CROP, including Subpart I thereof.

The Agency also encourages the use of Supplemental Environmental Projects, where appropriate, as part of any settlement. Enclosed is a copy of the 2015 Update to the 1998 U.S Environmental Protection Agency Supplemental Environmental Projects Policy (March 10, 2015) for your consideration.

If you have any questions or wish to discuss a settlement of this matter with the EPA by an informal conference, please immediately contact Justine Modigliani, P.E. Chief, CWA Compliance Section, at (212) 637-4268 or Modigliani.Justine@epa.gov. Or you can have your attorney immediately contact Phyllis Feinmark, Chief, Water and General Law Branch, Office of Regional Counsel, at (212) 637-3232 or Feinmark.Phyllis@epa.gov.

We urge your prompt attention to this matter.

Sincerely,

For Dore LaPosta, Director
Enforcement and Compliance Assurance Division

Enclosures

1. Complaint
2. Consolidated Rules of Practice
3. EPA Supplemental Environmental Projects Policy and SEP Brochure

cc (via email): Karen Maples, Regional Hearing Clerk
Crystal Lewis, Public Works Director, City of Atlantic City
Uzo Ahirakwe, City Engineer, City of Atlantic City
Carlton Dudley, Director, Division of Water Compliance and Enforcement, NJDEP
Bryan Barrett, Bureau Chief, Southern Bureau of Water Compliance and Enforcement, NJDEP
Phyllis Feinmark, Chief, Water & General Law Branch, Office of Regional Counsel, EPA Region 2

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
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September 19, 2023 @4:06 pm

USEPA – Region II
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IN THE MATTER OF:

City of Atlantic City
1301 Bacharach Boulevard
Atlantic City, New Jersey 08401

NJPDES Permit No. NJG0153168

Respondent

Proceeding pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. §1319(g)

**PROCEEDING TO ASSESS A CLASS I CIVIL
PENALTY**

DOCKET No. CWA-02-2023-3319

**ADMINISTRATIVE COMPLAINT
FINDINGS OF VIOLATION, NOTICE OF PROPOSED
ASSESSMENT OF AN ADMINISTRATIVE PENALTY, AND
NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

I. STATUTORY AND REGULATORY AUTHORITIES

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing (“Complaint”) is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 309(g)(2)(A) of the Clean Water Act (“Act” or “CWA”), 33 U.S.C. § 1319(g)(2)(A). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has redelegated it to the Director, Enforcement and Compliance Assurance Division (“ECAD”) of EPA, Region 2 (“Complainant”).
2. Pursuant to Section 309(g)(2)(A) of the Act, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“CROP”), 40 C.F.R. Part 22 (2001), a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against Respondent, as a result of Complainant’s determination that the Respondent is in violation of Section 301 of the Act, 33 U.S.C. § 1311, by failing to comply with the terms of the New Jersey Department of Environmental Protection (“NJDEP”) New Jersey Pollutant Discharge Elimination System (“NJPDES”) R9 – Tier A Municipal Stormwater General Permit, NJ0141852, for stormwater discharges from Municipal Separate Storm Sewer Systems (“MS4s”) for the MS4 that the Respondent owns.

II. DEFINITIONS AND STATUTORY PROVISIONS

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, among other things, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of the EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The New Jersey Department of Environmental Protection (“NJDEP”) is the agency with the authority to administer the federal NPDES program in New Jersey pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b). A New Jersey Pollutant Discharge Elimination System (“NJPDDES”) permit is required to be issued by the NJDEP to facilities for the discharge of pollutants from point sources to navigable waters of the United States. The EPA maintains concurrent enforcement authority with authorized States for violations of the CWA and permits issued by authorized States thereunder.
3. “Person” is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include an individual, corporation, partnership, association or municipality.
4. “Municipality” is defined by Section 502(4) of the CWA, 33 U.S.C. § 1362(4), to include among other things, a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes.
5. “Discharge of a pollutant” is defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12), to include any addition of any pollutant to navigable waters from any point source.
6. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged to water.
7. “Point source” is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
8. “Navigable waters” are defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), as “waters of the United States, including the territorial seas.”
9. Section 402(p) of the CWA, 33 U.S.C. § 1342(p) sets forth the permit requirements for the discharge of stormwater, including discharges of stormwater from Municipal Separate Storm Sewer Systems (“MS4s”).
10. 40 C.F.R. § 122.26(b)(8), defines an MS4 as a “conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches,

man-made channels, or storm drains): (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law).....that discharges into waters of the United States; (ii) designed or used for collecting or conveying stormwater; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works...”

