

**PUBLIC NOTICE**  
**U. S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4**  
**WATER PROTECTION DIVISION**  
**NPDES PERMITTING AND ENFORCEMENT BRANCH**  
**ATLANTA FEDERAL CENTER**  
**61 FORSYTH STREET, S.W.**  
**ATLANTA, GEORGIA 30303**

**DATE: August 25, 2016**

**PUBLIC NOTICE No. CWA-04-2016-4504(b)**

**Notice of Proposed Issuance of  
Consent Agreement and Final Order**

The U.S. Environmental Protection Agency (EPA), Region 4, proposes to issue a Consent Agreement and Final Order (CAFO), Docket No. CWA-04-2016-4504(b), that assesses an administrative penalty of \$44,230.00 to Mar-Jac Poultry, Inc. (Respondent), 1020 Aviation Boulevard, Gainesville, Hall County, Georgia 30501, under the authority of Section 309(g)(2)(B) of the Clean Water Act (CWA) 33 U.S.C. § 1319(g)(2)(B).

The CAFO will settle the EPA allegations that the Respondent violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), by failing to fully comply with its National Pollutant Discharge Elimination System permit, the State of Georgia's *Storm Water Discharges Associated with Industrial Activity, Permit No. GAR050000*, at its industrial facility known as Mar-Jac Poultry, Inc. located at 1020 Aviation Boulevard, Gainesville, Hall County, Georgia.

Any person wishing to comment on any aspect of the proposed CAFO may submit such comments in writing to the Regional Hearing Clerk at U.S. EPA, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia, 30303. Comments must be submitted within 30 days of the date of this notice. Please include the Public Notice Number and the Docket Number with any submitted comments.

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), the EPA cannot resolve or settle this CAFO until ten days after the close of the public comment period in accordance with 40 C.F.R. § 22.45 (b) and (c).

**FOR FURTHER INFORMATION:** Persons wishing to receive a copy of 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, which apply to this matter, or comment upon the proposed penalty assessment, should contact the Regional Hearing Clerk identified above. Unless otherwise noted, the public record for this action is located in the EPA Regional Office at 61 Forsyth Street, S.W., Atlanta, Georgia, and the file will be open for public inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 4**

<b>IN THE MATTER OF:</b>	)	<b>CONSENT AGREEMENT AND</b>
	)	<b>FINAL ORDER</b>
<b>MAR-JAC POULTRY, INC</b>	)	
1020 Aviation Blvd.	)	
Gainesville, Hall County, Georgia	)	
	)	<b>DOCKET NO. CWA-04-2016-4504(b)</b>
<b>RESPONDENT.</b>	)	

**CONSENT AGREEMENT**

**I. Statutory Authority**

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(B) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(B), and 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*, including Subpart I, published at 64 Fed. Reg. 40176 (July 23, 1999) and codified at 40 Code of Federal Regulations (“C.F.R.”) Part 22.

2. The authority to take action under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), is vested in the Administrator of the United States Environmental Protection Agency. The Administrator has delegated this authority to the Regional Administrator, Region 4, who in turn has, pursuant to Region 4 delegation 2-52-A, delegated this authority to the Director of the Water Protection Division of the EPA, Region 4 (“Complainant”).

**II. Allegations**

3. Mar-Jac Poultry, Inc. (“Respondent”) is a corporation duly organized and existing under the laws of the State of Georgia and is therefore a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this action, Respondent owned and/or operated a poultry processing facility (“Facility”), as identified by Standard Industrial Classification (“SIC”) Code 2015, located at 1020 Aviation Blvd, Gainesville, GA 30501, and is an “industrial user” within the meaning of Section 502(18) of the CWA, 33 U.S.C. § 1362(18).

5. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), to restore and maintain the chemical, physical and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402 of the CWA, 33 U. S .C. § 1342.

6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a NPDES permit program authorizing the EPA or authorized states to administer the NPDES permit program, including the issuance of NPDES permits allowing for the discharge of pollutants, including stormwater, into navigable waters subject to specific terms and conditions. The EPA has granted the State of Georgia, through the Georgia Environmental Protection Division (“GAEPD”), approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. GAEPD issued the *Authorization to Discharge under the National Pollutant Discharge Elimination System Storm Water Discharges Associated with Industrial Activity*, Permit No. GAR050000, (“Permit”) in accordance with the Georgia Water Quality Control Act of 1964 (O.C.G.A. Code Sections 12-5-20 *et seq.*, 1964), the Georgia Rules and Regulations for Water Quality, Chapter 391-3-6, and the CWA. The Permit became effective on June 1, 2012, and will expire on May 31, 2017. Coverage under the Permit is obtained by submission of a Notice of Intent (“NOI”) to GAEPD.

