



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

By HAND

March 31, 2015

Wanda Santiago, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region I (ORA 18-1)
5 Post Office Square, Suite 100
Boston, MA 02109-3912

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MAR 31 2015
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Office of Regional Hearing Clerk

Re: *In the Matter of: Bacon-Agostini Construction Co., Inc. and K.R. Rezendes, Inc.,
CWA-01-2015-0034*

Dear Ms. Santiago:

Enclosed for filing are the following original documents, and one copy of each, relating to the above-referenced matter:

1. Administrative Complaint and Notice of Opportunity for Hearing; and
2. Certificate of Service.

Kindly file the documents in the usual manner. I have also included a copy of the letter notifying the Massachusetts Department of Environmental Protection of the filing of this Complaint. Thank you very much for your help.

Sincerely,

A handwritten signature in blue ink that reads "William D. Chin".

William D. Chin
Enforcement Counsel

Enclosures

cc: George Agostini, Bacon-Agostini Construction Co., Inc., c/o Bacon Construction Co., Inc.
Steven Agostini, Bacon-Agostini Construction Co., Inc., c/o Agostini Construction Co., Inc.
James Rezendes, K.R. Rezendes, Inc.
Lisa Thuot, EPA Region 1

United States Environmental Protection Agency
Region 1

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MAR 31 2015

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_____)	
IN THE MATTER OF)	Docket No. CWA-01-2015-0034
)	
Bacon-Agostini Construction Co., Inc.,)	Administrative Complaint and
and K.R. Rezendes, Inc.)	Notice of Opportunity for Hearing
)	
Respondents.)	
)	
Somerset-Berkley Regional High School)	
Construction Site)	
625 County Street)	Proceeding to Assess Class II
Somerset, MA 02726)	Civil Penalty under Section 309(g)
_____)	of the Clean Water Act

COMPLAINT

I. STATEMENT OF AUTHORITY

1. This Administrative Complaint and Notice of Opportunity for Administrative Hearing (“Complaint”) is issued to Bacon-Agostini Construction Co., Inc. (“Bacon-Agostini”) and K. R. Rezendes, Inc. (“Rezendes”) (collectively, “Respondents”) pursuant to Section 309(g) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. Complainant is the Director, Office of Environmental Stewardship, United States Environmental Protection Agency (“EPA”), Region 1.

II. NATURE OF ACTION

2. The Complaint hereby notifies Respondents that EPA has determined that Respondents have violated Sections 301(a) and/or 308(a) of the CWA, 33 U.S.C. §§ 1311(a) and/or 1318(a), and 40 C.F.R. § 122.26 as well as the requirements of EPA’s current National Pollutant Discharge Elimination System (“NPDES”) General Permit for Storm Water Discharges

from Construction Activities (“CGP”). For these alleged violations, Complainant intends to seek civil penalties against Respondents pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. §1319(g)(2)(B).

3. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), Complainant will notify the Massachusetts Department of Environmental Protection (“MA DEP”) prior to the assessment of a penalty in this action.

4. The Notice of Opportunity for Hearing describes Respondents’ options to file an Answer to the Complaint and/or to request a formal hearing.

III. STATUTORY AND REGULATORY AUTHORITY

5. Section 301(a) of the CWA prohibits the discharge of pollutants by any person into the navigable waters of the United States except in compliance with, among other things, a NPDES permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

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

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

8. 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.” Forty C.F.R. § 122.2 further defines “waters of the United States” to include, among other things: (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; (ii) all inter-state waters; (iii) tributaries to such waters; and (iv) wetlands adjacent to such waters or their tributaries.

9. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

10. 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.”

11. Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), specifies that a NPDES permit is required for any stormwater “discharge associated with industrial activity.”
See also 40 C.F.R. § 122.26(a)(1)(ii).

12. 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, among other things, the development and issuance of NPDES permits pursuant to CWA section 402, 33 U.S.C. § 1342.

13. Pursuant to Sections 308(a) and 402 of the CWA, EPA promulgated stormwater discharge regulations at 40 C.F.R. § 122.26.

14. Forty C.F.R. § 122.26(b)(13) defines “storm water” to include storm water runoff, snow melt runoff, and surface runoff and drainage.