11. 40 C.F.R. § 122.26(b)(3) defines “incorporated place,” in part, as a city, town, township, or village that is incorporated under the laws of the State in which it is located.
12. 40 C.F.R. § 122.26(b)(16)(ii) defines “small municipal separate storm sewer system,” in part, as not defined as “large” or “medium” MS4s.
13. Pursuant to 40 C.F.R. § 122.32(a)(1), all small MS4s located in an “urbanized area” (as determined by the latest Decennial Census by the Bureau of Census) are regulated small MS4s.
14. 40 C.F.R. §§ 122.33(a) and (b)(1) require operators of regulated small MS4s to seek authorization to discharge under the applicable NPDES general permit issued by the permitting authority, by submitting a Request for Authorization (“RFA”) for coverage under such permit.
15. NJDEP issued R9 – Tier A Municipal Stormwater General Permit, NJ0141852, a NPDES general permit for stormwater discharges from Municipal Separate Storm Sewer Systems (“MS4s”) (“Permit” or “MS4 General Permit”) on January 1, 2023, which will expire on December 31, 2027. The current MS4 General Permit supersedes the previous NJPDES permit (NJ0141852), which became effective on January 1, 2018 and expired on December 31, 2022.
16. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a civil penalty for violations of Section 301 of the CWA, 33 U.S.C. § 1311, or any permit condition or limitation implementing, inter alia, Section 301, and contained in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

III. FINDINGS OF VIOLATION

1. The City of Atlantic City (“Respondent” or the “City”) is a municipal corporation chartered under the laws of the State of New Jersey, and as such, Respondent is a “person,” as that term is defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2, and is an “incorporated place,” as that term is defined in 40 C.F.R. § 122.26(b)(3).
2. Respondent owns the MS4 located in the City of Atlantic City, New Jersey, and is an owner or operator within the meaning of 40 C.F.R. § 122.2.
3. Respondent’s MS4 is a small MS4 located in an urbanized area within the meaning of 40 C.F.R. § 122.26(b)(16)(ii) and 40 C.F.R. § 122.32(a)(1).
4. Respondent’s MS4 includes at least eighty-eight (88) stormwater outfall pipes, which are “point sources” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14). Respondent’s MS4 discharges stormwater, which is a “pollutant” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to the Beach Thorofare, Clam Thorofare, Inside Thorofare, Delta Basin, Gardners Basin, Snug Harbor, Penrose Canal, Venice Lagoon,

Absecon Inlet, and the Atlantic Ocean, which are “Waters of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7). As such, Respondent discharges pollutants within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

5. Respondent submitted a Request for Authorization (“RFA”) to the NJDEP and subsequently received authorization under the New Jersey Pollutant Discharge Elimination System (“NJPDES” R9 Tier A Municipal Stormwater General Permit (“MS4 General Permit” or “Permit”) pursuant to permit identification number NJG0153168 and has been covered under the conditions and limitations in the MS4 General Permit at all relevant times addressed by this Order.
6. The MS4 General Permit authorizes Respondent to discharge pollutants from MS4 outfalls to waters of the United States, under the conditions and limitations prescribed in the Permit.
7. Between September 28, 2021 and November 8, 2021, the EPA Audit Team conducted an off-site MS4 desk audit (the “Audit”) which consisted of phone interviews with the Respondent’s representatives.
8. On April 6, 2022 and April 7, 2022, EPA Region 2 representatives conducted a Compliance Evaluation Inspection (“CEI” or “Inspection”) as a follow-up to the Audit. The inspection consisted of evaluating areas and facilities discussed during the Audit including, but not limited to, the municipal yard and maintenance activities at ancillary operations.
9. The NJDEP MS4 General Permit was the effective permit at the time of the Audit and Inspection.
10. Based on the Audit findings, the EPA finds that the Respondent failed to comply with the CWA and the conditions and limitations of the MS4 General Permit, including but not limited to the following:
 - a. Part IV.A.2.a of the Permit specifies that the Stormwater Pollution Prevention Plan (“SPPP”) is a primary plan required by the Permit as it documents the Tier A Municipality’s stormwater program and describes the measures necessary for compliance with the Statewide Basic Requirements, as well as any other Control Measures, Additional Measures and/or Optional Measures (if deemed appropriate). Part IV.F.1 requires Tier A Municipalities to develop, update, implement, and maintain a written SPPP that identifies the person designated as the Municipal Stormwater Program Coordinator and members of the SPPP Team; documents the municipality’s Tier A MS4 Stormwater Program including a description of shared or contracted services; describes measures necessary for compliance with all components of the Permit; and, reflects the measurable goals, implementation schedules, record keeping and other requirements in Attachment A. At the time of the Audit, the City provided the EPA with the City’s SPPP which was last revised on January 16, 2013. The SPPP did not include the following required elements:
 - i. An accurate description of the members of the SPPP Team, as required by Part IV.F.1.a.i of the Permit;
 - ii. Description of shared or contracted services, as required by Part IV.F.1.a.ii of the Permit;

