



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I  
ONE CONGRESS STREET SUITE 1100  
BOSTON, MASSACHUSETTS 02114-2023

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EPA OPC  
OFFICE OF  
REGIONAL HEARING CLERK  
WR

April 18, 2008

**BY HAND**

Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region I  
One Congress Street  
Suite 1100, Mail Code RAA  
Boston, MA 02114-2023

RE: Revane Development Company, Inc., Docket No. CWA-01-2008-0027

Dear Ms. Santiago,

Enclosed for filing in the above-referenced action, please find the original and one copy of COMPLAINANT'S INITIAL PREHEARING EXCHANGE.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Jeffrey Kopf".

Jeffrey Kopf  
Counsel for the Complainant

Enclosure

cc: The Honorable Susan L. Biro, Chief Administrative Law Judge  
Amy Kwesell, Esq.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

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**In the Matter of:** )  
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**Revane Development Company, Inc.** )  
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EPA DDC  
Docket No. CWA-01-2008-0027 *WR*  
REGIONAL HEARING CLERK

**COMPLAINANT'S  
PREHEARING EXCHANGE**

**COMPLAINANT'S PREHEARING EXCHANGE**

Complainant, the U.S. Environmental Protection Agency ("EPA"), submits this Prehearing Exchange pursuant to 40 C.F.R. § 22.19 and the Prehearing Order of the Presiding Judge issued on March 13, 2008.

**1. LIST OF WITNESSES, DOCUMENTS, AND STATEMENT AS TO LOCATION AND ESTIMATED LENGTH OF HEARING**

**A. Witnesses**

Pursuant to Section 1(A) of the Prehearing Order, set forth below are the witnesses that the Complainant intends to call at hearing together with a brief narrative summary of each witness' expected testimony:

**Fact Witnesses**

**1. Andrew Spejewski, Environmental Engineer, EPA, Region 1**

Mr. Spejewski is expected to testify about his knowledge of Revane Development Company, Inc.'s ("Respondent's") Auburn, Massachusetts residential development known as Bryn Mawr Estates (the "Site"). Mr. Spejewski will testify regarding his observations at the Site during inspections conducted on August 25, 2006, September 28,

2007, and April 9, 2008. He will also testify as to conversations he had with Respondent's representatives during the August 25, 2006, inspection. Mr. Spejewski will also testify as to conversations with City of Auburn officials regarding the City's municipal storm water system ("MS4"), which discharges into Dark Brook, which flows into the Blackstone River. Mr. Spejewski is expected to testify on the requirements of the National Pollutant Discharge Elimination System ("NPDES") permit program for storm water discharges, the applicability of the storm water requirements to Respondent's Site, and Respondent's failure to meet these requirements. Mr. Spejewski is also expected to testify on the events that transpired subsequent to his initial inspection on August 25, 2006, including the efforts of EPA to bring Respondent into compliance with the applicable environmental laws, including the issuance of two information requests and an administrative order. He will also testify as to certain factors relevant to the penalty assessment, such as estimates of the amount of storm water discharged from the Site and the lack of adequate best management practices to prevent discharges of storm water. If necessary, Mr. Spejewski will testify to the delegation of authority for issuance of the Administrative Penalty Complaint and Notice of Opportunity for Hearing filed in this matter as well as to EPA's consultation with the State of Massachusetts regarding the issuance of the Complaint.

**2. Arthur Fisher, Geographic Information System (GIS) Analyst, EPA Region 1**

Mr. Fisher is a GIS Analyst working for EPA contractor Vistrionics, Inc. He is expected to describe the use of the EPA Region 1 Geographic Information System to create the maps shown as Complainant's Exhibit ("CX")-19 through CX-24.

**3. Mike Suprenant, PE, Auburn Town Engineer**

Mr. Suprenant is expected to testify regarding the City of Auburn, Massachusetts' MS4 and how storm water travels from the Site to waters of the United States. He is also expected to testify with respect to the damage to the MS4 on Briarcliff Drive.