15. Forty C.F.R. § 122.26(b)(14)(x) defines “industrial activity” to include “construction activity” such as “clearing, grading and excavation” of land that results in, among other things, “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 plan will ultimately disturb five acres or more.”

16. Forty C.F.R. 122.26(c) requires dischargers of storm water associated with “industrial activity” to apply for an individual permit or to seek coverage under a promulgated general permit.

17. In February 1998, EPA issued the NPDES General Permit for Storm Water Discharges from Construction Activities (“CGP”), 63 Fed. Reg. 7858 (Feb. 17, 1998). EPA subsequently re-issued the CGP in 2003, 2008 and 2012. The 2012 CGP became effective on February 16, 2012 [See 77 FR 12286 (February 29, 2012)]. The 2012 CGP authorizes, subject to conditions contained therein, the discharge of pollutants in stormwater runoff associated with construction activities, including construction activities within the Commonwealth of Massachusetts (Permit Number: MAR100000).

18. Part 1.4 of the 2012 CGP requires “operators” to submit a notice of intent (“NOI”) to seek coverage for stormwater discharges associated with construction activities to EPA at least fourteen days prior to commencing construction.

19. Appendix A of the 2012 CGP defines “operator” as “any party associated with a construction project” that has 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 project that are necessary to ensure compliance with the permit conditions.”

20. Part 1.4.2 and Table 1 of the 2012 CGP requires the operator of a new construction project to submit a NOI and be authorized to discharge storm water from construction activities prior to the commencement of construction activities.

21. Prior to submitting an NOI, Part 7 of the 2012 CGP requires operators to develop an adequate stormwater 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: a list of all other site operators (Part 7.2.4); the sequence and estimated dates for construction activities (Part 7.2.5); a site map that includes, among other things,

stormwater discharge locations and locations of stormwater control measures (Part 7.2.6); and a description of all stormwater control measures that will be installed and maintained to meet the requirements of Part 2 of 2012 CGP (Part 7.2.10).

22. Part 2 of the 2012 CGP requires operators to “design, install, and maintain erosion and sediment controls that minimize the discharge of pollutants” from construction activities into the nation’s waters. The term “minimize,” as used in Part 2, is further defined in Appendix A as meaning “to reduce and/or eliminate to the extent achievable using control measures that are technologically available and economically practicable and achievable in light of the best industry practice.”

23. Part 2.1 of the 2012 CGP sets forth the general requirements for erosion and sediment control measures in the SWPPP including design requirements (Part 2.1.1.2), installation requirements (Part 2.1.1.3) and maintenance requirements (Part 2.1.1.4).

24. Part 2.1.2 of the 2012 CGP sets forth additional requirements for erosion and sediment control including minimizing the track-out of sediment onto off-site streets, other paved areas, and sidewalks from vehicles exiting a site (Part 2.1.2.3) and controlling discharges from stockpiled sediment or soil (Part 2.1.2.4).

25. Part 2.2 of the 2012 CGP sets forth requirements for the stabilization of exposed portions of a site. Part 2.2.1.1 of the 2012 CGP requires initiation of soil stabilization measures immediately whenever earth-disturbing activities have permanently or temporarily ceased on any portion of a construction site. Earth-disturbing activities have permanently ceased when clearing and excavation within any area of a construction site that will not include permanent structures has been completed. Earth-disturbing activities have temporarily ceased when clearing, grading, and excavation within any area of the site that will not include permanent structures will not

resume for a period of 14 or more calendar days, but such activities will resume in the future. In addition, Part 2.2.2 of the 2012 CGP sets forth the criteria for adequate stabilization.

26. Part 2.3 of the 2012 CGP sets forth requirements in the SWPPP for pollution prevention at a site including the prohibition against the discharge of wastewater from the washout of concrete, unless managed by an appropriate control (Part 2.3.1.1).

27. Part 7.3 of the 2012 CGP requires operators to keep a current copy of their SWPPP on the construction site or at an easily accessible location so that it can be made available at the time of an on-site inspection or upon request by EPA, or a state, tribal, or local agency approving stormwater management plans; or the operator of a storm sewer system receiving discharges from the site.