- iii. Description of measures necessary for compliance with all components of the Permit, as required by Part IV.F.1.a.iii of the Permit;
- iv. Measurable goals, implementation schedules, record keeping and other requirements in Attachment A, as required by Part IV.F.1.a.iv of the Permit;
- v. An accurate description of the City's public education and outreach program that reflects the requirements in Part IV.B.2.a of the Permit;
- vi. An accurate description of the City's stormwater management program to address post construction stormwater runoff in new development and redevelopment, as required by Part IV.B.4 of the Permit;
- vii. An accurate description of community wide pollution prevention/good housekeeping measures to control solids and floatables through a street sweeping program, a catch basin and storm drain inlet inspection and cleaning program, and a storm drain inlet retrofit program, as required in Part IV.B.5.b of the Permit;
- viii. An accurate description of best management practices ("BMPs") for municipal maintenance yards and other ancillary operations, including an inventory of materials and machinery located at municipal maintenance yards and ancillary operations which could be a source of pollutants in a stormwater discharge, as required in Part IV.B.5.c of the Permit;
- ix. An accurate description of the City's training program for its employees, design engineers, municipal engineers and other individuals that review stormwater management design for development and redevelopment projects on behalf of the City, and municipal board and governing body members, as required by Part IV.B.5.d – f of the Permit;
- x. An accurate description of the City's outfall pipe inspection program, including a program to detect stream scouring and a program to detect and eliminate illicit discharges, as required by Part IV.B.6 of the Permit.
- xi. An accurate description of the City's stormwater facility maintenance program, including long-term cleaning, operation and maintenance of all municipally owned or operated stormwater facilities, as required by Part IV.C.1.a of the Permit;
- xii. An accurate description of the City's stormwater facility maintenance program, including long-term cleaning, operation and maintenance of stormwater facilities not owned or operated by the City and not subject to the conditions of another NJPDES stormwater permit and constructed after February 7, 1984, as required by Part IV.C.1.b of the Permit; and
- xiii. Incorporation of Total Maximum Daily Load ("TMDL") Information into the SPPP, as required by Part IV.C.2 of the Permit.

Therefore, Respondent violated Part IV.A.2.a and Part IV.F.1 of the Permit.

- b. Part IV.B.1.b of the Permit requires Tier A Municipalities to make elements of its MS4 stormwater program available to the public, including posting the current SPPP on its website to the extent required by Part IV.F.1.f and posting the current Municipal Stormwater Management Plan ("MSWMP") and all ordinances required by the Permit on its website or otherwise comply with the notification requirements of N.J.A.C. 7:8-4.4(e). At the time of the Audit, the City had not posted the SPPP or the MSWMP to its website. Therefore, Respondent violated Part IV.B.1.b of the Permit.

