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

SEP 7 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Article Number: 7005 3110 0000 5951 8960

Mr. Mark Lesko, Supervisor
Town of Brookhaven
1 Independence Hill
Farmingville, New York 11738

Re: Notice of Proposed Assessment of a Civil Penalty Class I
Town of Brookhaven Municipal Separate Storm Sewer System (MS4)
Docket No. CWA-02-2012-3313

Dear Mr. Lesko:

Enclosed is a Complaint which the U.S. Environmental Protection Agency ("EPA" or "Agency") is issuing to you as a result of our determination that the Town of Brookhaven ("Respondent"), located at 1 Independence Hill in Farmingville, New York has violated Section 301 of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §1311. This Complaint is filed pursuant to Section 309(g) of the Act, 33 U.S.C. §1319(g). Upon consideration of the factors in Section 309(g), the Complaint proposes that a civil penalty of **$19,500** be assessed against Respondent for these violations.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or they are found to be true after you have had an opportunity for a hearing on them, you have the right to contest the penalty proposed in the Complaint. I have enclosed a copy of Consolidated Rules of Practice ("CROP"), found at 40 Code of Federal Regulations Part 22, which the EPA follows in cases of this kind. Please note the requirements for an Answer at Section 22.15 of the CROP. **If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file an Answer within thirty (30) days of your receipt of the enclosed Complaint to the EPA Regional Hearing Clerk at the following address**:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007-1866

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

Regardless of whether or not you request a formal hearing, EPA encourages you to pursue the possibility of settlement by requesting an informal conference with the Agency concerning the alleged violations and the amount of the proposed penalty. Please note that a request for an informal conference does not substitute for a written Answer, or affect what you may choose to say in an Answer, nor does it extend the thirty (30) day deadline by which you must file an Answer.

The Agency also encourages the use of Supplemental Environmental Projects ("SEPs"), where appropriate, as part of any settlement. Enclosed is a copy of the Final EPA Supplemental Environmental Projects Policy (May 1, 1998) for your consideration.

You may represent yourself or be represented by an attorney at any stage of the proceedings, including any informal discussions and/or a formal hearing, whether in person or by telephone. Any hearing held in this matter will be conducted in accordance with the CROP.

If you have any questions or wish to discuss a settlement of this matter with the EPA by an informal conference, please immediately contact:

Kim Kramer, Esq.
Water & General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway - 16th Floor
New York, New York 10007-1866
(212) 637-3238

Should you have any questions concerning this matter, please feel free to contact Ms. Kim Kramer at the phone number above or Ms. Justine Modigliani, Compliance Section Chief at (212) 637-4268.

Sincerely,

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

1. Complaint
2. CROP
3. EPA Supplemental Environmental Projects Policy and SEP Brochure

cc: Joseph DiMura, P.E., Director, Bureau of Water Compliance Programs, NYSDEC

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

SEP 7 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
Article Number: 7005 3110 0000 5951 8977

Mr. Joe DiMura, P.E., Director
Bureau of Water Compliance Programs
Division of Water
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-3506

RE: Notice of Proposed Assessment of a Civil Penalty Class I
Town of Brookhaven Municipal Separate Storm Sewer System (MS4)
Docket No. CWA-02-2012-3313

Dear Mr. DiMura:

Enclosed is a copy of the Complaint and Proposed Assessment of a Civil Penalty, which the United States Environmental Protection Agency (EPA) has issued the Town of Brookhaven pursuant to §309(g) of the Clean Water Act (Act), 33 U.S.C. §1319(g). EPA has issued the Complaint to begin the process to administratively assess a civil penalty of **$19,500** against Respondent for violations of the Act.

Since the violations have occurred in the State of New York, EPA is offering you an opportunity to confer with us regarding the proposed assessment. You may confer with me at (212) 637-4000.

A copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (40 C.F.R. Part 22), is enclosed for your reference.

Sincerely,

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures
1. Complaint
2. CROP

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF: Town of Brookhaven 1 Independence Hill Farmingville, New York 11738 SPDES Permit No. NYR20A411 **Respondent** Proceeding pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g)	**PROCEEDING TO ASSESS A CLASS I CIVIL PENALTY** **DOCKET No. CWA-02-2012-3313**

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

I. STATUTORY AND REGULATORY AUTHORITIES

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing ("Complaint") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 309(g)(2)(A) of the Clean Water Act ("Act" or "CWA"), 33 U.S.C. §1319(g)(2)(A). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Division of Enforcement and Compliance Assistance ("DECA") of EPA, Region 2 ("Complainant").