8. The Permit is a Georgia statewide NPDES general permit governing stormwater discharges associated with industrial activities.

9. On June 28, 2012, Respondent submitted an NOI to GAEPD requesting coverage under the Permit at the Facility. The authorization became effective on June 28, 2012, and will expire on May 31, 2017, and requires Respondent to comply with all provisions of the Permit.

10. The Permit includes the following provisions:

- a. Part 1.2 of the Permit provides that noncompliance with any of the requirements of this permit constitutes a violation of the CWA and the Georgia Water Quality Control Act (“WQCA”). As detailed in Part 3 (Corrective Actions) of this permit, failure to take any required corrective actions constitutes an independent, additional violation of this permit, CWA, and the WQCA.
- b. Part 2.1.2 of the Permit establishes non-numeric technology-based effluent limits which require the Permittee to minimize the exposure of manufacturing, processing, and material storage areas by: practicing good housekeeping; maintaining equipment and systems; implementing spill prevention and response procedures; stabilizing exposed areas to minimize erosion and sediment runoff; and managing runoff by implementing best management practices (BMPs), which may include, among others, practices listed in the *Industrial Storm Water Fact Sheet Series* and the *National Menu of Storm Water BMPs*.
- c. Part 4.2.2 of the Permit provides the documentation requirements for the required quarterly visual assessments. These requirements include sample location, date and time of collection or assessment, personnel collecting the sample or making assessment, nature of discharge, results of

observations, probable sources of any observed stormwater contamination, and, if applicable, why a sample was not collected within the first 30 minutes of discharge.

- d. Part 4.3.1.1 of the Permit requires annual comprehensive inspections of all areas of the facility affected by the requirements in the Permit, including areas identified in the SWPPP as potential pollutant sources where industrial materials or activities are exposed to stormwater, any areas where control measures are used to comply with the effluent limits, and areas where spills and leaks have occurred in the past 3 years.
- e. Part 5.1 of the Permit describes the requirements of the Storm Water Pollution Prevention Plan (SWPPP) developed for the facilities complying with the Permit.
- f. Part 5.1.1.2 of the Permit requires training for all employees who work in areas where industrial materials or activities are exposed to stormwater or who are responsible for implementing activities necessary to meet the conditions of the Permit (including the Pollution Prevention Team members).
- g. Part 6.1.1 of the Permit requires the applicable monitoring be performed at each outfall authorized under the Permit, except as otherwise exempt from monitoring as a “substantially identical outfall.”
- h. Part 6.1.3.1 of the Permit requires monitoring to be performed on a storm event that is greater than 0.1 inch of rainfall (measurable storm event) that results in an actual discharge from the facility that follows the preceding measurable storm event by at least 72 hours. In the case of snowmelt, the monitoring must be performed at a time when a measurable discharge occurs at the facility.
- i. Part 6.1.3.2 of the Permit requires the Permittee to identify for each monitoring event, except snowmelt monitoring, the date and duration of the rainfall event, rainfall total for the rainfall event, time since the previous rainfall event, and the volume sampled.
- j. Part 6.1.4 of the Permit requires sampling of outfalls be performed within the first 30 minutes of initial discharge from a measurable storm event.
- k. Appendix C.2.4.2.1 of the Permit requires the applicable benchmark for discharges in Appendix C.2.4.2 to be calculated as the instream geometric mean Water Quality Standard for fecal coliform. Where collection of the four samples needed to calculate the geometric mean is not possible due to weather or other adverse conditions then the benchmark for the months of

November through April shall be the daily maximum Water Quality Standard for any sample, and the benchmark for the months May through October shall be four times the instream geometric mean Water Quality Standard. Appendix C.3.4 requires that facilities who passed the benchmark sampling required by Appendix C.2 and those subject to the sampling requirements in C.4 below shall sample bi-annually for the pollutant of concern according to the schedule in Part 6.1.7.

11. On August 27, 2014, representatives of the EPA performed a Compliance Inspection (“CI”) at the Facility to evaluate the treatment and disposal of stormwater in accordance with the CWA, the regulations promulgated thereunder at 40 C.F.R. § 122.26 and the Permit.