**4. Nancy Sawyer, resident of 17 Regis Drive, Auburn, Massachusetts**

Ms. Sawyer is a resident of 17 Regis Drive, Auburn, Massachusetts, which is one of the streets that borders the Site. She will testify as to the large quantities of sediment that she observed flowing off Respondent's Site in storm water. She will also testify to the effects of storm water runoff from the Site to her property and Regis Drive. She will also testify as to photographs that she and her son have taken regarding the Site.

**5. Amalia Webster, resident of 5 Briarcliff St., Auburn, Massachusetts**

Ms. Webster is a resident of 5 Briarcliff St., Auburn, Massachusetts, which is one of the streets that borders the Site. She will testify as to her observations of storm water flowing off Respondent's Site. She will also testify as to the effects of storm water runoff from the Site to her property and Briarcliff St.

**6. David Pietrewicz, resident of 7 Grandview St., Auburn, Massachusetts**

Mr. Webster is a resident of 7 Grandview St., Auburn, Massachusetts. He will testify as to his observations with respect to changes in the quantity and nature of the storm water flow that runs behind his backyard after Respondent began development at the Site.

**Expert Witnesses**

Set forth below are the expert witnesses that the Complainant intends to call at hearing together with a brief narrative summary of each witness' expected testimony:

**7. Mary Medeiros, Financial Analyst, EPA Region 1**

Ms. Medeiros is expected to testify as to the economic benefit that Respondent accrued as a result of non-compliance with the CWA. If necessary, she will also be able to testify on Respondent's ability to pay the proposed penalty.

**8. Steven Couto, Environmental Engineer and the Regional Compliance Storm Water Coordinator, EPA Region 1**

Mr. Couto is expected to testify regarding EPA's Storm Water NPDES program, including, among other things, requirements of the federal storm water pollution prevention program.

**9. George Harding, Environmental Engineer, EPA Region 1**

Mr. Harding is a registered professional engineer and will testify as an expert in the area of general engineering practices and design related to drainage patterns, detention ponds, sloping and grading of construction sites, runoff co-efficients and other storm water related engineering practices. He will explain how he used GIS resources and modeling as the basis for his conclusions related to storm water and sediment runoff from the Site into the City of Auburn's MS4, which drains to waters of the U.S.

Complainant reserves the right to call any witnesses presented by Respondent.

**B. Documents and Exhibits**

Pursuant to Section 1(B) of the Prehearing Order, set forth below are documents that the Complainant intends to introduce into evidence at hearing (marked as "CX-1," etc., for "Complainant's Exhibit"):

1. June 12, 2006, letter from Nancy C. Sawyer, to Steven Couto, EPA, Region 1, with photographs (CX-1);

CX-1(a)-(k) a series of 11 color photographs provided to EPA by Ms. Sawyer in June 2006.

2. September 1, 2006, Stormwater Inspection, Bryn Mawr Estates, Auburn, Mass., prepared by Andrew Spejewski, with photographs, including field notes, and September 6, 2006, Addition to Storm Water Inspection Report (CX-2);

CX-2(a)-(x) a series of 24 color photographs printed from the digital images taken by Andrew Spejewski during the August 25, 2006, Stormwater Inspection of the Site.

3. December 20, 2006, letter from Deborah Brown, EPA Region 1, to Thomas Revane (CX-3);
4. January 30, 2007, letter from Thomas Revane to Andrew Spejewski, EPA Region 1 (CX-4) (copies of attachments reduced in size from originals);
5. March 31, 2007, letter from Deborah Brown, EPA Region 1, to Thomas Revane (CX-5);
6. May 10, 2007, letter from Thomas Revane to Andrew Spejewski, EPA Region 1 (CX-6);
7. September 28, 2007, Photo Log of Reconnaissance Inspection, Bryn Mawr Development, Auburn, Massachusetts (CX-7);

CX-7(a)-(uu) a series of 47 color photographs printed from the digital images taken by Andrew Spejewski during the September 28, 2007, Reconnaissance Inspection of the Site.