2. Pursuant to Section 309(g)(2)(A) of the Act, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("CROP"), 40 C.F.R. Part 22 (2001), a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against Respondent, as a result of Complainant's determination that the Respondent is in violation of Sections 301 of the Act, 33 U.S.C. §1311, respectively, by failing to comply with the terms of the New York State Department of Environmental Conservation's ("NYSDEC's") State Pollutant Discharge Elimination System ("SPDES") General Permit for Storm Water Discharges from Municipal Separate Storm Sewer Systems ("MS4s") at the MS4 that the Respondent owns and operates.

II. DEFINITIONS AND STATUTORY PROVISIONS

1. Section 301(a) of the CWA, 33 U.S.C. §1311(a), prohibits the discharge of pollutants from a point source into waters of the United States, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. §1342.

2. Section 402 of the CWA, 33 U.S.C. §1342, authorizes the Administrator of EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The New York State Department of Environmental Conservation ("NYSDEC") is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402 of the CWA, 33 U.S.C. §1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA. Additionally, under the authority granted to the NYSDEC by the EPA under Section 402(b) of the CWA, 33 U.S.C. §1342(b), a State Pollutant Discharge Elimination System ("SPDES") permit is required to be issued to facilities by the NYSDEC for the discharge of pollutants from said facilities from a point source to a navigable water of the United States.

3. "Person" is defined by Section 502(5) of the CWA, 33 U.S.C. §1362(5), to include an individual, corporation, partnership, association or municipality.

4. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. §1362(6), to include among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal, biological materials and agricultural waste discharged into water.

5. "Navigable waters" is defined by Section 502(7) of the CWA, 33 U.S.C. §1362(7), to include the waters of the United States.

6. "Discharge of a pollutant" is defined by Section 502(12) of the CWA, 33 U.S.C. §1362(12), to include any addition of any pollutant to navigable waters from any point source.

7. "Point source" is defined by Section 502(14) of the CWA, 33 U.S.C. §1362(14), to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

8. Section 402(p) of the CWA, 33 U.S.C. §1342(p) sets forth the permit requirements for the discharge of stormwater, including discharges of stormwater from Municipal Separate Storm Sewer Systems ("MS4s").

9. 40 C.F.R. §122.26(b)(8), defines an MS4 as a "conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by State law).....that discharges into waters of the United States; (ii) designed or used for collecting or conveying stormwater; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works..."

10. 40 C.F.R. §122.26(b)(3) defines "incorporated place," in part, as a city, town, township, or village that is incorporated under the laws of the State in which it is located.

11. 40 C.F.R. §122.26(b)(16)(ii) defines "small municipal separate storm sewer system," in part, as not defined as "large" or "medium" MS4s.

12. Pursuant to 40 C.F.R. §122.32(a)(1), all small MS4s located in an "urbanized area" (as determined by the latest Decennial Census by the Bureau of Census) are regulated small MS4s.

13. 40 C.F.R. §§122.33(a) and (b) require operators of regulated small MS4s to seek authorization to discharge under the applicable NPDES general permit issued by the permitting authority, by submitting a Notice of Intent ("NOI") for coverage under such permit.

14. NYSDEC issued SPDES General Permit for Storm Water Discharges from MS4s (GP-0-10-002) ("Permit" or "MS4 General Permit") in April 2010. The Permit became effective on May 1, 2010 and expires on April 30, 2015. The Permit supersedes the previous SPDES permit (GP-0-08-002), which became effective on May 1, 2008 and expired on April 30, 2010, and SPDES permit (GP-02-02), which became effective on January 8, 2003 and expired on January 8, 2008. SPDES permit (GP-02-02) was administratively extended until April 15, 2008, when SPDES permit (GP-0-08-002) was issued.

15. Part IV.A of the Permit requires the permittee to develop, implement and enforce a Storm Water Management Program ("SWMP") designed to reduce the discharge of pollutants to the maximum extent practicable ("MEP").

16. Part IV.F of the Permit requires the permittee to develop and implement a SWMP that satisfies the requirements of the six minimum control requirements ("MCM") in Part VII of the Permit.

17. Part V.A of the Permit requires the permittee to conduct an annual evaluation of its program compliance, the appropriate Best Management Practices ("BMPs"), and progress towards achieving its identified measurable goals, which must include reducing the discharge of pollutants to the MEP.

18. Part V.C.1 of the Permit requires annual reports to be submitted by the permittee and received by NYSDEC by June 1 of each reporting year.