- c. Part IV.B.2.a of the Permit requires Tier A Municipalities to implement a public education and outreach program that focuses on educational and pollution prevention activities about the impacts of stormwater discharges on surface water and groundwater and to involve the public in reducing pollutants in stormwater and mitigating flow. The Permit further specifies that the Tier A Municipality shall annually conduct activities that total at least 12 points from at least three of the five categories as set forth in Attachment B of the Permit. In addition, at least one of the activities required to be completed includes educating businesses and the general public of hazards associated with illicit connections and improper disposal of waste. At the time of the Audit, the City was not implementing a public education and outreach program as required by the Permit, as it was not conducting activities that totaled at least 12 points from at least three of the five categories identified in Attachment B of the Permit. Therefore, Respondent violated Part IV.B.2.a of the Permit.
- d. Part IV.A.2.b of the Permit states that the MSWMP is a significant component of the SPPP and also a component of the municipal master plan. The MSWMP describes the municipality's strategy, structure, and process for addressing stormwater runoff from new development and redevelopment to ensure compliance with the Stormwater Management Rules (N.J.A.C. 7:8 seq.). This strategy, structure, and process also constitutes much of the post-construction stormwater management program in the Permit. Part IV.B.4.f.iii of the Permit requires a Tier A Municipality to review and update its MSWMP as necessary, and as part of the reexamination of its municipal master plan in accordance with N.J.A.C. 7:8-4.3 (c) and (d). N.J.A.C. 7:8 was amended March 2, 2020. The City's MSWMP was adopted in 2008 and has not been updated to reflect the March 2, 2020 changes made to N.J.A.C. 7:8 seq. Therefore, Respondent violated Parts IV.A.2.b and IV.B.4.f.iii of the Permit.
- e. Part IV.B.4.g of the Permit requires Tier A Municipalities to adopt, amend, implement and enforce a municipal stormwater control ordinance. The City's Municipal Stormwater Control ordinance (Chapter 223 – Stormwater Management, Article II) was adopted on April 23, 2008 and has not been revised to reflect the amendments to the Stormwater Management rules at N.J.A.C. § 7.8 adopted on March 2, 2020. Therefore, Respondent violated Part IV.B.4.g of the Permit.
- f. Part IV.B.5.d of the Permit requires Tier A Municipalities to develop, update and implement an employee training program to address Tier A MS4 NJPDES permit components and SPPP requirements. At the time of the Audit, the EPA Audit Team observed that the SPPP was not updated to reflect the new training requirements outlined in the Permit and the City did not provide required annual training to employees during the 2020 reporting year in accordance with Parts IV.B.5.d.v, IV.B.5.d.viii, and IV.B.5.d.x of the Permit. Therefore, Respondent violated Part IV.B.5.d of the Permit.
- g. Part IV.B.5.e of the Permit requires Tier A Municipalities to ensure that all design engineers, municipal engineers and other individuals that review the stormwater management design for development and redevelopment projects on behalf of the municipality, complete the NJDEP approved Stormwater Management Design Review Course once every five (5) years. At the time of the Audit, the City's Engineer stated he had not taken the training as required. Therefore, Respondent violated Part IV.B.5.e of the Permit.