8. November 13, 2007, letter from Susan Studlien, EPA Region 1, to Thomas Revane and Finding of Violation and Order for Compliance (returned to sender) (CX-8);

9. December 31, 2007, Finding of Violation and Order for Compliance (CX-9);
10. December 31, 2007, letter from Susan Studlien, EPA Region 1, to Philip Weinberg, Massachusetts Department of Environmental Protection (CX-10);
11. January 3, 2007, proof of public notice and service filed with Regional Hearing Clerk (CX-11);
12. January 17, 2008, email from David Pietrewicz regarding Revane (CX-12);

CX-12(a)-(e) a series of one map and four color photographs printed from the digital images provided to EPA taken by Mr. Pietrewicz; January 21, 2008.

CX-12(f)-(m) a series of color photographs printed from the digital images provided to EPA taken by Mr. Pietrewicz April 7, 2008.

13. April 9, 2008, Inspection Report Bryn Mawr Estates Stormwater/Receiving Waters, by Andrew Spejewski, with photographs (CX-13);

CX-13(a)-(cc) a series of 29 color photographs printed from the digital images taken by Andrew Spejewski during the April 9, 2008, Inspection of Bryn Mawr Estates Stormwater/Receiving Waters.

14. NPDES General Permit for Storm Water Discharges From Construction Activities (2003) (CX-14);
15. NPDES General Permit for Storm Water Discharges From Construction Activities (as modified effective January 1, 2005) (CX-15);
16. NPDES General Permit for Storm Water Discharges From Construction Activities – Fact Sheet (CX-16);
17. Rainfall data collected at Worcester airport as compiled by the National Oceanic and Atmospheric Administration from September 1, 2004 to December 31, 2007 (CX-17);
18. Town of Auburn Stormwater Drainage System Map (CX-18);

19. Bryn Mawr Estates, Regis Drive and Briarcliff Drive, Auburn, Massachusetts, map created by EPA GIS Center (CX-19);
20. 2001 Aerial Photograph of the Site (CX-20);
21. 2007 Aerial Photograph of the Site (CX-21);
22. USGS Topographic Map of the Site (CX-22);
23. 2007 Aerial Photograph with USGS Topographic Map overlay (CX-23);
24. Bryn Mawr Estates, 2007 Aerial Photo & Soil Data (CX-24);
25. Revane Development Co., Inc. Annual Reports for 2006 and 2005 (CX-25);
26. Printouts from Revane Website on September 8, 2006 and March 28, 2008 (CX-26);
27. Delegation of Authority 2-52-A from the Administrator of EPA to Regional Administrators for Clean Water Act Class II Administrative Penalty: Initiation of Action; Public Notice; Consultation with State; Negotiation and Signing Consent Agreements; and Assessing Penalties dated May 11, 1994 (CX-27);
28. Delegation of Authority 2-52-A from the Regional Administrator to the Director, Office of Environmental Stewardship, and Others Class II Administrative Penalty: Initiation of Action; Public Notice; Consultation with State; Negotiation and Signing Consent Agreements; and Assessing Penalties dated November 6, 2000 (CX-28);
29. 64 Federal Register 68722-68802 (Dec. 8 1999) (National Pollutant Discharge Elimination System—Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges; Final Rule Report to Congress on the Phase II Storm Water Regulations; Notice) (CX 29);

30. Overview of the Storm Water Program, EPA 833-R-96-008 (June 1996) (CX-30);
31. Massachusetts Year 2006 Integrated List of Waters Final Listing of Conditions of Massachusetts' Water Pursuant to Sections 303(d) and 305(b) of the Clean Water Act (Excerpts) (CX-31);
32. April 10, 2008 email from Nancy Sawyer (CX-32);  
CX-32(a)-(e) a series five color photographs printed from the digital images provided to EPA taken by Ms. Sawyer April 4, 2008;
33. USGS Topographic Maps printed out by Andrew Spejewski using ArcGIS service (CX-33);
34. Aerial Photo printed out by Andrew Spejewski using ImageConnect (CX-34);
35. Mary Medeiros Resume (CX-35);
36. Steven Couto Resume (CX-36);
37. George Harding Resume (CX-37);