12. On February 10, 2015, the EPA issued a Notice of Violation (“NOV”) to Respondent for violations of the CWA and the Permit observed by the EPA during the CI and requested that Respondent contact EPA to schedule a Show Cause Meeting.

13. On April 14, 2015, a Show Cause Meeting was held between the EPA and Respondent to discuss the alleged violations in the NOV. At the Show Cause Meeting, the Respondent provided documentation of how it addressed or would address all of the deficiencies that were alleged in the NOV.

14. Based on the CI, the EPA determined that the Respondent failed to comply with the CWA, its implementing regulations, and the Permit as follows:

- a. The following deficiencies were observed with the Respondent's compliance with the non-numeric technology based effluent limits in violation of Part 2.1.2 of the Permit:
  - i. Maintenance and/or housekeeping issues were observed. At the tanker truck loading area there was evidence of prior spills around the storm drain inlet. At the staging area and the used oil pump station the containment structure showed signs of staining which could be exposed to stormwater. In the chlorine holding tank secondary containment structure the valve was in the open position during the inspection, which could result in a release of chlorine.
  - ii. There were storage and staging areas that were not identified in the SWPPP.
- b. The following deficiencies were observed with the SWPPP provided during the inspection in violation of Part 5.1 of the Permit:
  - i. The site map provided with the SWPPP did not identify some of the structural BMPs and outfalls at the Facility.

- ii. The SWPPP had not been updated to reflect some of the current conditions at the Facility.
  - iii. The responsibilities of the various Pollution Prevent Team members were not identified in the SWPPP.
  - iv. Some of the necessary details regarding employee training were not provided.
  - v. Some of the necessary details pertaining to the housekeeping and preventative maintenance measures were not provided in the SWPPP.
- c. Training records reviewed during the inspection showed training was not being provided to some of the required personnel. Specifically, training records were not provided for some of the Pollution Prevention Team members in violation of Part 5.1.1.2 of the Permit.
- d. The following deficiencies were observed with the documentation of the visual assessments and comprehensive inspections performed at the Facility:
- i. Information was not provided regarding the time of sampling to assure that sampling did occur within the first 30 minutes of discharge in violation of Parts 4.2.2 and 6.1.4 of the Permit.
  - ii. Annual comprehensive inspection records did not include observations of all of the facilities covered by the Permit in violation of Part 4.3.1.1 of the Permit.
- e. The following deficiencies were observed with the benchmark monitoring performed at the Facility:
- i. Sampling records did not include the necessary information pertaining to the rain event or the times of collection in violation of Part 6.1.3 of the Permit.
  - ii. Benchmark sampling was only performed at two of the three required outfalls at the Facility in violation of Part 6.1.1 of the Permit.

15. Therefore, Respondent has violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p) by failing to comply with the GAEPD Permit.

16. On September 30, 2015, the EPA and Respondent finalized an Administrative Order on Consent, Docket No. CWA 04-2015-4775 (“AOC”), pursuant to Section 309(a) of the

CWA, 33 U.S.C. § 1319(a), whereby Respondent agreed to perform certain injunctive relief to address the above violations. This Consent Agreement and Final Order (“CA/FO”) represents the culmination of negotiations between Complainant and Respondent and resolution of the allegations in the NOV (Attachment 1) that is incorporated into this CA/FO.

### **III. Stipulations and Findings**

17. Complainant and the Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this CA/FO will simultaneously commence and conclude this matter.

18. For the purposes of this CA/FO, the Respondent admits the jurisdictional allegations set out above and neither admits nor denies the factual allegations set out above.

19. The Respondent hereby waives its right to contest the allegations set out above and its right to appeal the Final Order accompanying this Consent Agreement.

20. The Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CA/FO and consents to the other conditions set forth in this CA/FO.

21. By signing this CA/FO, the Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response and statement. The Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information.

22. The EPA reserves the right to assess and collect any and all civil penalties for any violation described herein and in the Administrative Order on Consent to the extent that any information or certification provided by the Respondent was materially false or inaccurate at the time such information or certification was provided to the EPA.

23. Complainant and the Respondent agree to settle this matter by their execution of this CA/FO. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of the CWA.

### **IV. Payment**

24. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, the EPA has determined that forty-four thousand two hundred and thirty dollars (\$44,230.00) is an appropriate civil penalty to settle this action.

