

REGIONAL HEARINGS
OFFICE
2016 JUL 20 AM 6:49
U.S. Environmental
Protection Agency
Region 2

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

**New York State Department of Transportation
50 Wolf Road
Albany, NY 12232
SPDES Permit No. NYRA20A288**

**PROCEEDING TO ASSESS CLASS II
CIVIL PENALTY**

Respondent

DOCKET NO. CWA-02-2016-3403

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

**RESPONDENT'S ANSWER
TO ADMINISTRATIVE COMPLAINT**

**PURSUANT TO SEC. 22.15 OF THE CONSOLIDATED RULES OF PRACTICE, FOUND AT 40
CODE OF FEDERAL REGULATIONS PART 22, RESPONDENT IN THIS MATTER ASSERTS
THIS, ITS ANSWER.**

AS TO THE ALLEGATIONS OF THE ADMINISTRATIVE COMPLAINT CONTAINED IN THE
SECTION THEREOF CAPTIONED -- I. STATUTORY AND REGULATORY AUTHORITIES, the
Respondent alleges:

1. Respondent DENIES knowledge sufficient to form a belief or respond.
2. Respondent DENIES knowledge sufficient to form a belief or respond.

AS TO THE ALLEGATIONS OF THE ADMINISTRATIVE COMPLAINT CONTAINED IN THE
SECTION THEREOF CAPTIONED -- II. APPLICABLE LEGAL REQUIREMENTS, the Respondent
repeats and re-alleges its ANSWER to the allegations contained within the COMPLAINT at I. 1 and 2,
above, and alleges:

1. Respondent DENIES knowledge sufficient to form a belief or respond.
2. Respondent DENIES knowledge sufficient to form a belief or respond.
3. Respondent DENIES knowledge sufficient to form a belief or respond.
4. Respondent DENIES knowledge sufficient to form a belief or respond.
5. Respondent DENIES knowledge sufficient to form a belief or respond.
6. Respondent DENIES knowledge sufficient to form a belief or respond.
7. Respondent DENIES knowledge sufficient to form a belief or respond.

8. Respondent DENIES knowledge sufficient to form a belief or respond.
9. Respondent DENIES knowledge sufficient to form a belief or respond.
10. Respondent DENIES knowledge sufficient to form a belief or respond.
11. Respondent DENIES knowledge sufficient to form a belief or respond.
12. Respondent DENIES knowledge sufficient to form a belief or respond.
13. Respondent DENIES knowledge sufficient to form a belief or respond.
14. Respondent DENIES knowledge sufficient to form a belief or respond.
15. Respondent DENIES knowledge sufficient to form a belief or respond.
16. Respondent DENIES knowledge sufficient to form a belief or respond.

AS TO THE ALLEGATIONS OF THE ADMINISTRATIVE COMPLAINT CONTAINED IN THE SECTION THEREOF CAPTIONED -- III. FINDINGS OF FACT AND CONCLUSIONS OF LAW, the Respondent repeats and re-alleges its ANSWER to the allegations contained within the COMPLAINT at I. 1 and 2, and II. 1 through 16, above, and alleges:

1. Respondent ADMITS that NYSDOT is a public body; and DENIES knowledge sufficient to form a belief or respond to the remaining allegations.
2. Respondent DENIES knowledge sufficient to form a belief or respond.
3. Respondent ADMITS that the Respondent is a small, non-traditional municipal separate storm water system; but DENIES knowledge sufficient to form a belief or respond to the remaining allegations.
4. Respondent DENIES knowledge sufficient to form a belief or respond.
5. Respondent DENIES knowledge sufficient to form a belief that stormwater is a pollutant and; further, submits that Complainant has not demonstrated that the Respondent discharged any pollutants in the course of any of the events, transactions or occurrences cited in the COMPLAINT; and DENIES the remaining allegations.
6. Respondent ADMITS that it submitted an NOI; but DENIES knowledge sufficient to form a belief or respond to the remaining allegations.
7. Respondent ADMITS that it operates administrative offices for the transaction of business at the locations generally described; but DENIES knowledge sufficient to form a belief or respond to the remaining allegations.
8. Respondent ADMITS that audits were conducted; but DENIES knowledge sufficient to form a belief or respond to the remaining allegations.
9. Respondent ADMITS.
- 10.a. Respondent Repeats and re-alleges the allegations contained in its ANSWER above, and ADMITS that Permit GP-0-10-002 ("the Permit") speaks for itself; and Respondent submits that the Permit does not state, among other things, clear, certain, unambiguous time limits for completion of modifications of the SWMP; and DENIES knowledge sufficient to form a belief or respond to the remaining allegations.
10. a. i. Respondent Repeats and re-alleges the allegations contained in its ANSWER above, and ADMITS that the EPA Audit team itself concluded that it found no evidence of established goals and procedures, a rating system, or a checklist for conducting construction project reviews; however,

Respondent submits that such documentation did exist at the time of the audit and was supplied to EPA; and DENIES knowledge sufficient to form a belief or respond to the remaining allegations.

