

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

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In the Matter of:	:	Proceeding to Assess Class II
Recycled Aggregates, LLC,	:	Administrative Penalty Under
	:	Section 309(g) of the Clean Water Act
and	:	
John Driggs Company,	:	Docket No. CWA-03-2016-0040
	:	
Respondents.	:	<b>ADMINISTRATIVE PENALTY</b>
	:	<b>COMPLAINT</b>
Property Location:	:	<b>AND NOTICE OF OPPORTUNITY TO</b>
1721 South Capitol St., S.W.	:	<b>REQUEST HEARING</b>
Washington, DC 20003	:	

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**I. STATUTORY AUTHORITY**

1. Pursuant to Section 309(g) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency (“EPA” or “the Agency”) is authorized to assess administrative penalties against persons who violate Section 301(a) of the Act, 33 U.S.C. § 1311(a). The EPA Administrator has delegated this authority to the Regional Administrator of EPA, Region III, who in turn has delegated this authority to the Water Protection Division Director (“Complainant”).
2. Pursuant to Section 309 of the Act, 33 U.S.C. § 1319, and in accordance with the enclosed *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* (“Consolidated Rules”), 40 C.F.R. Part 22, Complainant hereby proposes to assess a civil penalty in the amount of \$54,000 (fifty-four thousand dollars) against Recycled Aggregates, LLC and John Driggs Company (together, “Respondents”), for violations of Section 301 of the CWA, 33 U.S.C. § 1311.

**II. FACTUAL AND LEGAL ALLEGATIONS**

3. Respondent Recycled Aggregates, LLC is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. section 122.2.

4. Respondent John Driggs Company is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. section 122.2.
5. The John Driggs Company, Inc. is the 95% owner of Recycled Aggregates LLC.
6. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (“NPDES”) program under Section 402 of the Act, 33 U.S.C. § 1342.
7. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States or may authorize states to issue such permits. The discharges are subject to specific terms and conditions as prescribed in the permit.
8. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. sections 122.2 and 122.26 provide that, with some exceptions not relevant here, storm water discharges are “point sources” subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).
9. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).
10. “Discharge of a pollutant” includes “any addition of any ‘pollutant’ or combination of pollutants to ‘waters of the United States’ from any ‘point source’”. 40 C.F.R. § 122.2.
11. Respondents own and/or operate a business processing rock, crushed stone, crushed concrete, sand, and gravel at a facility known as “DC Rock”, located at 1721 South Capitol Street, SW, Washington, DC 20003 (“the Facility”).
12. The Standard Industrial Classification (“SIC”) code number assigned to the Facility is 1429.
13. Facilities classified as SIC code categories 10 through 14 are considered to be engaging in “industrial activity” within the meaning of Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. section 122.26(b)(14)(iii). SIC code number 1429 is such a classification.
14. The Anacostia River is considered a “water of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. section 122.2.
15. The Facility is a “point source” as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. section 122.2.
16. Respondents, as the owners and/or operators of the Facility, “discharged” “pollutants” with storm water runoff as those terms are defined at Sections 502(6) and 502(16) of the Act, 33 U.S.C. §§ 1362(6) and 1362(16), and 40 C.F.R. section 122.2.

17. Therefore, Respondents were required to obtain NPDES permit coverage prior to discharging any pollutants from a point source to a water of the United States as a result of an industrial activity.
18. Pursuant to Sections 402(a) and 402(p) of the Act, 33 U.S.C. §§ 1342(a) and 1342(p), as well as 40 C.F.R. section 122.26(b)(14), EPA issued a Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity (“MSGP”) effective September 29, 2008 (“the 2008 Permit” or “the 2008 MSGP”). The 2008 Permit authorized discharges of storm water associated with construction activities, but only in accordance with the conditions of the 2008 Permit.
19. The 2008 Permit replaced the prior MSGP, effective October 30, 2000 (hereinafter, “the 2000 Permit” or “the 2000 MSGP”).
20. The 2008 Permit required that existing dischargers authorized for coverage under the 2000 MSGP must submit a Notice of Intent (“NOI”) for coverage under the 2008 MSGP no later than January 5, 2009. 2008 MSGP at Part 1.3, Table 1-2.
21. Respondents were existing dischargers with coverage for the Facility under the 2000 MSGP.
22. On September 19, 2012, representatives of EPA Region III and EPA contractors from ERG (“the Inspection Team”) conducted an inspection at the Facility (“the Inspection”).
23. After a review of its records, EPA determined that Respondents did not have an NPDES permit for discharges of storm water from the Facility, nor had the Respondents applied for coverage for its discharges of storm water under the 2008 MSGP.
24. On or about September 21, 2012, Respondents submitted an NOI for coverage for the Facility under the 2008 Permit.
25. EPA determined that the Facility was eligible for coverage under the 2008 Permit, effective October 21, 2012, and assigned the Facility Permit Tracking Number DCR05AA06.
26. The Inspection Team prepared an inspection report from the Inspection (“the Inspection Report”).
27. EPA sent a copy of the Inspection Report to Respondent Recycled Aggregates, LLC on March 25, 2013.
28. As documented in the Inspection Report, storm water discharges from the Facility have flowed to the Washington, D.C. municipal separate storm sewer system (“DC MS4”), which ultimately discharges to the Anacostia River.