25. The Respondent shall submit payment of the penalty specified in the preceding paragraph within thirty (30) days of the effective date of this CA/FO via a cashier's or certified check, payable to the order of "Treasurer, United States of America." The check shall reference on its face the name of the Respondent and the Docket Number of this CA/FO. Such payment shall be tendered to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

26. At the time of payment, the Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CA/FO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

and

Mary Mattox  
U.S. Environmental Protection Agency, Region 4  
Water Protection Division  
NPDES Permitting and Enforcement Branch  
Municipal and Industrial Enforcement Section  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

27. The penalty amount specified above shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of federal taxes.

28. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by the Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject the Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CA/FO), attorney's fees, costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of such penalty and nonpayment penalty which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount and appropriateness of the penalty and of this CA/FO shall not be subject to review.

## **V. General Provisions**

29. This CA/FO shall not relieve the Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Other than as expressed herein, compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by the EPA.

30. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of the Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for the Respondent's violation of any federal or state statute, regulation or permit.

31. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and the Respondent of all claims for civil penalties pursuant to the CWA with respect to only those violations alleged in this CA/FO. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained herein.

32. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent, or other liability resulting from violations that were not alleged in this CA/FO.

33. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.

34. This CA/FO applies to and is binding upon the Respondent and its officers, directors, employees, agents, successors and assigns.

35. Any change in the legal status of the Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter the Respondent's responsibilities under this CA/FO.

36. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CA/FO.

37. In accordance with 40 C.F.R. § 22.5, the individuals below are authorized to receive service related to this proceeding:

For Complainant:

Wilda Watson Cobb  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9530

For Respondent:

E. Fitzgerald Veira  
Troutman Sanders LLP  
Bank of America Plaza, Suite 5200  
600 Peachtree Street, N.E.  
Atlanta, Georgia 30308-2216  
(404) 885-3278

38. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a Consent Agreement and proposed Final Order based on comments received during the public comment period.

39. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of Georgia was provided a prior opportunity to consult with Complainant regarding this matter.

40. Effective upon signature of this CA/FO by the Respondent, the Respondent agrees that the time period commencing on the date of its signature and ending on the date the EPA receives from the Respondent the payment required by this CA/FO shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the EPA related to the matters addressed in this CA/FO and that, in any action brought by the EPA related to the matters addressed, the Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If the EPA gives notice to the Respondent that it will not make this CA/FO effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by the EPA.

## **VI. Effective Date**

41. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

DOCKET NO. CWA-04-2016-4504(b)

**AGREED AND CONSENTED TO:**

**For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4:**

\_\_\_\_\_  
James D. Giattina  
Director  
Water Protection Division  
U.S. EPA, Region 4

Date: \_\_\_\_\_

For RESPONDENT, MAR-JAC POULTRY, INC.:

Date:

  
\_\_\_\_\_  
Joel Williams  
Complex manager  
Marc-Jac Poultry, Inc.  
U.S. EPA, Region 4

Date: 8-17-16

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 4**

<b>IN THE MATTER OF:</b>	)	<b>CONSENT AGREEMENT AND</b>
	)	<b>FINAL ORDER</b>
<b>MAR-JAC POULTRY, INC</b>	)	
1020 Aviation Blvd.	)	
Gainesville, Hall County, Georgia	)	
	)	<b>DOCKET NO. CWA-04-2016-4504(b)</b>
<b>RESPONDENT.</b>	)	

**FINAL ORDER**

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*, 40 C.F.R. Part 22, and authorities delegated to me, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: \_\_\_\_\_

\_\_\_\_\_  
Heather McTeer Toney  
Regional Administrator

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of Mar-Jac Poultry, Inc., **Docket No. CWA-04-2016-4504(b)** (filed with the Regional Hearing Clerk on \_\_\_\_\_, 2016) was served on \_\_\_\_\_, 2016, in the manner specified to each of the persons listed below.

By hand-delivery:

Ms. Wilda Cobb  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

By certified mail,  
return receipt requested:

Mr. John Weeks  
Mar-Jac Poultry, Inc  
P.O. Box 1017  
Gainesville, Georgia 30503

Mr. James A. Capp, Chief  
Chief, Program Coordination Branch  
Georgia Environmental Protection Division  
2 Martin Luther King Jr., Drive, S.E.  
East Floyd Tower, Suite 1452  
Atlanta, Georgia 30334-9000

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Patricia A. Bullock  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9511

# **Attachment 1**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

FEB 10 2015

CERTIFIED MAIL 7012 1010 0001 8097 2638  
RETURN RECEIPT REQUESTED

Mr. John Weeks  
Regulatory Compliance Manager  
Mar-Jac Poultry, Inc.  
P.O. Box 1017  
Gainesville, Georgia 30503

