RECEIVED
2014 OCT 14 AM 10: 1
REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

Docket Number CWA-03-2015-0013

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

In the Matter of:	Proceeding to Assess Class II Administrative Penalty Under Section 309(g) of the Clean Water Act
Charles County, Maryland	Docket No. CWA-03-2015-0013
Respondent.	**ADMINISTRATIVE PENALTY COMPLAINT AND NOTICE OF OPPORTUNITY TO REQUEST HEARING**

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") is authorized to assess administrative penalties against persons who violated Section 301(a) of the Act, 33 U.S.C. § 1311(a). The Administrator of EPA 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(g) of the Act, 33 U.S.C. § 1319(g), 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 $37,500 (thirty-seven thousand five hundred dollars) against Charles County ("Respondent") for violation(s) of Section 301 of the CWA, 33 U.S.C. § 1311.

II. FACTUAL AND LEGAL ALLEGATIONS

3. 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.

4. 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.

5. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 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).

6. Charles County, Maryland is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

7. At all times relevant to this Complaint, Respondent has owned and/or operated a municipal separate storm sewer system ("MS4") as that term is defined in 40 C.F.R. § 122.26(b)(8).

8. Respondent's MS4 is located within the geographic boundaries of Charles County.

9. Charles County (the "County") encompasses a total area of approximately 292,960 acres. According to the County, its population is estimated at 150,592.

10. Stormwater from the County drains to a number of water bodies, including the Mattawoman Creek, Zekiah Swamp, Port Tabacco Creek and the Potomac River, in addition to numerous small tributary creeks and streams, which are considered "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2; 40 C.F.R. § 122.2.

11. 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. The discharges are subject to specific terms and conditions as prescribed in the permit.

12. "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.

13. "Storm water" is defined as "storm water runoff, snow melt runoff and surface runoff and drainage." 40 C.F.R. § 122.26(b)(13).

14. The term MS4 includes, "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States." 40 C.F.R. § 122.26(b)(8)(i).

15. An NPDES permit is required for discharges from an MS4 serving a population of 100,000 or more, Section 402(p)(2) of the Act, 33 U.S.C. § 1342(p)(2); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.

16. Respondent's MS4 serves a population of at least 100,000 people.

17. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Maryland Department of the Environment ("MDE") to issue NPDES permits on September 5, 1974.

18. MDE issued to Respondent an NPDES MS4 Discharge Permit (No. MD 0068365) which became effective on July 31, 2002 (hereinafter the "MS4 Permit") and was applicable to the County development district.

19. The expiration date of the MS4 Permit was July 31, 2007; however, the MS4 Permit has been administratively extended.

20. An NPDES permit is also required for discharges of storm water associated with industrial activity, as well as for stormwater discharges which MDE or EPA determine to be a significant contributor of pollutants or that contributes to a violation of a water quality standard. Section 402(p)(2) of the Act, 33 U.S.C. § 1342(p)(2); 40 C.F.R. § 122.26(a), 40 C.F.R. § 122.21.

21. On June 25 and 26, 2013, a compliance inspection team comprised of EPA and authorized representatives of EPA reviewed Respondent's MS4 program (the "MS4 Inspection").

22. In September 2013, EPA issued the Charles County Municipal Separate Storm Sewer System (MS4) Program Inspection Report ("Inspection Report").

23. The County received a copy of the Inspection Report on October 28, 2013, and prepared and submitted a response to EPA on December 27, 2013.

24. Based upon the June 25 and 26, 2013 review and Respondent's responses thereto, EPA identified the following violation of the MS4 Permit and Section 301 of the

Act, 33 U.S.C. § 1311.

III. FINDINGS OF VIOLATION

Failure to Inspect all Stormwater Management Facilities Triennially

26. Part III.E.1 of the Permit requires the County to conduct preventative maintenance inspections of all stormwater management facilities at least on a triennial basis.

27. At the time of inspection the County had failed to inspect at least 214 stormwater management facilities within its development district within the triennial period.

28. Respondent's failure to inspect all of its stormwater management facilities triennially constitutes a violation of the 2002 Permit and Section 301 of the Act, 33 U.S.C. § 1311.

IV. PROPOSED CIVIL PENALTY

29. Under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, violations which are assessed penalties under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and occur between January 12, 2009 and December 6, 2013, subject the violator to civil penalties in an amount not to exceed $16,000 per day of each violation up to a total penalty of **$ 177,500** per proceeding and for violations that occur after December 6, 2013, civil penalties in an amount not to exceed $16,000 per day of each violation up to a total penalty of **$187,500.**

30. Based on the foregoing findings of violation, and pursuant to the authority of Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), Complainant hereby proposes to issue an Order Assessing Administrative Penalties to the Respondent assessing a penalty in the amount of **$37,500**. The proposed administrative penalty has been determined in accordance with Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). For purposes of determining the amount of any penalty to be assessed, EPA has taken into account the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require. The proposed penalty does not constitute a demand as defined in 28 U.S.C. §§ 2412 *et seq.*

31. If warranted, Complainant may adjust the proposed civil penalty assessed in this Complaint. Complainant will consider Respondent's ability to pay in making any adjustments to the proposed civil penalty assessed. However, the burden of raising the

issue of an inability to pay and demonstrating this fact rests with the Respondent. In addition, to the extent that facts or circumstances unknown to Complainant at the time of issuance of the Complaint become known after issuance of the Complaint, such facts and circumstances may also be considered as a basis for adjusting the proposed civil penalty assessed in the Complaint.