28. Part 7.4 of the 2012 CGP requires modifications of the SWPPP under certain conditions including: whenever changes to construction plans, stormwater control measures, pollution prevention measures, or other activities at the site no longer are accurately reflected in the 2012 CGP (Part 7.4.1.1); or if inspections or investigations by site staff, or by local, state, tribal, or federal officials determine that SWPPP modifications are necessary for compliance with the 2012 CGP (Part 7.4.1.3). Pursuant to 7.4.2 of the 2012 CGP, an operator must complete the required revisions to the SWPPP within 7 calendar days following the occurrence of any of the conditions listed in Part 7.4.1.

29. Section 309(g) of the CWA authorizes EPA to assess a civil penalty of up to \$10,000 per day of violation of Sections 301(a) and 308(a) of the CWA, and 40 C.F.R. § 122.26, up to a maximum penalty of \$125,000. Pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, violations of Sections 301(a) and 308(a) of the CWA, 40 C.F.R. § 122.26, and the 2012 CGP that occurred from January 13, 2009 through December 8,

2013 are subject to a penalty of up to \$16,000 per day of violation with a maximum penalty of \$187,500.

IV. GENERAL ALLEGATIONS

30. The Somerset-Berkeley Regional High School site is a municipal development located at 625 County Street in Somerset, Massachusetts (“the Site”). The project at the Site involves the construction of a new regional high school (the “Project”) at the Site. The estimated area to be disturbed at the Site for the Project is approximately 31.6 acres. The Site is bordered by four municipal roads: Luther Avenue to the north; Holland Road to the south; Prospect Street to the west; and County Street (Route 138) to the east.

31. The Site is owned by the Town of Somerset, Massachusetts (the Town”). The Somerset-Berkley Regional High School Building Committee (the “SBRHSBC”) was formed to oversee the funding and construction of the new regional high school at the Site.

32. On June 28, 2012, the Somerset-Berkley Regional School District (the “School District”) hired Bacon-Agostini as the general contractor for the Site.

33. Bacon-Agostini is a joint venture comprised of two corporations: Bacon Construction Company, Inc., and Agostini Construction Company, Inc. Both companies are incorporated in the State of Rhode Island. Bacon Construction Company, Inc. has its principal place of business at 241 Narragansett Park Drive in East Providence, Rhode Island. Agostini Construction Company, Inc., has its principal place of business at 243 Narragansett Park Drive in East Providence, Rhode Island.

34. On or about July 17, 2012, Bacon-Agostini hired Rezendes as a subcontractor for the Site. Rezendes is primarily responsible for the development and updating of the SWPPP for the

Site as well as the installation and maintenance of erosion control and stormwater control measures.

35. Rezendes is a Massachusetts corporation with a principal place of business at 3 Sammy's Lane in Assonet, Massachusetts.

36. Bacon-Agostini and Rezendes are "persons" as defined at Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

37. On July 11, 2012, Rezendes electronically submitted its NOI to EPA for coverage under the 2012 CGP for the Site, with a tracking number of MAR12AB58. Rezendes subsequently received an email letter from EPA confirming submission of its NOI and stating that coverage under the 2012 CGP would begin on August 8, 2012. Bacon-Agostini, however, did not apply for an individual NPDES permit or submit an NOI to EPA for coverage under the 2012 CGP for the Site prior to the commencement of construction activity at the Site.

38. On or about July 16, 2012, Respondents began installing hay bales and silt fences along the perimeter of the Site. On or about July 18, 2012, Respondents began construction activities at the Site including installing the construction site access road and clearing land, and removing trees and stumps.

39. Accordingly, Respondents have either directed or participated directly in construction activities at the Site, including grubbing, clearing, grading, filling, and excavation activities, that have resulted in the disturbance of greater than five acres of total land area.

40. Since at least July 16, 2012, Bacon-Agostini has had operational control over the construction plans and specifications for the Project, including the ability to make modifications to those plans and specifications.

41. Since at least July 16, 2012, Respondents have had day-to-day operational control of the construction activities at the Site that are necessary to ensure compliance with the 2012 CGP, including the development of a SWPPP for the Site and the installation and maintenance of erosion control measures.

42. Accordingly, Respondents are “operators” at the Site as defined at Appendix A the 2012 CGP and 40 C.F.R. § 122.2.

43. The construction activities at the Site are “industrial activities” as defined at 40 C.F.R. § 122.26(b)(14)(x).

44. These construction activities at the Site have resulted in the discharge of “storm water associated with industrial activity” within the meaning of Forty C.F.R. 122.26(c).