19. Part V.C.3 of the Permit requires the permittee to include any change in identified BMPs or measurable goals and justification for those changes in the annual report.

20. Part V.C.3.b of the Permit requires annual reports submitted by the permittee to include at a minimum an assessment/evaluation of the appropriateness of the identified BMPs; progress towards achieving the statutory goal of reducing the discharge of pollutants to the MEP; and the identified measurable goals for each of the MCMs.

21. Part VII.A.4.a.i of the Permit requires the permittee to develop, implement and enforce a program that provides equivalent protection to the NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activities ("CGP"). The current CGP (GP-0-10-001) has an effective date of January 29, 2010 and has the following requirements:

a. Part III.A of the CGP requires the owner or operator to develop and implement a Stormwater Pollution Prevention Plan ("SWPPP") that describes the erosion and sediment control practices that will be used at the site to reduce the pollutants in stormwater discharges; and

b. Part III.A.4 of the CGP requires the owner or operator to keep the SWPPP current so that it at all times accurately documents the erosion and sediment control practices that are being used during construction.

22. Part VII.A.4.a.ix of the Permit requires the permittee to develop, implement and enforce a construction site stormwater runoff control program that describes procedures for site inspections and enforcement of erosion and sediment control measures, including steps to identify priority sites for inspection and enforcement based on the nature of the construction activity, topography, and the characteristics of soils and receiving water.

23. Part VII.A.6.a.i of the Permit requires the permittee to develop and implement a pollution prevention / good housekeeping program for municipal operations and facilities that addresses municipal operations and facilities that contribute or potentially contribute Pollutants of Concern ("POCs") to the small MS4 system. The operations and facilities may include, but are not limited to: street and bridge maintenance; winter road maintenance; stormwater system maintenance; vehicle and fleet maintenance; park and open space maintenance; municipal building maintenance; solid waste management; new construction and land disturbances; right-of-way maintenance; marine operations; hydrologic habitat modification; or other.

24. Part VII.A.6.a.ii of the Permit requires that the permittee must: at a minimum frequency of once every three years, perform a self assessment of all municipal operations addressed by the SWMP to: determine the sources of pollutants potentially generated by the permittee's operations and facilities; and identify the municipal operations and facilities that will be addressed by the pollution prevention and good housekeeping program, if it is not done already.

25. Part VII.A.6.a.vi of the Permit requires the permittee to develop and implement a pollution prevention/good housekeeping program for municipal operations and facilities that includes an employee pollution prevention and good housekeeping training program and ensures that staff receive and utilize training.

26. Part VII.A.6.e of the Permit requires that the permittee adopt techniques to reduce the use of fertilizers, pesticides, and herbicides, as well as potential impact to surface water.

27. Section 309(a) of the CWA, 33 U.S.C. §1319(a), authorizes the Administrator to commence an administrative action for violations of Section 301 of the CWA, 33 U.S.C. §1311, or any permit condition or limitation implementing, inter alia, Section 301, and contained in a permit issued under Section 402 of the CWA, 33 U.S.C. §1342.

III. FINDINGS OF VIOLATION

1. The Town of Brookhaven ("Respondent") is a municipality incorporated under the laws of the State of New York, and as such, Respondent is a person, as defined in Section 502(5) of the

CWA, 33 U.S.C. §1362(5), and 40 C.F.R. §122.2, and is an "incorporated place" as defined in 40 C.F.R. §122.26(b)(3).

2. Respondent owns and operates the MS4, located in the Town of Brookhaven, Suffolk County, New York and is an owner or operator within the meaning of 40 C.F.R. §122.2.

3. The MS4 in the Town of Brookhaven is a small MS4 located in a urbanized area within the meaning of 40 C.F.R. §122.26(b)(16) and 40 C.F.R. §122.32(a)(1).

4. The MS4 in the Town of Brookhaven is a point source within the meaning of Section 502(14) of the CWA, 33 U.S.C. §1362(14).

5. Respondent's MS4 discharges stormwater, a pollutant within the meaning of Section 502(6) of the CWA, 33 U.S.C. §1362(6), to Long Island Sound, Port Jefferson Harbor, Conscious Bay and tributaries, the South Shore Estuary Reserve, Forge River, West Moriches Bay Tributaries, Canaan Lake and Lake Ronkonkoma, all waters of the United States within the meaning of 502 of the CWA, 33 U.S.C. §1362, and 40 C.F.R. §122.2, and as such, discharges pollutants within the meaning of Section 502(12) of the CWA, 33 U.S.C. §1362(12).