### **C. Proposed Hearing Location and Estimated Length of Hearing**

Pursuant to Section 1(C) of the Prehearing Order, and 40 C.F.R. §§ 22.19(d) and 22.21(d), EPA proposes that the hearing be held in either Worcester, or Boston, Massachusetts. The conduct that is the subject of this hearing occurred in Auburn, Massachusetts, which is approximately 10-15 minutes south of Worcester, Massachusetts, which is where Revane's business address is located. Worcester is approximately 45 miles/50 minutes west of Boston. Counsel for Revane and EPA are in Boston. Complainant believes that either Worcester or Boston would be appropriate and convenient for the hearing.

EPA estimates that it should take approximately two days to present its case.

COMPLAINANT'S PREHEARING EXCHANGE  
Docket No. CWA-01-2008-0027

US EPA Region 1  
One Congress St., Suite 1100  
Boston, MA 02114-2023

**2. ADDITIONAL INFORMATION REQUESTED AS PART OF INITIAL PREHEARING EXCHANGE**

The Presiding Judge's March 13, 2003 Prehearing Order requested that the following additional information be provided as part of Complainant's Initial Prehearing Exchange:

**A. a copy of the reissued NPDES General Permit for Storm Water from Construction Activities ("2003 CGP") as referenced in Paragraph 16 of the Complaint**

See CX-14 and CX-15.

**B. a copy of any report(s) of the August 25, 2006 Inspection of the Site as referenced in Paragraph 28 of the Complaint, and a copy of any documents, photographs, videos, field notes, maps, diagrams, and/or illustrations taken or created during the inspection;**

See CX-2.

**C. a copy of any documents, photographs, videos and/or field notes in support of EPA Inspector's observations of storm water with significant turbidity in the open-air channel during EPA's August 25, 2006 Inspection as referenced in Paragraph 30 of the Complaint;**

See CX-2(a) and CX-7(cc) through (hh).

**D. a copy of any documents, photographs, videos, field notes, maps, diagrams, and/or illustrations in support of the allegations in Paragraphs 31, 35 and 36 of the Complaint;**

Paragraph 31 relates to the pathway of storm water from the Site to waters of the United States. See CX-2, CX-6, CX-7, CX-12, CX-13, CX-18 through 23, CX-33 and CX-34.

Paragraph 35 relates to Revane's continued participation in construction activities at the Site since August 22, 2004. See CX-4 and CX-6.

Paragraph 36 relates to the allegation that Respondent's construction activities have resulted in the discharge of storm water associated with industrial activity to waters of the U.S. and that the pollutant-containing storm water is conveyed through ditches and the Town of Auburn's MS4 to such waters. See CX-1, CX-2, CX-4, CX-6, CX-7, CX-12, CX-13, CX18 through 23, CX-33, and CX-34.

**E. a copy of any documents in support of Complainant's allegation that Respondent has not prepared nor implemented a storm water pollution prevention plan ("SWPPP") for the Site as referenced in Paragraph 41 of the Complaint;**

See CX-2 through CX-4.

**F. a copy of any "penalty policy" upon which Complainant has relied upon, or intends to rely upon, in consideration of a proposed penalty assessment as referenced in Paragraph 46 of the Complaint;**

Complainant does not intend on relying upon any "penalty policy" in proposing an appropriate penalty. At the hearing, EPA intends to put on witnesses, as identified in this prehearing exchange, who will present testimony related to the statutory penalty factors in Section 309(g)(3) of the Act, and then argue in the post-trial brief what the appropriate penalty should be in light of the testimony and exhibits admitted as part of the evidentiary record during the hearing.<sup>1</sup>