- h. Part IV.B.5.f of the Permit requires Tier A Municipalities to ensure that municipal board and governing body members that review and approve applications for development and redevelopment projects complete the “*Asking the Right Questions in Stormwater Review Training Tool*” posted online at <https://www.nj.gov/dep/stormwater/training.htm>. The training was required to be completed by municipal board members within six (6) months of the Permit effective date and by new members within six (6) months of commencing duties. Once per term of service thereafter, municipal board and governing body members are required to review at least one of the tools offered by the NJDEP under Post-Construction Stormwater Management on the NJDEP’s website. The Tier A Municipality is required to maintain a list of the dates and names of training program participants in the SPPP. At the time of the Audit, the City did not have a list as required nor did the City provide a list in response to the EPA’s November 24, 2021 RFI. Therefore, Respondent violated Part IV.B.5.f of the Permit.
 - i. Part IV.G.1.c of the Permit requires the Annual Report and Certification to be submitted to the NJDEP on or before May 1st annually through the Regulatory Services Portal which is an electronic online business portal maintained by the NJDEP. According to the NJDEP, the City’s Annual Reports for the 2020, 2019, 2018 and 2017 reporting periods were all submitted after the May 1 deadline. Therefore, Respondent violated Part IV.G.1.c of the Permit.
11. Based on the Inspection findings, the EPA finds that the Respondent failed to comply with the CWA and the conditions and limitations of the MS4 General Permit, including but not limited to the following:
- a. Part IV.B.5.c of the Permit requires Tier A Municipalities to implement the BMPs described in Attachment E of the Permit for municipal maintenance yards and other ancillary operations owned or operated by the Tier A Municipality.
 - i. Attachment E, Inventory of Materials and Machinery, states that the SPPP shall include a list of all materials and machinery located at municipal maintenance yards and ancillary operations which could be a source of pollutants in a stormwater discharge. At the time of the Inspection, this inventory was not available, violating Part IV.B.5.c of the Permit.
 - ii. Attachment E, Inspections and Good Housekeeping, requires the clean-up of spills or dry materials immediately after discovery. At the time of the Inspection, the EPA observed multiple oil sheens throughout the Site, violating Part IV.B.5 of the Permit. Additionally, the only spill kit EPA observed was located in the shed by the vehicle fueling station and there were no signs indicating where the spill kits were located, or that the spill kit existed at all.
 - iii. Attachment E, Fueling Operations, requires Tier A Municipalities to clearly post in a prominent area of the facility, instructions for safe operation of fueling equipment. The following must be included:
 - 1. “Topping off of vehicles, mobile fuel tanks, and storage tanks is strictly prohibited”
 - 2. “Stay in view of fueling nozzle while dispensing”
 - 3. Contact information for the person(s) responsible for spill response.

EPA observed some signage and/or instructions at the fueling station at the municipal yard stating “Engine must be turned off while getting fuel. It’s the law.” And “no smoking.” However, the required language as specified in the Permit was not posted, in violation of Part IV.B.5.c of the Permit.

- b. Part IV.B.5.c.i of the Permit requires Tier A Municipalities to develop and implement BMPs for Fueling Operations in municipal maintenance yards, as described in Attachment E of the Permit. At the time of the Inspection, the City stated that First Vehicle maintains and operates the vehicle fueling operation in the municipal yard, however, vehicle fueling is not discussed in the City’s contract with First Vehicle. At the time of the Inspection, EPA did not observe BMPs in practice, and written procedures for vehicle fueling were not available, violating Part IV.B.5.c.i of the Permit.
- c. Part IV.B.5.c.iii of the Permit requires Tier A Municipalities to develop and implement BMPs for Vehicle Maintenance in municipal maintenance yards, as described in Attachment E of the Permit. This includes, but is not limited to, use of designated areas away from storm drains or blocking storm drain inlets when vehicle and equipment maintenance is being conducted outdoors. At the time of the Inspection, EPA noticed multiple locations where vehicles were being stored outdoors. Throughout the Site, EPA observed commercial and industrial vehicles with flat tires, and vehicles that appeared to need major repairs. The Site representative stated that the vehicles located outdoors southwest of the main building were not totaled and were being staged before getting maintenance. Among these vehicles along the western edge of the Site, EPA observed vehicles with fluids still in them. EPA observed a vehicle which had a cracked receptacle for windshield washer fluid, with the fluid still in it, in violation of Part IV.B.5.c.iii of the Permit.
- d. Part IV.B.5.c.iv of the Permit requires Tier A Municipalities to implement the BMPs described in Attachment E for On-Site Equipment and Vehicle Washing and Wash Wastewater Containment. At the time of the Inspection, the Site representative stated that employees clean the vehicle wash station after each use, however, EPA observed standing water and debris in the vehicle wash station, violating Part IV.B.5.c.iv of the Permit.
- e. Part IV.B.5.c.vi of the Permit requires Tier A Municipalities to develop and implement BMPs for Aggregate Material and Construction Debris Storage. At the time of the Inspection, EPA observed the sand storage area in the northern portion of the Site. This area was uncovered, three sided, on a slope decline, and had noticeable washout leading directly to a catch basin, violating Part IV.B.5.c.vi of the Permit.
- f. Part IV.B.5.c.vii of the Permit requires Tier A Municipalities to implement the BMPs described in Attachment E for Street Sweepings, Catch Basin Clean Out, and Other Material Storage. At the time of the Inspection, EPA observed containers for street sweeping at two (2) separate locations: the municipal yard and an auxiliary container between S. Rhode Island Avenue and S. Victoria Avenue. The auxiliary location, between S. Rhode Island Avenue and S. Victoria Avenue, was inconsistent with the location stated during the Audit, which was New Hampshire Avenue. Containers at both

locations were relatively full and uncovered. Additionally, the container at the auxiliary location appeared to contain residential garbage as well as street sweeping debris, in violation of Part IV.B.5.c.vii of the Permit.