29. On July 31, 2014, EPA sent an Information Requirement letter pursuant to Section 308 of the Act, 33 U.S.C. § 1318, to the John Driggs Company.
30. On September 18, 2014, EPA received information in response to the Information Requirement letter.

### **III. FINDINGS OF VIOLATION**

#### **Discharge Without a Permit (2011-2012)**

31. The 2008 Permit required that existing dischargers authorized for coverage under the 2000 MSGP must submit an NOI for coverage under the 2008 MSGP no later than January 5, 2009. 2008 MSGP at Part 1.3, Table 1-2.
32. Respondents were existing dischargers with coverage for the Facility under the 2000 MSGP.
33. Respondents submitted an NOI for the Facility for coverage under the 2008 MSGP on September 21, 2012.
34. Based upon the information obtained during the Inspection and from the review of the information received in response to the Information Requirement letter, Respondents failed to submit an NOI for the Facility by January 5, 2009.
35. Respondents' failure to submit an NOI for the Facility by January 5, 2009 constitutes violations of the 2008 Permit and Section 301 of the Act, 33 U.S.C. § 1311. Respondents have violated Section 301 of the Act, 33 U.S.C. § 1311, by discharging storm water from its facility to a water of the United States without first obtaining an NPDES permit and/or authorization under the MSGP.

### **IV. PROPOSED CIVIL PENALTY**

36. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (28 U.S.C. § 2461), and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, violations that are assessed penalties under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), subject the violator to civil penalties in an amount not to exceed \$177,500 per proceeding for violations that occurred after January 12, 2009 and through December 6, 2013.
37. Based upon the foregoing allegations, pursuant to the authority of Section 309(g)(2)(B) of the CWA and in accordance with the enclosed *Consolidated Rules*, 40 C.F.R. Part 22,

Complainant hereby proposes to issue a Final Order Assessing Administrative Penalties to the Respondents in the amount of \$54,000 (fifty-four thousand dollars) for the violations alleged herein. This does not constitute a “demand” as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

38. The proposed penalty was determined after taking into account the nature, circumstances, extent, and gravity of the violations, Respondents’ prior compliance history, ability to pay the proposed penalty, degree of culpability for the cited violations, and any economic benefit or savings to Respondents because of the violations. 33 U.S.C. § 1319(g)(3). To the extent that facts or circumstances unknown to Complainant at the time of issuance of this Complaint become known after issuance of this Complaint, such facts or circumstances may also be considered as a basis for adjusting the proposed penalty.
39. If warranted, EPA may adjust the proposed penalty assessed in this Complaint. In so doing, the Agency will consider any number of factors in making this adjustment, including Respondents’ ability to pay. However, the burden of raising the issue of an inability to pay and demonstrating this fact rests with the Respondents.
40. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, shall affect Respondents’ continuing obligation to comply with the CWA, any other Federal or State laws, and/or with any separate Compliance Order issued under Section 309 of the Act, 33 U.S.C. § 1319, for the violations alleged herein.

#### **V. SETTLEMENT CONFERENCE**

41. EPA encourages settlement of proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the CWA. Whether or not a hearing is requested, Respondents may request a settlement conference to discuss the allegations of the Complaint and the amount of the proposed civil penalty. However, a request for a settlement conference does not relieve Respondents of the responsibility to file a timely Answer to the Complaint.
42. If Respondents wish to arrange a settlement conference or if Respondents have any questions related to this proceeding, Respondents may contact the attorney assigned to this case, as indicated in Section VI, following Respondents’ receipt of this Complaint.
43. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator or his designee. The execution of such a Consent Agreement shall constitute a waiver of Respondents’ right to contest the allegations of the Complaint or to appeal the Final Order accompanying the Consent Agreement.