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<sup>1</sup> *In re Larry Richner/Nancy Sheepbouwer & Richway Farms*, CWA Appeal No. 01-01, slip op. at 23 (EAB July 22, 2002) ("Because there are no CWA penalty guidelines, a CWA penalty must be calculated based upon the evidence in the record and the penalty criteria set forth in CWA § 309(g).") (citing *In re Pepperell Assoc.*, CWA Appeal Nos. 99-1 & 99-2, slip op. at 36 n.22 (EAB, May 10, 2000), aff'd *Pepperell Assoc. v. EPA*, 246 F.3d 15 (1st Cir. 2001); see also EPA, "Interim Clean Water Act Settlement Penalty Policy" (March 1, 1995) at 3 ("This Policy is not intended for use by EPA, violators, courts, or

As the Complaint filed in this action does not specify a proposed penalty, Complainant is submitting below, as required by 40 C.F.R. § 22.19(a)(4), an outline of the factual information relevant to the assessment of a penalty. In accordance with 40 C.F.R. § 22.19(a)(4), within 15 days after Respondent files its prehearing exchange, Complainant intends to file a document specifying a proposed penalty and explaining how the proposed penalty was calculated in accordance with any criteria set forth in the Act.

**1. Nature, circumstances, extent and gravity of the violations**

The testimony and exhibits will show that the Site is approximately 18 acres and is located near storm drains that discharge to waters of the U.S. The testimony and exhibits will show that these storm water discharges likely caused adverse impacts to these waters. The testimony and exhibits will show that the period of non-compliance exceeded three years. Testimony from neighbors to the Site will describe their observations with respect to storm water discharges from the Site and describe some of the adverse impacts of these discharges.

**2. Ability to Pay**

Complainant has no reason to believe that the Respondent is unable to pay the proposed amount without adverse effects on its ability to continue in business.

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administrative judges in determining penalties at a hearing or trial.”); EPA, “Clean Water Act Distinctions Among Pleading, Negotiating and Litigating Civil Penalties For Enforcement Cases” (January 19, 1989) at 1 (“[EPA] Counsel should support its arguments for the ‘litigation amount’ based upon reasoned application of the statutory penalty assessment criteria and citation of precedent, not through arithmetic calculations derived according to the CWA penalty settlement policy.”)

COMPLAINANT’S PREHEARING EXCHANGE  
Docket No. CWA-01-2008-0027

US EPA Region 1  
One Congress St., Suite 1100  
Boston, MA 02114-2023

**3. Prior History of Such Violations**

EPA has no information related to prior violations related to the CWA by Respondent.

**4. Degree of Culpability**

The testimony and exhibits will show that the company did not take timely steps to come into compliance with the applicable storm water permitting requirements after notification of such requirements. Despite an initial storm water compliance inspection in August 2006, and two subsequent information requests related to storm water compliance, it was not until after EPA filed the Complaint in this matter and issued an Order for Compliance that Respondent obtained coverage under the Construction General Permit.

**5. Economic Benefit or Savings**

The Regional Financial Analyst will provide testimony at hearing on economic benefit including use of the agency's BEN computer model.

**6. Such Other Matters as Justice May Require**

None are identified at this time.

**G. a copy of all documents Complainant intends to present in support of a penalty in this case;**

See CX-1 through CX-9; CX-12 through CX-26; CX-29 through CX-34.

**H. a statement regarding whether the Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. § 3501 *et seq.* applies to this proceeding, whether there is a current**

**Office of Management and Budget control number involved herein and whether the provisions of Section 3512 of the PRA are applicable to this case.**

The Paperwork Reduction Act (“PRA”), 44 U.S.C. § 3501 *et seq.*, is applicable to the National Pollutant Discharge Elimination System. The applicable Office of Management and Budget (“OMB”) control numbers and Information Collection Request (“ICR”) numbers are: National Pollutant Discharge Elimination System (NPDES)/Compliance Assessment/Certification Information (OMB Control No. 2040-0110, ICR Nos. 1427.05 & 1427.06) and Notice of Intent for Stormwater Discharges Associated with Construction Activity Under a NPDES General Permit EPA (OMB Control Number: 2040-0188, ICR Numbers 1842.01, 1842.02 & 1842.04).