10. a. ii. Respondent Repeats and re-alleges the allegations contained in its ANSWER, above, and ADMITS that prior to conducting its site visits and audit, the EPA Audit team had provided NYSDOT with Pre Audit Questionnaires, Record Requests and Checklists which purported to represent the Audit team's anticipated/proposed scope of inquiry; and further, ADMITS that NYSDOT provided responsive answers and records at the time of audit; however, submits that the anticipated/proposed scope of inquiry articulated in the aforementioned Pre Audit Questionnaires, Record Requests and Checklists differed in relevant and material ways from some of the questions asked and documents requested in each individual audit conducted by EPA; and DENIES knowledge sufficient to form a belief or respond to the remaining allegations.

10a.iii. Respondent Repeats and re-alleges the allegations contained in its ANSWER, above; however, submits that the Permit had previously been modified in relevant and material ways; and further submits that the records sought existed and were available, but not at the location desired by EPA; and DENIES knowledge sufficient to form a belief or respond to the remaining allegations.

10.b. Respondent DENIES and submits that the subject records were all maintained and available in the NYSDOT SLMS system; and DENIES knowledge sufficient to form a belief or respond to the remaining allegations.

10.c. Respondent DENIES knowledge sufficient to form a belief or respond to the remaining allegations.

10.d. Respondent DENIES.

10.e. Respondent DENIES and submits that the requirement alleged was not a condition of the Permit; and DENIES knowledge sufficient to form a belief or respond to the remaining allegations.

10.f. Respondent DENIES.

10.g. Respondent DENIES.

10.h. Respondent DENIES and submits that NYSDOT has no relevant enforcement authority; and DENIES knowledge sufficient to form a belief or respond to the remaining allegations.

10.i. Respondent DENIES and submits that NYSDOT has no relevant enforcement authority; and DENIES knowledge sufficient to form a belief or respond to the remaining allegations.

10.j. Respondent DENIES and submits that the requirement alleged was not a condition of the Permit; and DENIES knowledge sufficient to form a belief or respond to the remaining allegations.

10.k. Respondent ADMITS that the Respondent is a small, non-traditional municipal separate storm water system lacking relevant enforcement authority; and DENIES knowledge sufficient to form a belief or respond to the remaining allegations.

10.l. Respondent ADMITS that the Permit requires all permittees to develop and implement a pollution prevention /good housekeeping program; and DENIES the remaining allegations.

10.m. Respondent ADMITS.

10.n. Respondent DENIES and submits that the records sought existed and were available, but not at the location desired by EPA; and DENIES knowledge sufficient to form a belief or respond to the remaining allegations.

10.o. Respondent DENIES.

11. Respondent ADMITS that the EPA mailed the Respondent an Administrative Order; and DENIES knowledge sufficient to form a belief or respond to the remaining allegations.

12. Respondent ADMITS that the EPA and Respondent met and discussed a revised compliance schedule; and DENIES knowledge sufficient to form a belief or respond to the remaining allegations.

13. Respondent ADMITS that the EPA issued the Respondent a revised compliance schedule; and DENIES knowledge sufficient to form a belief or respond to the remaining allegations.

14. Respondent DENIES.

AS TO THE ALLEGATIONS OF THE ADMINISTRATIVE COMPLAINT CONTAINED IN THE SECTION THEREOF CAPTIONED -- IV. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY the Respondent repeats and re-alleges its ANSWER to the allegations contained within I. 1 and 2, II. 1 through 16, and III. 1 through 14, above; and DENIES that the EPA has taken into account the nature, circumstances, extent and gravity of the alleged violations, the Respondents prior compliance history, degree of culpability, economic benefit or savings accruing to the Respondent by virtue of the alleged violations; and further DENIES knowledge sufficient to form a belief or respond to the remaining allegations.

THE RESPONDENT DENIES ANY AND ALL REMAINING ALLEGATIONS OF THE COMPLAINT TO WHICH IT HAS NOT HERETOFORE DIRECTLY RESPONDED OTHERWISE.