6. Respondent submitted a Notice of Intent ("NOI") and a Storm Water Management Program ("SWMP") to NYSDEC on February 28, 2003, seeking coverage under the SPDES permit (GP-02-02). Respondent received permit coverage under the SPDES General Permit (GP-02-02) and permit coverage was maintained under subsequent SPDES permits (GP-0-08-002) and (GP-0-10-002).

7. From June 7, 2011 through June 9, 2011, EPA conducted a compliance audit of Brookhaven's MS4 ("Audit"). At the time of the Audit, the EPA inspector identified the following violations of the MS4 General Permit (GP-0-10-002):

   a. Respondent failed to fully evaluate its program compliance, appropriateness of its identified BMPs, and progress towards achieving its identified measurable goals, which must include reducing the discharge of pollutants to the MEP, on an annual basis, for the time period from 2003 to 2011, in violation of Part V.A of the Permit:

      i. Respondent failed to assess the effectiveness of its identified BMPs;

      ii. Respondent failed to determine if there has been a reduction in the discharge of pollutants; and

      iii. Respondent failed to develop a process of evaluating and revising BMPs or the program's effectiveness resulting in an alteration in the SWMP.

   b. Respondent failed to submit an annual report by June 1 of the respective reporting year for 2008 and 2009, in violation of Part V.C.1 of the Permit. NYSDEC received the Town's 2008 annual report on September 16, 2008 and the Town's 2009 annual report on October 30, 2009.

   c. Respondent failed to include justification for changes to its identified measurable goals, in violation of Part V.C.3 of the Permit. Respondent made the following changes to

measurable goals identified in its 2010 annual report, in its 2011 annual report, without including justification for those changes in the submission:

i. Respondent excluded the 2010 measurable goal to "update and enhance the Town's stormwater management website" in its 2011 annual report;

ii. Respondent excluded the 2010 measurable goal to "recruit citizen volunteers to assist with green initiatives such as a large scale plant-in" in its 2011 annual report;

iii. Respondent excluded the 2010 measurable goal to "inspect 100% of applicable construction sites" in its 2011 annual report; and

iv. Respondent added at least eight additional measurable goals to the 2011 annual report that were not previously identified in the 2010 annual report.

d. Respondent failed to develop, implement and enforce stormwater construction program, in violation of Part VII.A.4 of the Permit as detailed below:

i. Respondent failed to enforce a program that provides equivalent protection to the NYSDEC Construction General Permit ("CGP"), in violation of Part VII.A.4.a.i of the Permit, at the Eastport Meadows construction site in the Town of Brookhaven. The following was observed at the Eastport Meadows construction site on June 9, 2011 demonstrating the construction site's failure to implement the SWPPP, in violation of Part III.A of the CGP:

1. Two unstabilized stock piles of sand on-site;

2. Concrete washout spilled in sandy area;

3. Coir mats (coconut husk material) were being used over drywells, whereas the SWPPP specifies filter fabric and stakes would be used as inlet protection;

4. Perimeter silt fencing was collapsed on the southern edge of the site; and

5. Sediment tracking was identified on East Moriches Boulevard, and the construction entrance was in need of maintenance.

ii. Respondent failed to describe procedures for site inspections as part of the construction site stormwater runoff control program, in violation of Part VII.A.4.a.ix of the Permit.

e. Respondent failed to develop and implement a good housekeeping program, in violation of Part VII.A.6 of the Permit as detailed below:

i. Respondent failed to fully develop and implement a pollution prevention and good housekeeping program for municipal operations and facilities that contribute or potentially contribute POCs to the small MS4 system, in violation

of Part VII.A.6.a.i of the Permit. The following was observed at municipal operations and facilities during the audit:

1. Uncovered material stock piles at the Parks Garage at Coram-Ward #1 uphill from a drain;

2. Vehicle maintenance at the North Ocean Avenue Garage conducted immediately uphill from a drain; and

3. Vehicle washing at Parks Garage at Cedar Beach-Ward #2 was conducted on top of a drain.

ii. Respondent failed to perform a self assessment of all municipal operations addressed by the SWMP, at a minimum frequency of once every three years, for the time period from 2003 to 2011, in violation of Part VII.A.6.a.ii of the Permit. Brookhaven has not performed a self assessment at Town facilities including but not limited to, all Parks Department and Vehicle Control facilities;

iii. Respondent failed to develop and implement an employee pollution prevention and good housekeeping training program and failed to ensure that staff receive and utilize training, in violation of Part VII.A.6.a.vi of the Permit. Town employee and contractor training is not regularly scheduled, documented, and is not included in the SWMP Plan; and

iv. Respondent failed to adopt techniques to reduce the use of fertilizers, pesticides, and herbicides, as well as potential impact to surface waters, in violation of Part VII.A.6.e of the Permit. The Town has not developed procedures for applying and reducing the use of fertilizers, pesticides and herbicides.