OMB Control Number 2040-0110 was originally approved on September 23, 1996 (61 Fed. Reg. 54998 (October 23, 1996)) and was extended through February 29, 2004 (66 Fed. Reg. 18629 (April 10, 2001)). On February 26, 2004, EPA submitted a request to OMB for an emergency extension of the expiration date, which was approved the same day with a new expiration date of May 31, 2004. On May 17, 2004, EPA submitted a renewal request to OMB, which was approved September 28, 2004, with an expiration date of September 30, 2007. On September 27, 2007, EPA submitted a renewal request to OMB, which was approved February 6, 2008, with a current expiration date of February 28, 2011.

OMB Control Number 2040-0188 was originally approved on February 23, 1998 (63 Fed. Reg. 13045 (March 17, 1998)) and was extended through June 30, 2006 (68 Fed. Reg. 44076 (July 25, 2003)). On June 29, 2006, EPA submitted a request to OMB for an emergency extension of the expiration date, which was approved the same day with a

new expiration date of September 30, 2006. On July 13, 2006, EPA submitted a renewal request to OMB, which was approved November 1, 2006, with a current expiration date of November 30, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while a submission is pending at OMB, thus there was no lapse in the OMB approval of this ICR at any time during the period in question. *See* 5 C.F.R. § 1320.12(b)(2).

EPA has complied with section 3512 of the PRA control number display requirement by publishing the ICR and OMB approval numbers in the Federal Registers and 40 C.F.R. § 9.1. Displaying specific information regarding National Pollutant Discharge Elimination System (NPDES)/Compliance Assessment/Certification Information and Notice of Intent for Stormwater Discharges Associated with Construction Activity under a NPDES General Permit EPA is a regulatory “collection of information.” Since such display is regulatory rather than collection of information through forms or questionnaires, publishing the control number and the disclaimer statement in the Federal Register satisfies the display requirements in the OMB regulations, 5 C.F.R. § 1320.3(f)(3). Publication of the OMB approval in 40 C.F.R. part 9 is an alternative method of satisfying the display requirements. *See* 40 C.F.R. § 1320.5(b).

**3. RESERVATION**

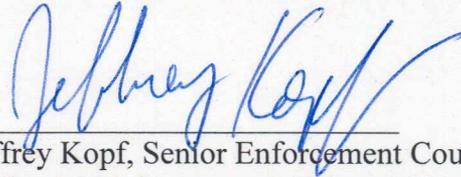
Complainant reserves its right to supplement this Initial Prehearing Exchange as provided in the Prehearing Order dated March 13, 2008, and as otherwise allowed by the rules of practice set forth at 40 C.F.R. § 22.19(f).

Respectfully submitted,

United States Environmental Protection Agency, Region 1, Complainant.

Date:

April 18, 2008



Jeffrey Kopf, Senior Enforcement Counsel  
Office of Environmental Stewardship (SEL)  
U.S. Environmental Protection Agency  
Region I  
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**In the Matter of: Revane Development Company, Inc.**  
**Docket Nos. CWA-01-2008-0027, 08-004**

**CERTIFICATE OF SERVICE**

I certify that the foregoing COMPLAINANT'S PREHEARING EXCHANGE was sent to the following persons, in the manner specified on the date below:

Original and one copy  
hand delivered:

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

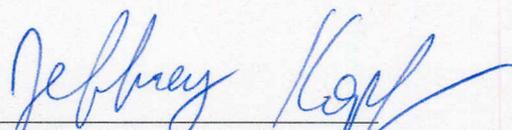
Copy, via first class mail, to:

The Honorable Susan L. Biro,  
Chief Administrative Law Judge  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Copy, via first class mail, to:

Amy Kwesell  
Rubin and Rudman LLP  
50 Rowes Wharf  
Boston, MA 02110-3319

Date: April 18, 2008

  
Jeffrey Kopf, Senior Enforcement Counsel  
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