45. The stormwater discharges from the Site are “storm water discharges from an industrial activity,” as defined at 40 C.F.R. § 122.26(b)(14)(x).

46. The stormwater discharges from the Site are conveyed through ditches, culverts, swales, gullies, and channels through disturbed areas of the Site and are contaminated with sand, dirt, sediment, suspended solids, residues of construction material, and turbidity. The stormwater discharges from the Site flow offsite into various storm drains for the Town’s municipal separate storm sewer system (“Somerset MS4”).

47. The sand, dirt, sediment, suspended solids, residues of construction material, and turbidity contained in the stormwater discharges from the Site are “pollutant[s]” within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6). The stormwater discharges from the Site result in the “discharge of pollutants,” as defined at Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

48. The ditches, culverts, swales, gullies, and channels at the Site and the various storm drains/catch basins for the Somerset MS4 are “point source[s]” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

49. The stormwater discharges from the Site flow offsite into various storm drains for the Somerset MS4 which in turn discharge into either Breeds Cove Brook and/or Buffington Brook. Both Breeds Cove Brook and Buffington Brook flow into the Taunton River which in turn empties into the Atlantic Ocean.

50. Breeds Cove Brook, Buffington Brook, the Taunton River, and the Atlantic Ocean are all “waters of the United States” as defined by 40 C.F.R. § 122.2 and are “navigable waters,” as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

51. On August 15, 2012, a wet weather event occurred in the Somerset area, and sediment discharged from the Site into catch basins for the Somerset MS4.

52. On August 16, 2012, the Somerset Conservation Commission (the “ConCom”) issued a Massachusetts Wetlands Protection Act (“WPA”) Enforcement Order (the “1st EO”) to Bacon-Agostini regarding the “[f]lushing of catch basins” around the Project after a major rain storm on August 15, 2012. The 1st EO stated: “Catch basins were filled with very muddy runoff from project resulting in muddy waters being disbursed into the Taunton River via the Breed’s Cove drainage brook. The result is deep discoloration of the surrounding waters near the drain pipe.”

53. On August 16, 2012, the Town Conservation Agent delivered the 1st EO to the Site to a representative at the site for Skanska USA Building, Inc. (“Skanska”), a project management firm that is serving as a consultant and advisor to the SBRHSC on the Project. Skanska maintains an office trailer at the Site. While delivering the 1st EO, the Town Conservation Agent

requested a copy of a SWPPP for the site to review. The site representative for Skanska was unable to provide a copy of the SWPPP for the site.

54. On August 17, 2012, the ConCom issued another WPA Enforcement Order to Bacon-Agostini (the "2nd EO") requiring the company to "[i]nstall erosion control around piles of fill immediately and perimeter of work area" and to immediately stabilize the piles of fill. The 2nd EO also stated that "[s]iltation devices should be immediately installed further away from the project than what already exists" and that a stormwater management plan be made available to the ConCom as soon as possible.

55. On September 5, 2012, another wet weather event occurred in the Somerset area and sediment discharged from the Site.

56. A Site stormwater inspection report prepared by Rezendes on September 5, 2012 noted that sediment basins "overflowed," and hay bale dams, stone check dams, and 1.5 inch stone rip-rap dams were "breached."

57. On October 3, 2012, EPA Region 1 conducted a CWA compliance inspection of the Site to evaluate Respondents' compliance with the 2012 CGP (the "EPA Inspection").

58. At the time of the EPA Inspection, the southern end of the Site (bordering Holland Road) was situated at a lower elevation than the school building construction area. This area contained several medium-sized, unstabilized loam stockpiles, a settling pond ("Settling Pond #1"), a rip-rap/crushed stone settling area, and two concrete truck wash-out pits. The loam stockpiles were being temporarily stored until the material was re-spread on other areas of the Site. Drainage swales around the loam stockpiles flowed into Settling Pond #1, which was filled to capacity and overflowing at the time of the EPA Inspection.

59. At the time of the EPA Inspection, three Somerset MS4 catch basins located on Holland Road near the large loam stockpile, the school driveway, and the Site entrance for construction vehicles had an accumulation of leaves, debris and sediment and required cleaning/maintenance.