Re: Compliance Evaluation Inspection Report  
Notice of Violation and Opportunity to Show Cause  
National Pollutant Discharge Elimination System Permit No.: GAR050000

Dear Mr. Weeks:

On August 27, 2014, the U.S. Environmental Protection Agency performed a Compliance Stormwater Evaluation Inspection (CSWEI) of the Mar-Jac Poultry (Mar-Jac) facility in Gainesville, Georgia. The findings of the EPA's inspection are summarized in the enclosed report. The purpose of the EPA's inspection was to evaluate Mar-Jac's compliance with the treatment and disposal of stormwater in accordance with the requirements of Section 402(p) of the Clean Water Act (CWA), 33 U.S.C. § 1342(p), the regulations promulgated thereunder at 40 Code of Federal Regulations (C.F.R.) Part 122.26, and the Georgia General Permit, *Authorization to Discharge Under The National Pollutant Discharge Elimination System Stormwater Discharges Associated With Industrial Activity* (Permit), Permit No: GAR050000, effective June 1, 2012.

The CSWEI, as described in the enclosed report, revealed that Mar-Jac failed to comply with the requirements of the Permit and is therefore in violation of Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p). Additionally, the EPA believes that Mar-Jac had an unpermitted illegal discharge of a pollutant into waters of the United States.

Specifically, Mar-Jac violated the following CWA provisions and Permit conditions:

1. **Section 301 of the CWA: provides in part that: “{e}xcept as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, and 1344 of this title the discharge of any pollutant by any person shall be unlawful.**

Observation – see Sections 3 and 4 of the inspection report. The EPA received information from a citizen's group that indicates that Mar-Jac discharged a pollutant from an outfall into an unnamed tributary that discharges directly into Flat Creek. Flat Creek is an eastern tributary to Lake Lanier, the largest lake located entirely within the State of Georgia. And Flat Creek is listed on “Georgia's Impaired Waters”.

2. **Section 2.1.2 of the Permit established non-numeric technology-based effluent limits which included requirements for the minimization of exposure, good housekeeping, maintenance, spill prevention and response procedures, erosion and sediment controls, and management of runoff. The non-numerical technology based limits include requirements for minimizing the exposure of manufacturing, processing, and material storage areas to stormwater (Section 2.1.2.1); maintaining good housekeeping practices for industrial areas exposed to stormwater (Section 2.1.2.2); performing regular inspection, testing, repairs for all industrial processes (Section 2.1.2.3); and implement the appropriate spill prevention and response procedures (Section 2.1.2.4).**  
Observation - see Section 5 of the inspection report. Various areas of the site were observed to be in need of either housekeeping and/or maintenance measures.
3. **Section 3.3 of the Permit requires the Permittee to document the discovery of any of the conditions listed in Parts 3.1 and 3.2 of the Permit within 24 hours of making such discovery. Subsequently, within 30 days of such discovery, the Permittee must document any corrective action(s) to be taken to eliminate or further investigate the deficiency, or if no corrective action is needed, the basis for the determination. If the Permittee determined that changes are necessary following the review, any modification to control measures must be made as soon as practicable but in no case more than ninety (90) days after the discovery unless additional time is approved by EPD.**  
Observation - see Section 4 of the inspection report. All of the necessary documentation was not available for the illicit discharge observed at the outfall on the northwest side of the site.
4. **Section 5.1 of the permit outlines the necessary elements of the SWPPP. Included in these requirements are identify the members and the member responsibilities of the Pollution Prevention Team (Section 5.1.1), site description (Section 5.1.2.1), periodic training requirements (Sections 5.1.1.2 and 8.U.3.1), a site map which provides the location all of stormwater outfalls which discharge storm water associated with industrial activity (Section 5.1.2.3), identification of potential pollutant sources (Sections 5.1.2 and 8.U.4.2), description of control measures (Sections 5.1.4, 8.U.7, and C.2.4.2), schedule and procedures for good housekeeping and preventative maintenance (Section 5.1.5.1), spill prevention and response procedures (Sections 5.1.5.1 and 2.1.2.4), schedule and procedures for monitoring (Sections 5.1.3.6, 5.1.5.2, and Appendix C), schedule and procedures for routine inspections (Sections 5.1.5.2 and 8.U.5), and schedule and procedures for annual comprehensive inspection (Section 5.1.5.2).**  
Observation - see Section 2 of the inspection report. Review of the facility's site plan showed deficiencies of various requirements of Section 5.1 of the permit pertaining to the SWPPP.
5. **Section 5.2.1 of the Permit requires the Permittee to amend the SWPPP within thirty (30) days whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the State of Georgia, or if the SWPPP proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified in the SWPPP, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity. The SWPPP must be updated at least annually.**

Observation – see Section 2 of the inspection report. The plan provided by Mar-Jac neither met all of the current permit requirements nor accurately reflect the current conditions at the site. Additionally, the SWPPP had not been updated at least annually to reflect current site conditions.