12. On November 24, 2021, the EPA transmitted the findings from the Audit to the Respondent with a Request for Information (“RFI”), CWA-IR-22-005, requiring the Respondent to submit information regarding the City’s compliance with the MS4 General Permit. The RFI required the Respondent to provide a response documenting the actions taken, or planned, to address each of the “*Potential Non-Compliance Items*” and “*Areas of Concern*” in the Audit report. The EPA received submittals in response to the RFI from the Respondent on January 5, 2022, February 3, 2022, and February 11, 2022.
13. On March 24, 2022, EPA issued an Information Request and Administrative Compliance Order (“Order #1”) (CWA-02-2022-3023). The Order directed the Respondent to comply with the requirements of the Permit in accordance with a compliance schedule.
14. On June 27, 2022, EPA issued an Information Request and Administrative Compliance Order (“Order #2) (CWA-02-2022-3029). The Order directed the Respondent to comply with the requirements of the Permit in accordance with a compliance schedule.
15. On August 30, 2022, April 14, 2023, and June 21, 2023, Respondent submitted documentation addressing most of the violations identified in Order #1. On November 11, 2022 and April 14, 2023, Respondent submitted documentation addressing most of the violations identified in Order #2. As of July 27, 2023, Respondent has not completed the municipal training required by Part IV.B.5.d of the Permit in effect at the time of EPA’s Audit and Ordered Provision C.2.c of Order #1. Respondent has not revised the City’s SPPP to meet the requirements of Part IV.F.1 of the Permit in effect at the time of EPA’s Audit, nor has Respondent posted the SPPP on the City’s website as required by Parts IV.B.1.b and IV.F.1.f of the Permit in effect at the time of EPA’s Audit and Ordered Provisions C.2.f – C.2.h of Order #1. Respondent has not submitted a copy of the revised County-approved MSWMP in accordance with Part IV.B.4.f of the Permit in effect at the time of EPA’s Audit and Ordered Provision C.2.i of Order #1, nor has Respondent posted the updated MSWMP to its website in accordance with Part IV.B.1.b.iii of the Permit in effect at the time of EPA’s Audit and Ordered Provision C.2.j of Order #1. In addition, Respondent has not submitted written procedures for vehicle fueling operations as required by Part IV.B.5.c.iv of the Permit in effect at the time of EPA’s inspection and Ordered Provision C.2.e of Order #2, nor has Respondent provided documentation to EPA showing that best management practices are in place for aggregate material and construction debris as required by Part IV.B.5.c.vi of the Permit in effect at the time of EPA’s inspection and Ordered Provision C.5.g of Order #2. The original deadline for Order #1 was November 30, 2022 but had been extended by EPA until July 1, 2023.
16. Based on the Findings cited in paragraphs 1-15 above, Respondent has violated Section 301 of the Act, 33 U.S.C. § 1311.

IV. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), and the Debt Collection Improvement Act of 1996, EPA, Region 2 hereby

proposes to issue a Final Order Assessing Administrative Penalties (“Final Order”) to Respondent assessing a civil penalty of **\$61,500**. EPA determined the proposed penalty after taking into account the applicable factors identified at Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). EPA has taken account of the nature, circumstances, extent, and gravity of the violation (or violations), and Respondent’s prior compliance history, degree of culpability, economic benefit or savings accruing to Respondent by virtue of the violations, and Respondent’s ability to pay the proposed penalty. Based on the Findings set forth in Part III above, the **Respondent is liable for fifteen (15) distinct violations of the Act, three of which have continued for at least six hundred and sixty-seven (667) days**. The on-going violations are described in Part III Paragraph 10 Subsections a, b, d, e, and f, and in Paragraph 11 Subsections b and e. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after Respondent’s receipt of this Notice, unless Respondent files an Answer to the Complaint within that time and requests a Hearing on this Notice pursuant to the following section.