AS AND FOR A DEFENSE, the Respondent submits that it has expended in excess of \$500,000.00 (Five-hundred-thousand-dollars) in its efforts to resolve alleged violations relevant to the events, transactions and occurrences cited in the allegations of the ADMINISTRATIVE COMPLAINT (annexed hereto, and in support thereof, please find letter from Respondent to EPA, Region 2, dated July 11, 2016).

RESPONDENT HEREBY REQUESTS A HERARING IN THIS MATTER.

ISSUED THIS 14th DAY OF July, 2016



KEITH D. MARTIN, Associate Attorney
Division of Legal Affairs
Office Address:
New York State Department of Transportation
50 Wolf Road, 6th Floor
Albany, NY 12232
Phone: 518-457-2411
Fax: 518-457-4021

SERVICE PURSUANT TO 40 CFR 22.15

Original and One via 1st class US Mail to:

Regional Hearing Clerk
US Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

Copy via 1st Class US Mail to:

Timothy Murphy, Asst. Regional Counsel
Water and General Law Branch, Office of General Counsel
US Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007-1866

Copy via 1st Class US Mail to:

Joseph DiMura, P.E., Director
Bureau of Water Compliance Programs
Division of Water
NYSDEC
625 Broadway
Albany, NY 12233-3506



Department of
Transportation

ANDREW M. CUOMO
Governor

MATTHEW J. DRISCOLL
Commissioner

Cathy Calhoun
Chief of Staff

July 11, 2016

Timothy Murphy
Assistant Regional Counsel
Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

RE: Notice of Proposed Assessment of a Civil Penalty Class II
Docket No. CWA-02-2016-3403

Dear Mr. Murphy:

The New York State Department of Transportation (the Department) is in receipt of the Proceeding to Assess a Class II Civil Penalty, Docket No. CWA-02-2016-3403 (the Complaint). The Department is disputing the penalty proposed in the Complaint and requesting a hearing to contest the proposed penalty; however, we hereby request an informal conference prior to this matter proceeding further.

The Department has expended over \$500,000, which includes several thousand staff hours, labor, and materials to comply with the Order, and considers that to be more than adequate to satisfy any monetary penalty.

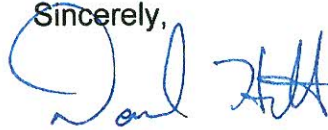
The Department has been proactive in complying with and completing all of the Ordered Provisions of the Administrative Compliance Order, Docket No. CWA-02-2014-3041 (the Order). During meetings to discuss the provisions of the Order, the Department had been assured by EPA compliance staff that no penalties would be assessed if the Department successfully completed all of the Ordered Provisions. The Department has received no indication that we have not complied with any provisions of the Order.

Item D.6. on page 19 of the Order states that "...failure to comply with the terms of the CWA Section 309(a)(3) Compliance Order may result in your liability for civil penalties...". Additionally, the cover letter to the Order states "Failure to comply with the enclosed Order may subject NYSDOT to civil or criminal penalties pursuant to Section 309 of the CWA, 33 U.S.C. § 1319." Neither the Order, nor the cover letter, identifies a situation whereby these penalties would be assessed even though the

Department has satisfied all of the Ordered Provisions. The Department has fully complied with the Order and should not be penalized further.

Please contact me to arrange an informal conference to discuss the above. I can be reached at Dan.Hitt@dot.ny.gov, Desk: (518)-457-4054, or Cell: (518) 935-0334.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Dan Hitt', is written over the word 'Sincerely,'.

Daniel P. Hitt, RLA
Director, Office of Environment

DH/ek/jb/sk

cc: P. Eng, Executive Deputy Commissioner, 6th Floor
J. McLachlan, Assistant Commissioner and Acting Chief Counsel, 6th Floor
K. Martin, Associate Attorney, Office of Legal Services, 6th Floor

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

New York State Department of Transportation
50 Wolf Road
Albany, NY 12232
SPDES Permit No. NYRA20A288

PROCEEDING TO ASSESS CLASS II
CIVIL PENALTY

Respondent

DOCKET NO. CWA-02-2016-3403

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


I CERTIFY that on July 14, 2016, I served the foregoing answer, bearing the above
referenced docket number, on the person(s) listed below, in the following manner(s):

Original and One via 1st class US Mail to:
Regional Hearing Clerk
US Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

Copy via 1st Class US Mail to:
Timothy Murphy, Asst. Regional Counsel
Water and General Law Branch, Office of General Counsel
US Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007-1866

Copy via 1st Class US Mail to:
Joseph DiMura, P.E., Director
Bureau of Water compliance Programs
Division of Water
NYSDEC
625 Broadway
Albany, NY 12233-3506

Dated: July 14, 2016



KEITH D. MARTIN, Associate Attorney
New York State Department of Transportation