- 6. Section 5.3.1 of the Permit requires the Permittee to retain a copy of the current Storm Water Pollution Prevention Plan (SWPPP) required by this permit at the facility and readily available at the time of an onsite inspection or upon request.**

Observation – see Section 2 of the inspection report.

- 7. Section 5.4 of the Permit requires the Permittee to maintain and make readily available records of the various inspections, monitoring requirements, and certifications in accordance with Part 7.5. This includes the requirement to maintain adequate records for routine inspection reports, quarterly visual assessment reports, and comprehensive site inspection reports (Section 5.4.5); records of employee training (Section 5.4.11); and records of corrective action taken at the facility (Section 5.4.7).**

Observation – see Section 4 of the inspection report. The inspection and certification records provided by the Permittee showed various deficiencies with regards to the documentation of various requirements.

- 8. Section B.14.2 of the Permit requires the Permittee to maintain records of all of the required monitoring events. Per Section B.14.4, these records should include the date, place, and time or samples, name of the individual performing the sampling, date(s) analyses was initiated, date analysis were performed, names of people performing the analyses, references and written procedures, and the results of the analyses.**

Observation – see Section 4 of the inspection report.

Until compliance with the CWA is achieved, Mar-Jac is considered to be in violation of the CWA and subject to enforcement action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319. This Section provides for the issuance of administrative penalty and/or compliance orders and the initiation of civil and/or criminal actions.

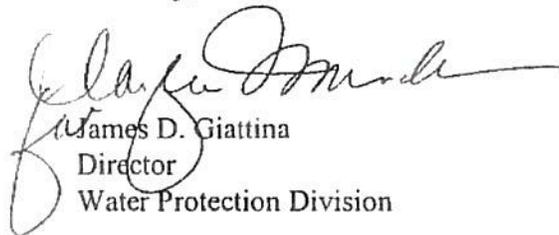
Therefore, the EPA requests that representatives of Mar-Jac contact the EPA within 14 days of receipt of this letter to arrange a meeting in this office to show cause why the EPA should not take formal enforcement action against Mar-Jac for these violations and any other potential violations, including the assessment of appropriate civil penalties. In lieu of appearing in person, a telephone conference may be scheduled. You should be prepared to provide all relevant information with supporting documentation pertaining to the violations, including but not limited to any financial information, which may reflect an inability to pay a penalty. You have the right to be represented by legal counsel.

Please be aware that the EPA may use information provided during the meeting or telephone conference in any enforcement proceeding related to this matter. Failure to schedule a show cause meeting may result in a unilateral enforcement action against Mar-Jac. Notwithstanding the scheduling of a show cause meeting, the EPA retains the right to bring further enforcement action under Section 309(d) of the CWA, 33 U.S.C. § 1319, for the violations cited therein or for any other violation of the CWA.

Enclosed is a document entitled *U.S. EPA Small Business Resources-Information Sheet* for your use and to assist you in understanding the compliance assistance resources and tools available to you. However, any decision to seek compliance assistance at this time does not relieve you of your obligation to the EPA, does not create any new rights or defenses and will not affect the EPA's decision to pursue enforcement action. In addition, the Securities and Exchange Commission (Commission) requires its registrants to periodically disclose environmental legal proceedings in statements filed with the Commission. To assist you, the EPA has also enclosed a document entitled *Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings*.

Please contact Mr. Ahmad Dromgoole, of my staff, at (404) 562-9212 to arrange a show cause meeting. Please direct any questions or concerns to Mr. Dromgoole. Legal inquiries should be directed to Ms. Wilda Cobb, Associate Regional Counsel, at (404) 562-9533.

Sincerely,



James D. Giattina  
Director  
Water Protection Division

Enclosures

cc: Mr. James Capp  
Georgia Environmental Protection Division

Mr. Bert Langley  
Georgia Environmental Protection Division