V. SETTLEMENT CONFERENCE

32. 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 SDWA. Whether or not a hearing is requested, the Respondent 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 the Respondent of the responsibility to file a timely Answer to the Complaint.

33. 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 Respondent's right to contest the allegations of the Complaint or to appeal the Final Order accompanying the Consent Agreement.

34. If you wish to arrange a settlement conference or if you have any questions related to this proceeding, please contact the attorney assigned to this case, as indicated in Section VI, following your receipt of this Complaint. Such a request for a settlement conference does not relieve the Respondent of the responsibility to file an Answer within 30 days following Respondent's receipt of this Complaint.

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

35. As provided in section 1319(g)(2)(B) of the Act, 33 U.S.C. § 309(g)(2)(B), the Respondent has the right to a hearing on the record regarding this Complaint to contest any material fact contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty.

36. Hearing procedures are described in the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, a copy of which is enclosed.

37. If the Respondent wishes to avoid being found in default, it must file a written Answer to this Complaint and a Request for Hearing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region III, within 30 (thirty) days of service of this Complaint. The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation and so states, the allegation is deemed denied.

38. The Answer shall also state:

a. the circumstances or arguments that are alleged to constitute grounds of any defense;
b. the facts which Respondent disputes;
c. the basis for opposing any proposed relief; and
d. whether a hearing is requested.

Failure of respondent to admit, deny or explain any material factual allegation in the Complaint constitutes an admission of the allegation.

39. The Answer must be filed within thirty (30) days of receiving this Complaint with the following:

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

40. A copy of this Answer and any subsequent documents filed in this action shall be sent to:

Mr. Andrew Duchovnay
Senior Assistant Regional Counsel (3RC20)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029
Duchovnay.Andrew@epa.gov

Mr. Duchovnay may be reached by telephone at (215) 814-2484 and by facsimile at (215) 814-2603.

41. If Respondent fails to file a written Answer within thirty (30) days of service of this Complaint, a Default Order may be issued. Default by the 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. Upon issuance of a default judgment, the civil penalty proposed herein shall become due and payable without further proceedings thirty (30) days after the default order becomes final. Respondent's 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. In addition, the 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.

42. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. Part 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 herefore begin to accrue on any unpaid amount if it is not paid within thirty (30) calendar days of Respondent's 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. Part 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. Part 13.11(b). In addition, a penalty will be assessed on any portion of the debt which remains delinquent more than ninety (90) calendar days after payment is due. 40 C.F.R. Part 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 4 C.F.R. Part 102.13(e). Furthermore, pursuant to EPA Resources Management Directives System, Chapter 9, 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.

43. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), shall affect Respondent's continuing obligation to comply with the CWA, any other Federal or State laws, and with any Compliance Order issued pursuant to Section 309(a) of the Act, 33 § 1319(a).

VII. QUICK RESOLUTION

44. In accordance with 40 C.F.R. § 22.18(a) Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint.

45. If Respondent pays the specific penalty proposed in this Complaint within thirty (30) days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1), no Answer need be filed.

46. If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a)(2), Respondent may file a written statement with the Regional Hearing Clerk within 30 days after receiving this Complaint stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a)(1). Such written statement need not contain any response to, or admission of, the allegations in the Complaint. 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:

Mr. Andrew Duchovnay (3RC20)
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

47. If Respondent files such a written statement with the Regional Hearing Clerk within 30 days after receiving this Complaint, Respondent shall pay the full amount of the proposed penalty within 60 days of receiving the Complaint. Failure to make such payment within 60 days of receipt of the Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17.

48. Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a)(3), the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment by Respondent shall constitute a waiver of Respondent's rights to contest the allegations and to appeal the final order.

49. Payment of the penalty shall be made by one of the following methods below. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of the Administrative Penalty Complaint.

a. Payment by check to "United States Treasury":

i. If sent via first-class mail, to:

US EPA Region III
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
Finance Center Contacts:
1) Jesse White: 301-887-6548
2) John Schmid: 202-874-7026
3) REX (Remittance Express) 866-234-5681

At the same time payment is made, copies of the check and/or proof of payment via wire transfer or ACH shall be mailed to:

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

and to:

Mr. Andrew Duchovnay (3RC20)
Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029.

VIII. SEPARATION OF FUNCTIONS AND *EX PARTE* COMMUNICATIONS

50. 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: 10/14/14

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

In Re: Charles County,
Docket No. CWA-03-2015-0013

CERTIFICATE OF SERVICE

I certify that on this date I caused to be sent by UPS, a copy of this "Administrative Complaint and Opportunity to Request a Hearing" to the following persons:

Mr. Mark Belton
Administrator
Charles County
200 Baltimore Street
La Plata, Maryland 20646

Date: October 14, 2014

Andrew Duchovnay
Sr. Asst. Regional Counsel