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE ACTION

The rules of procedure governing this civil administrative litigation have been set forth in the CROP, 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

A. Answering The Complaint

Where Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
maples.karen@epa.gov**

Respondent shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a). Respondent’s Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which the Respondent has any knowledge. 40 C.F.R. § 22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in the Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that the Respondent disputes (and thus intends to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether Respondent requests a Hearing. 40 C.F.R. § 22.15(b).

Respondent’s failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of a defense may preclude Respondent, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a Hearing.

B. Opportunity To Request A Hearing

If requested by Respondent in its Answer, a Hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If however, Respondent does not request a Hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a Hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any Hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A Hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of 40 C.F.R. Part 22.

Should Respondent request a Hearing on this proposed penalty assessment, members of the public to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondent not request a Hearing, EPA will issue a Final Order, and only members of the public who submit timely comment on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a Hearing thereon. EPA will grant the petition and will hold a Hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

C. Failure To Answer

If Respondent fails in any Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondent fails to file a timely Answer to the Complaint [i.e. not in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)], Respondent may be found in default upon motion. 40 C.F.R. § 22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondent for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondent without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondent, and to collect the assessed penalty amount, in Federal court.

VI. INFORMAL SETTLEMENT CONFERENCE

Regardless of whether Respondent requests a formal Hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint and Respondent may also provide whatever additional information is believed to be relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have

on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, in response to any relevant information previously not known to Complainant that demonstrates that any of the findings herein are without merit, or that the proposed penalty is not warranted. Respondent is referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Phyllis Feinmark
Chief, Water and General Law Branch
Office of Regional Counsel
Telephone (212) 637-3232
feinmark.phyllis@epa.gov

The parties may engage in settlement discussions regardless of whether Respondent has requested a Hearing. 40 C.F.R. § 22.18(b)(1). Respondent's requesting a formal Hearing does not prevent Respondent from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint.

A request for an informal settlement conference does not affect Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15. Note that no penalty reduction will be made simply because an informal settlement conference is held.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. § 22.18(b)(2). In accepting the Consent Agreement, Respondent waives any right to contest the allegations in the Complaint and waive any right to appeal the Final Order that is to accompany the Consent Agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3).

Entering into a settlement through the signing of such Consent Agreement and complying with the terms and conditions set forth in such Consent Agreement and Final Order terminates this administrative litigation and these civil proceedings against Respondent (note that a new enforcement action may be initiated based on continued non-compliance). Entering into a settlement agreement does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty (**\$61,500**) within 30 days after receipt of the Complaint, provided that Respondent file with the Regional Hearing Clerk, Region 2 (at the address noted above), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). A copy of the check or other instrument of payment should be

provided to the EPA Attorney identified in Section VI above. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America", in the full amount of the penalty assessed in this complaint to the following addresses:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, MO 63197-9000
Docket No. CWA-02-2022-3319

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency".

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondent elects to pay the full amount of the penalty proposed in the Complaint within thirty (30) days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order in accordance with 40 C.F.R. § 22.18(a)(3). In accordance with 40 C.F.R. § 22.45(c)(3), no Final Order shall be issued until at least ten (10) days after the close of the comment period on this Complaint. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint (note that a new enforcement action may be initiated based on continued non-compliance). Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's right both to contest the allegations made in the Complaint and to appeal said Final Order to Federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

VIII. FILING OF DOCUMENTS

The Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
maples.karen@epa.gov

A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Phyllis Feinmark
Chief, Water and General Law Branch
Office of Regional Counsel
Telephone (212) 637-3232
Feinamrk.phyllis@epa.gov

Justine Modigliani, P.E.
CWA Compliance Section Chief
Water Compliance Branch
U.S. Environmental Protection Agency, Region 2
modigliani.justine@epa.gov

and

Christy Arvizu
Environmental Scientist
Water Compliance Branch
U.S. Environmental Protection Agency, Region 2
arvizu.christy@epa.gov

IX. GENERAL PROVISIONS

1. Respondent has a right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated there under, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act will affect Respondent's continuing obligation to comply with the Act, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), for the violations alleged herein.

ISSUED THIS 19th DAY OF September, 2023.

For _____
Dore LaPosta, Director
Enforcement and Compliance Assurance Division
U. S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007-1866