

US EPA ARCHIVE DOCUMENT

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1**

**Date of Notice:** January 10, 2014

**Public Notice Number:** PN2014-0001

**Comment Period:** January 13, 2014 – February 11, 2014

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

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. In Class I proceedings under Section 309(g)(2)(A), any person who violates certain provisions of the Clean Water Act may be administratively assessed a civil penalty of up to \$10,000 per violation per day for each day during which the violation continues, up to a maximum of \$25,000. Pursuant to 40 C.F.R. Part 19 (Adjustments of Civil Penalties for Inflation) promulgated pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, the maximum civil penalties that may be administratively assessed in Class I proceedings have been increased as follows: For violations occurring between March 15, 2004 and January 12, 2009, up to \$11,000 per violation per day for each day during which the violation continues, up to a maximum of \$32,500; and for violations occurring on or after January 13, 2009, up to \$16,000 per violation per day for each day during which the violation continues, up to a maximum of \$37,500. 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").

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.

Pursuant to Section 309(g), EPA is providing public notice of the following proposed administrative penalty assessment:

**Name of Case:** In the Matter of: Barberry Homes, Inc.

**Name and Mailing Address of Respondent:**

Barberry Homes, Inc.  
10 Speen Street  
Framingham, MA 01702

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

Michael Road Extension Subdivision  
Michael Road  
Wayland, MA

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

Homebuilder

**Description of Violation(s) Alleged in Complaint:**

Failure to promptly submit a Notice of Intent for coverage under the NPDES Construction General Permit for Stormwater (NOI was submitted four months late), and failure to follow permit requirements for erosion controls (slopes were not stabilized within required timeframes).

**Proposed Settlement Penalty:** \$3,000

**Docket Number:** CWA-01-2013-0071

**Date Filed with Regional Hearing Clerk:** TBA

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

Wanda I. Santiago  
Regional Hearing Clerk  
U.S. EPA, Region 1  
5 Post Office Square - Suite 100  
Mail Code: ORA18-1  
Boston, Massachusetts 02109-3912

(617) 918-1113

**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 5 Post Office Square, Boston, Massachusetts, and the file will be open for public inspection during normal business hours.

Because this matter involves a CWA Section 309(g) proceeding that is proposed to be simultaneously commenced and settled under 40 C.F.R. § 22.13(b), this matter will not be resolved or settled until ten (10) days after the close of the public comment period in accordance with 40 C.F.R. § 22.45(b) and (c).