

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

IN THE MATTER OF:

Michael B. Rapasadi
2106 Lake Road
Oneida, NY 13421

Thomas R. Rapasadi
2106 Lake Road
Oneida, NY 13421

Respondents.

Proceeding pursuant to § 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)

**Proceeding to Assess Class I
Civil Penalty Pursuant to Section
309(g) of the Clean Water Act**

Docket No. CWA-02-2013-3601

REPORT OF STATUS CONFERENCE AND ORDER

The status teleconference in this matter was held on September 30, 2014. Participating were:

Presiding Officer:	Helen S. Ferrara
Respondent's Attorney:	John Benjamin Carroll
Complainant:	Lauren Fischer, Attorney David Pohle Aaron Smith

Introduction: The Presiding Officer again requested that the Respondent's counsel update the parties on his progress on obtaining the necessary tax returns from his clients, ascertaining whether his clients want to pursue ADR, and getting a commitment from local governments to assist in remediation of the site.

Status: Mr. Carroll stated that he had not received any additional documentation from his clients to support his clients' argument that they are unable to pay the proposed penalty,

despite the fact that he had asked his clients repeatedly for this information.

Mr. Carroll also stated that based on a site visit with his client and Mr. Smith, his client understood that the Corps of Engineers might require less fill to be removed. His current understanding is that the local governments would not help remediate the site unless the parties could agree on a partial removal of less fill.

Mr. Smith pointed out that removal of a smaller amount was not acceptable unless all the parties agreed to accept that as remediation. Ms. Fischer is unclear about the confusion concerning the amount of fill required to be removed. Mr. Smith said that EPA has made it clear that the footprint of the fill is 1.13 acres; if fill is piled on top it does not increase the footprint. Respondent can't just remove the fill on top; they must remove the whole footprint. Representatives of the Complainant emphasized that the 309(a) Findings of Violation and Order clearly require that the entire 1.13 acres of fill be removed.

The parties discussed the fact that the Respondents should consider submitting a restoration plan, and it appears that they may be willing to submit such a plan and remove the fill.


Mr. Carroll represented that his clients would be interested in ADR, and it was decided that Mr. Carroll and Ms. Fischer would be in touch to facilitate scheduling of ADR.

Once again, the Undersigned emphasized that there must be more progress in the matter, as little has been made in the past few months. The parties are optimistic about the possibility of engaging in the ADR process. The parties agreed that it was in the best interest of all parties to schedule a follow up status teleconference as soon as possible.

IT IS ORDERED:

A status teleconference is scheduled for Tuesday, November 18, 2014 at 11:00PM.

Dated: October 27, 2014


Helen S. Ferrara
Presiding Officer

CERTIFICATE OF SERVICE


I hereby certify that the **Report Of Status Conference And Order** by Regional Judicial Officer Helen Ferrara in the matter of **Michael B. Rapasadi and Thomas Rapasadi**, Docket No. CWA-02-2013-3601, was served on the parties as indicated below:

First Class Mail -

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Karen Maples
Regional Hearing Clerk
USEPA - Region II

Dated: October 28, 2014