8. On September 16, 2011, pursuant to Section 309 of the CWA, EPA issued an Administrative Order ("AO" or "Order") (CWA-02-2012-3054), which directed the Town of Brookhaven to comply with the requirements of the MS4 General Permit.

9. The Town of Brookhaven submitted responses to EPA dated October 17, 2011, October 31, 2011, November 7, 2011 and December 22, 2011 that addressed Ordered Provisions in the AO.

10. Based on the Findings cited in paragraphs 1-9 above, Respondent violated Sections 301 of the Act, 33 U.S.C. §1311.

IV. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

Based on the foregoing Findings of Violation, and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. §1319(g), and the Debt Collection Improvement Act of 1996, EPA, Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties ("Final Order") to Respondent assessing a civil penalty of **$19,500**. EPA determined the proposed penalty after taking into account the applicable factors identified at Section 309(g)(3) of the Act, 33 U.S.C. §1319(g)(3). EPA has taken account of the nature, circumstances, extent, and gravity of the violation (or violations), and Respondent's prior compliance history, degree of culpability, economic benefit or savings accruing to Respondent by virtue of the violations, and Respondent's ability to pay the proposed penalty. Based on

the Findings set forth above, the **Respondent is liable for violations of the Act, one of which has continued for at least one hundred and ninety-six (196) days**. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after Respondent's receipt of this Notice, unless Respondent files an Answer to the Complaint within that time and requests a Hearing on this Notice pursuant to the following section.

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE ACTION

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

A. Answering The Complaint

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

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007-1866

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

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

B. Opportunity To Request A Hearing

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

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

C.F.R. Part 22.

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

C. Failure To Answer

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

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

VI. INFORMAL SETTLEMENT CONFERENCE

Regardless of whether Respondent requests a formal Hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. §22.18(b). At an informal conference with a representative(s) of Complainant, Respondent may comment on the charges made in this Complaint and Respondent may also provide whatever additional information is believed to be relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

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

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

Kim Kramer, Esq.
Water and General Law Branch
Office of Regional Counsel
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone (212) 637-3238
Fax: (212) 637-3202

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

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

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

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

VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty **$19,500** within 30 days after receipt of the Complaint, provided that Respondent file with the Regional Hearing Clerk, Region 2 (at the address noted above), a copy of the check or other instrument of payment. 40 C.F.R. §22.18(a). A copy of the check or other instrument of payment should be provided to the EPA Attorney identified in Section VI above. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America", in the full amount of the penalty assessed in this complaint to the following addressee:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Docket No. CWA-02-2012-3313

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

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

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

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

VIII. FILING OF DOCUMENTS

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

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

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

Kim Kramer, Esq.
Water and General Law Branch
Office of Regional Counsel
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone (212) 637-3238
Fax: (212) 637-3202

IX. GENERAL PROVISIONS

1. Respondent has a right to be represented by an attorney at any stage of these proceedings.

2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated there under, or any applicable permit.

3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act will affect Respondent's continuing obligation to comply with the Act, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. §1319(a), for the violations alleged herein.

ISSUED THIS 7th DAY OF September, 2012.

Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U. S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF: Town of Brookhaven 1 Independence Hill Farmingville, New York 11738 SPDES Permit No. NYR20A411 **Respondent** Proceeding pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. §1319(g)	**PROCEEDING TO ASSESS A CLASS I CIVIL PENALTY** **DOCKET No. CWA-02-2012-3313**

CERTIFICATE OF SERVICE

I certify that on SEP 10 2012, I served the foregoing fully executed Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing, bearing the above referenced docket number, on the persons listed below, in the following manner:

Original and One Copy By Hand:	Office of Regional Hearing Clerk U.S. Environmental Protection Agency - Region 2 290 Broadway, 16th floor New York, New York 10007-1866
Copy by Certified Mail Return Receipt Requested:	Mr. Mark Lesko, Supervisor Town of Brookhaven 1 Independence Hill Farmingville, New York 11738
Copy by Certified Mail Return Receipt Requested	Mr. Joseph DiMura, P.E., Director Bureau of Water Compliance Programs NYSDEC 625 Broadway Albany, New York 12233-4500

Dated: SEP 10 2012

NAME OF SECRETARY, Secretary
New York, NY