

US EPA ARCHIVE DOCUMENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION I

**Date of Notice:** August 21, 2009

**Public Notice Number:** PN2009-0016

**Comment Period:** August 24, 2009 - September 22, 2009

**Action:** Notice of Proposed Assessment of Class II Clean Water Act Section 309(g)(2)(B) Administrative Penalties and Opportunity to Comment

1. Under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), EPA is authorized to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons public notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, *et seq.*; the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, *et seq.*; the rule for Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.1-19.4; and pursuant to the 2008 Civil Monetary Penalty Inflation Adjustment Rule effective January 12, 2009 (73 Fed. Reg. 75,340 (Dec. 8, 2008)), Respondent is subject to civil penalties of up to sixteen thousand dollars (\$16,000) per day for each day during which the violation continued, up to a maximum of one hundred seventy-seven thousand five hundred dollars (\$177,500). Proceedings are conducted in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of

- Civil Penalties and the Revocation or Suspension of Permits," at 40 C.F.R. Part 22 ("Part 22").
2. The procedures by which the public may submit written comments on a proposed penalty order or participate in a penalty proceeding are set forth in Part 22. The deadline for submitting public comment on a proposed penalty order is thirty (30) days after issuance of public notice.
  3. Pursuant to Section 309(g), EPA is providing public notice of the following proposed administrative penalty assessment:

**In the Matter of the City of Gardner, Massachusetts**

**Name and Mailing Address of Respondent:**

The Honorable Mark P. Hawke  
City of Gardner  
City Hall, Room 125  
95 Pleasant St.  
Gardner, Massachusetts 01140

**Name and Address of Facility or Site Addressed by Complaint:**

City of Gardner  
City Hall, Room 125  
95 Pleasant St.  
Gardner, Massachusetts 01140

**Description of Business or Activity Conducted by the Respondent:**

Municipality

**Description of Violations Alleged in Complaint:**

The municipality has been authorized to discharge storm water under EPA's National Pollutant Discharge Elimination System General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems ("Permit") since 2003. The Permit requires, among other things, that the municipality develop, implement and enforce a program to detect and eliminate illicit discharges to its municipal separate storm sewer system. The municipality has failed to comply with this requirement in violation of the Permit thereby violating

a National Pollutant Discharge Elimination System (“NPDES”) permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

**Proposed Settlement Penalty:** \$60,000

**Name of Case:** In the Matter of the City of Gardner, Massachusetts

**Docket Number:** CWA-01-2009-0075

**Date Filed with Regional Hearing Clerk:** August 14, 2009

**Name, Mailing Address, and Telephone Number of Regional Hearing Clerk:**

Ms. Wanda Santiago  
Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region I  
One Congress Street  
Suite 1100, Mail Code RAA  
Boston, MA 02114-2023

FOR FURTHER INFORMATION: Persons wishing to receive a copy of Part 22, review the complaint or other documents filed by the parties in this proceeding, comment upon the proposed penalty assessment, or participate in any hearing that may be held, should contact the Regional Hearing Clerk identified above. Unless otherwise noted, the public record for the proceeding is located in the EPA Regional Office at One Congress Street, Boston, Massachusetts, and the file will be open for public inspection during normal business hours.

In order to provide opportunity for public comment, EPA will not take final action in this proceeding prior to thirty (30) days after issuance of this notice.