60. At the time of the EPA Inspection, immediately west of a large loam stockpile was a steep, unstabilized slope located below a temporary employee parking lot along the Holland Road section of the Site perimeter.

61. At the time of the EPA Inspection, a temporary, paved parking lot for teachers (constructed in September 2012) was located on the east perimeter of the Site along County Street. Down gradient of the parking lot, residual sediment had accumulated behind the hay bales and silt fence in the northeast corner of the Site (near the intersection of County Street and Luther Avenue).

62. At the time of the EPA Inspection, the Site SWPPP: (1) only identified Rezendes as an operator for the Site and did not contain a description of any other operator for the Site (i.e., the Site SWPPP did not describe Bacon-Agostini as an operator for the Site); (2) did not contain a complete sequence and estimated dates of construction activities (i.e. earth-disturbing activities, stabilization) at the Site; (3) did not contain complete descriptions and/or was missing descriptions of the stormwater control measures to be installed and maintained during construction activity, (e.g., no design descriptions of Settling Ponds #1 and #2) to meet the requirements of Part 2 of the 2012 CGP; (4) did not contain an adequate SWPPP site map that included the locations of stormwater control measures (i.e. settling ponds, velocity dissipation features) and stormwater discharge points/outfalls.

63. On or about December 19, 2012, Respondents cleared the area at the Site where the school's athletic fields had been located (on the western perimeter of the Site along Prospect Street). The area was graded to divert any runoff to Settling Pond #1 via diversion swales. Respondents, however, did not initiate any temporary stabilization measures for the exposed soils and large stockpiles of soil at that time.

64. On December 21, 2012, January 15, 2013, and January 17, 2013, turbid sediment plumes flowed from the Breed's Cove Brook outfall into the Taunton River (near the intersection of County Street and Riverside Ave.).

65. On March 28, 2013, Complainant issued a CWA Administrative Order (the "AO") to Respondents pursuant to Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3). The AO required, among other things, Bacon-Agostini and/or Rezendes to: apply for permit coverage; ensure that all Site stormwater controls were in effective operating condition and perform maintenance on the controls to correct issues identified during the EPA Inspection; develop a plan to stabilize the area where the former athletic fields were located; submit an updated Site SWPPP to EPA Region 1; and evaluate existing stormwater controls and assess whether additional measures were necessary to control and treat stormwater discharges from the Site.

66. On April 11, 2013, Bacon-Agostini submitted an NOI to EPA for coverage under the 2012 CGP for the Site. Bacon-Agostini's coverage under the 2012 CGP began on April 25, 2013.

67. On April 26, 2013, Respondents submitted their responses to the AO (the "AO Responses") to Complainant.

68. On September 11, 2013, Complainant issued a CWA Information Request to Respondents (the "308 Letter") pursuant to Section 308(a) of the CWA.

69. On October 23, 2013, Respondents submitted their responses to the 308 Letter (the "308 Responses"). The 308 Responses included an updated Site SWPPP as well as a chart ("Attachment B") identifying all of the Site's sediment and erosion controls, installation dates, any changes to the controls, and the modification dates. Attachment B indicated that at least 8 out of the 12 erosion and sediment controls at the Site had been installed after the initiation of construction activities (July 2012), and that 9 out of the 12 had also been modified after being installed.

70. Based on the EPA Inspection, the AO Responses, the 308 Responses, as well as other information and documents obtained from Respondents and other sources, Complainant has identified the following violations of the CWA, Part 122 and the 2012 CGP:

V. VIOLATIONS:

Count 1 – Failure to Apply for and Obtain Permit/Discharge without Permit

71. Paragraphs 1 through 70 above are incorporated by reference as if fully set forth herein.

72. By failing to apply for an individual permit or to submit an NOI under Part 1.4 of the 2012 CGP seeking coverage for the Site under the 2012 CGP from at least July 18, 2012 until April 11, 2013, Bacon-Agostini violated 40 C.F.R. § 122.26(c) and Section 308(a) of the CWA.

73. By discharging storm water associated with industrial activity into waters of the U.S. without authorization under an NPDES permit from at least July 18, 2012 until April 25, 2013, Bacon-Agostini violated Section 301(a) of the CWA.