**VI. ANSWER TO COMPLAINT AND  
NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

44. Pursuant to Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), Respondents may request a hearing on the proposed civil penalty within thirty (30) days of receiving this Complaint in accordance with the procedures contained in 40 C.F.R. Part 22. At the hearing, Respondents may contest any material fact contained in this Complaint, and the appropriateness of the penalty amount proposed in Section IV (“Proposed Civil Penalty”).
45. If Respondents request a hearing on this proposed penalty assessment, members of the public to whom EPA is obligated to give notice of this proposed action and a reasonable opportunity to comment pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and who have commented upon the proposed penalty assessment, will have an opportunity to be heard and to present evidence on the appropriateness of the penalty assessment. 33 U.S.C. § 1319(g)(4)(B).
46. If Respondents do not request a hearing, members of the public who submit timely comments on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon. 33 U.S.C. § 1319(g)(4)(C); 40 C.F.R. § 22.45(c). EPA will grant the petition and will hold a hearing if the petitioner’s evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.
47. Hearing procedures are described in the *Consolidated Rules*, 40 C.F.R. Part 22, a copy of which is enclosed.
48. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with respect to which the Respondents have any knowledge, or clearly state the Respondents have no knowledge as to particular factual allegations in the Complaint. Where Respondents have no knowledge of a particular factual allegation and so states, the allegation is deemed denied. The Answer must also state the following:
  - a. The specific factual and legal circumstances or arguments which are alleged to constitute any grounds of defense;
  - b. The facts that Respondents dispute;
  - c. The basis for opposing any proposed relief; and
  - d. Whether a hearing is requested.

**Failure to admit, deny, or explain any material factual allegations in the Complaint constitutes admission of such allegations.**

49. The Answer and any request for hearing must be filed within thirty (30) days of service of this Complaint with the following:

Regional Hearing Clerk (3RC00)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

50. A copy of the Answer, any request for hearing, and any subsequent documents filed in this action shall also be sent to the following:

Kelly Gable  
Assistant Regional Counsel (3RC20)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

Ms. Gable also may be reached by telephone at (215) 814-2471, by facsimile at (215) 814-2603, and by e-mail at [gable.kelly@epa.gov](mailto:gable.kelly@epa.gov).

51. Failure to file an Answer within thirty (30) days of service of this Complaint may result in issuance of a default order against Respondents. Default by the Respondents constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondents' right to contest such factual allegations. Upon issuance of a default order, the civil penalty proposed herein shall become due and payable without further proceedings thirty (30) days after the default order becomes final. Respondents' failure to pay the entire penalty assessed by the default order by its due date will result in a civil action to collect the assessed penalty, plus interest, attorney's fees, costs, and an additional quarterly nonpayment penalty pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9). In addition, a default penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.
52. Pursuant to 31 U.S.C. section 3717 and 40 C.F.R. section 13.11, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on any unpaid amount if it is not paid within thirty (30) calendar days of Respondents' receipt of notice of filing of an approved copy of an Order assessing Administrative Penalties with the Regional Hearing Clerk. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. section 13.11(a). Moreover, the costs of the

Agency's administrative handling of overdue debts, based on either actual or average cost incurred, will be charged on all debts. 40 C.F.R. § 13.11(b). In addition, a penalty will be assessed on any portion of the debt that remains delinquent more than ninety (90) calendar days after payment is due. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge of the debt be required, it will be assessed as of the first day payment is due pursuant to 40 C.F.R. section 102.13(e). Furthermore, pursuant to Chapter 9 of EPA's Resource Management Directive System policy on cash management (RMDS No. 2540-09), EPA will assess a \$15.00 handling charge for administrative costs on unpaid penalties for the first 30-day period after a payment is due and an additional \$15.00 for each subsequent 30 days the penalty remains unpaid.