Count 2 – Failure to Comply with 2012 CGP

74. Paragraphs 1 through 73 above are incorporated by reference as if fully set forth herein.

75. By failing to include a complete sequence and estimated dates of construction activities (i.e. earth-disturbing activities, stabilization) at the Site in the Site SWPPP, Rezendes violated Part 7.2.5 of the 2012 CGP from at least July 2012 until October 2013, and Bacon-Agostini violated Part 7.2.5 of the 2012 CGP from at least April 2013 until October 2013.

76. By failing to include a complete description of and/or missing descriptions of the stormwater control measures to be installed and maintained during construction activity, (i.e. sediment controls, stabilization techniques) to meet the requirements of Part 2 of the 2012 CGP in the Site SWPPP, Rezendes violated Part 7.2.10 of the 2012 CGP from at least July 2012 until October 2013, and Bacon-Agostini violated Part 7.2.10 of the 2012 CGP from at least April 2013 until October 2013.

77. By failing to include an adequate site map that included the locations of stormwater control measures (i.e. settling ponds, velocity dissipation features) and stormwater discharge points/outfalls in the Site SWPPP, Rezendes violated Part 7.2.6 of the 2012 CGP from at least July 2012 until October 2013, and Bacon-Agostini violated Part 7.2.6 of the 2012 CGP from at least April 2013 until October 2013.

78. By failing to make the Site SWPPP available on-site when it was requested by the Town Conservation Agent on August 16, 2012, Rezendes violated Part 7.3 of the 2012 CGP.

79. By failing to modify the Site SWPPP to describe the installation of new erosion control measures and changes to existing erosion control measures at the Site (as listed in Attachment B), Rezendes violated Parts 7.4.1.1 and 2.1.1.4.b.ii of the 2012 CGP from at least

July 2012 until October 2013, and Bacon-Agostini violated Parts 7.4.1.1 and 2.1.1.4.b.ii of the 2012 CGP from at least April 2013 until October 2013.

80. By failing to adequately design, install, and maintain erosion and sediment controls that minimize the discharge of pollutants from earth-disturbing activities at the Site from at least July 2012 through January 2013, Rezendes violated Part 2.1 of the 2012 CGP.

81. By failing to install Settling Pond #1 and velocity dissipation controls for the Site Yard Drain (i.e. rip-rap swale and inlet protection) prior to the commencement of construction and earth-disturbing activities from at least July 2012 until December 2012, Rezendes violated Part 2.1.1.3 of the 2012 CGP.

82. By failing to design Settling Pond #1 to meet the proper erosion and sediment control design requirements from at least August 2012 until December 2012, Rezendes violated Parts 2.1.1.2 and 2.1.3.2 of the 2012 CGP.

83. By failing to ensure that all sediment and erosion controls were maintained and/or remained in effective operating condition from at least July 2012 until January 2013, Rezendes violated Part 2.1.1.4.a of the 2012 CGP.

84. By failing to stabilize the soil stockpiles located near Settling Pond #1 and the exposed soil by the temporary employee parking lot from at least July 2012 until October 2012, Rezendes violated Part 2.2 of the 2012 CGP.

85. By failing to stabilize the large soil stockpile located along the Holland Road perimeter of the Site from at least July 2012 until September 2012, Rezendes violated Part 2.2 of the 2012 CGP.

86. By failing to stabilize the exposed soil where the former athletic fields had been located from at least December 2012 until January 2013, Rezendes violated Part 2.2 of the 2012 CGP.

87. By failing to prevent the track-out of sediment by construction equipment from the Site onto Holland Road from at least July 2012 until October 2012, Rezendes violated Part 2.1.2.3 of the 2012 CGP.

88. By discharging stormwater associated with industrial activity into waters of the U.S. in violation of the terms and conditions of a permit issued pursuant to Section 402 of the CWA, and by failing to comply with all the conditions in the 2012 CGP, Rezendes violated Section 301(a) of the CWA from at least July 2012 until October 2013, and Bacon-Agostini violated Section 301(a) of the CWA from at least April 2013 until October 2013.

VI. PROPOSED CIVIL PENALTY

89. Based on the foregoing allegations and pursuant to the authority of Section 309(g) of the CWA, 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, and 40 C.F.R. Part 19), Respondents are subject to civil penalties of up to \$16,000 per day for each violation that occurred from January 13, 2009 through December 8, 2013, up to a maximum penalty of \$187,500.

90. Complainant is seeking a penalty from Respondents of up to \$16,000 for each day of violation for at least 463 days (from July 18, 2012 through October 23, 2013) up to a maximum penalty of \$187,500.

91. In determining the amount of the penalty to be assessed under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Complainant will take into account the statutory factors

listed in Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3). These factors include the nature, circumstances, extent and gravity of the violation, or violations, and Respondents' prior compliance history, the degree of culpability for the cited violations, any economic benefit or savings accruing to Respondents resulting from the violations, Respondents' ability to pay the proposed penalty, and such other matters as justice may require.

92. The violations alleged represent significant violations of the CWA because of the extent and duration of the violations and because compliance with the federal stormwater program is important to ensuring that stormwater runoff does not contribute to the impairment of water quality to waters of the United States.

93. Prior to any hearing in this matter, Complainant will file a document specifying a proposed penalty for the CWA violations and explaining how the proposed penalty was calculated, as required by the Consolidated Rules of Practice.

VII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

94. As provided by Section 309(g)(2)(B) of the CWA, and in accordance with 40 C.F.R. § 22.14, Respondents have a right to request a hearing on any material fact alleged in this Complaint. Any such hearing would be conducted in accordance with EPA's Consolidated Rules of Practice, 40 C.F.R. Part 22, a copy of which is enclosed with this Complaint. Any request for a hearing must be included in Respondents' written Answer to this Complaint ("Answer") and filed with the Regional Hearing Clerk at the address listed below within thirty (30) days of receipt of this Complaint.

95. In their Answer, Respondents may also: (1) dispute any material fact in the Complaint; (2) contend that the proposed penalty is inappropriate; or (3) contend that they are entitled to judgment as a matter of law. The Answer must clearly and directly admit, deny, or

explain each of the factual allegations contained in this Complaint of which Respondents have any knowledge. If Respondents have no knowledge of a particular factual allegation and so states, the allegation is considered denied. The failure to deny an allegation constitutes an admission of that allegation. The Answer must also include the grounds for any defense and the facts Respondents intend to place at issue.

96. The original and one copy of the Answer, as well as a copy of all other documents that Respondents file in this action, must be sent to:

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

97. After the Answer has been filed, the original and one copy of all other documents filed in this action (except for any Consent Agreement and Final Order settling the case) must be sent to the Headquarters Hearing Clerk, in the following manner:

For U.S. Postal Service mailings:

Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Mail Code 1900R
1200 Pennsylvania Ave., NW
Washington, DC 20460

For UPS, FedEx, DHL or other courier, or personal delivery:

Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Rm. M1200
1300 Pennsylvania Ave., NW
Washington, DC 20460

98. Respondents should also send a copy of the Answer, as well as a copy of all other documents that Respondents file in this action, to William Chin, the attorney assigned to represent Complainant in this matter and who is designated to receive service, at:

William D. Chin
Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square - Suite 100
Mail Code: OES04-4
Boston, MA 02109-3912

99. If Respondents fail to file a timely Answer to this Complaint, they may be found to be in default, which constitutes an admission of all the facts alleged in the Complaint and a waiver of the right to a hearing.

100. The filing and service of documents, other than the complaint, rulings, orders, and decisions, in all cases before the Region 1 Regional Judicial Officer governed by the Consolidated Rules of Practice may be filed and served by email, consistent with the "Standing Order Authorizing Filing and Service by E-mail in Proceedings Before the Region 1 Regional Judicial Officer," a copy of which has been provided with the Complaint.

101. Pursuant to 40 C.F.R. § 22.17(d), the penalty assessed in any default order shall become due and payable by Respondents without further proceedings thirty (30) days after the default order becomes final.

VIII. CONTINUED COMPLIANCE OBLIGATION

102. Neither assessment nor payment of a civil penalty pursuant to Section 309(g) of the CWA shall affect any Respondent's continuing obligation to comply with the CWA, the regulations promulgated thereunder, or any other applicable Federal, State or local law.

Date: 03/27/15

Susan Studien
Susan Studien
Director, Office of Environmental Stewardship
U.S. EPA, Region 1