## VII. QUICK RESOLUTION

53. If Respondents do not contest the findings and assessments set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 C.F.R. section 22.18 and this paragraph. No such payment may be made until ten (10) days after the close of the public comment period provided for under 40 C.F.R. section 22.45. If Respondents elect to resolve this action by paying the proposed penalty in full pursuant to 40 C.F.R. section 22.18, no Answer need be filed, provided that Respondents file, within thirty (30) days after service of the Complaint, a statement pursuant to 40 C.F.R. section 22.18(a)(2) agreeing to pay the proposed penalty in full. Upon receipt of such a statement from Respondents, but no sooner than ten (10) days after close of the public comment period and subject to any comments received, Complainant will cause a final order to be issued. 40 C.F.R. §§ 22.18(a)(3) and 22.31. If Respondents file a statement pursuant to 40 C.F.R. section 22.18(a)(2), Respondents shall pay the penalty no sooner than ten (10) days after the close of the public comment period and no later than sixty (60) days after receipt of the Complaint.
54. If Respondents wish to file a statement pursuant to 40 C.F.R. section 22.18(a)(2), agreeing to pay the proposed penalty in full, such statement shall be filed with the following:

Regional Hearing Clerk (3RC00)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

and a copy shall be provided to:

Kelly Gable  
Assistant Regional Counsel (3RC20)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029



55. Payment of the penalty in this manner shall constitute consent by Respondents to the assessment of the proposed penalty and a waiver of Respondents' right to a hearing in this matter.
56. Payment of the penalty shall be made by one of the following methods below. Payment by Respondents shall reference Respondents' names and addresses, and the EPA Docket Number of this Complaint.
  - a. Payment by check to "United States Treasury":
    - i. If sent via first-class mail, to:  
U.S. Environmental Protection Agency  
Cincinnati Finance Center  
P. O. Box 979077  
St. Louis, MO 63197-9000
    - ii. If sent via UPS, Federal Express, or Overnight Mail, to:  
U.S. Environmental Protection Agency  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
314-418-1028
  - b. Via wire transfer, sent to:  
  
Federal Reserve Bank of New York  
ABA: 021030004  
Account Number: 68010727  
SWIFT address: FRNYUS33  
33 Liberty Street  
New York, NY 10045  
Attn: "D 68010727 Environmental Protection Agency"

- c. Via ACH (Automated Clearing House) for receiving U.S. currency, sent to:

US Treasury REX/Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 – checking

Contact REX (Remittance Express): 866-234-5681  
Finance Center Contacts:  
Craig Steffen: 513-487-2091; [steffen.craig@epa.gov](mailto:steffen.craig@epa.gov)  
Molly Williams: 513-487-2076; [williams.molly@epa.gov](mailto:williams.molly@epa.gov)

57. Copies of the check and/or proof of payment via wire transfer or ACH shall be mailed at the same time payment is made to:

Regional Hearing Clerk (3RC00)  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

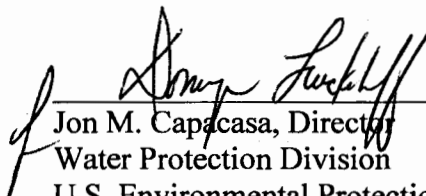
and to

Kelly Gable (3RC20)  
Assistant Regional Counsel  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029.

#### **VIII. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS**

58. The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region III Office of Regional Counsel, the Region III Water Protection Division, the Office of the EPA Assistant Administrator for the Office of Water, and the EPA Assistant Administrator for Enforcement and Compliance Assurance. From the date of this Complaint until the final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice, 40 C.F.R. Part 22, prohibit any unilateral discussion or *ex parte* communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer after issuance of a Complaint.

Date: 1/11/16

  
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Jon M. Capacasa, Director  
Water Protection Division  
U.S. Environmental Protection Agency, Region III

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**CERTIFICATE OF SERVICE**


I hereby certify that on this day, I caused to be filed with the Regional Hearing Clerk, EPA Region III, the original and one copy of the Administrative Penalty Complaint and Notice of Opportunity to Request Hearing in the above-captioned case.

I further certify that I caused a copy of the same to be sent to the following individual by Certified Mail, return receipt requested:

John Driggs, President  
John Driggs Company  
8700 Ashwood Drive  
Capitol Heights, MD 20743

David Cantwell, General Manager  
Recycled Aggregates, LLC  
8700 Ashwood Drive  
Capitol Heights, MD 20743

Date: 11 January 2016

  
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Kelly Gable  
Assistant Regional Counsel  
US EPA Region III