

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
Region 2**

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG  
2012 MAY 15 A 6: 58  
REGIONAL HEARING  
CLERK

**IN THE MATTER OF:**

Dolomite Products Co., Inc.  
Manitou Construction  
Manitou-Redman Mine, Concrete Plant and  
Maintenance Facility  
1150 Penfield Road, Rochester, New York

Respondent.

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

**CONSENT AGREEMENT**

**AND**

**FINAL ORDER**

DOCKET NO. CWA-02-2010-3403

NPDES TRACKING NO. NYR00B138

**CONSENT AGREEMENT AND ORDER**

Complainant, the United States Environmental Protection Agency ("EPA"), having issued Complaint Number CWA-02-2010-3403 on September 2, 2010, against Dolomite Products Co., Inc., Manitou Construction, Manitou-Redman Mine, Concrete Plant and Maintenance Facility (collectively referred to as "Respondent"), and

Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby agreed, and ordered as follows:

**I. PRELIMINARY STATEMENT**

1. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319.
2. The Complaint alleges that Respondent failed to comply with the terms of its State Pollutant Discharge Elimination System ("SPDES") Multi Sector General Permit for

Stormwater Discharges Associated with Industrial Activity GP-0-06-002, Permit No. NYR00B138, which is a duly issued SPDES permit for the State of New York. The Complaint further alleges that Respondent failed to either eliminate its process wastewater discharge (sand and gravel washwater discharge) or apply for an individual permit for the sand and gravel washwater discharge as required for compliance with 40 C.F.R. Part 436 and Sections 301 and 402 of the Clean Water Act from on or before September 1, 2005, until on or about May 20, 2009.

3. EPA notified the State of New York (New York State Department of Environmental Conservation (“NYSDEC”)) regarding this action and offered an opportunity for the State of New York to confer with EPA on the proposed penalty assessment, pursuant to 40 CFR Part 22.
4. This action was publicly noticed. No public comment was received.
5. Respondent filed a timely request to enlarge its time to answer pending settlement discussions.
6. This Consent Agreement and Final Order shall apply to and be binding upon Respondent, as well as applying to and binding upon the Respondent’s officers, directors, and employees, in their capacities as representatives of Respondent as well as on the Respondent’s successors and assigns, including, but not limited to, Respondent’s subsequent purchasers.
7. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in the Complaint and that the Complaint states a claim upon which relief can be granted against Respondent. Respondent hereby waives any defenses it might have as to jurisdiction and venue, admits the factual and legal allegations contained in the Complaint and consents to the terms of this Consent Agreement and Final Order, but in so consenting to the factual and legal allegations does not waive any defenses it may have to any such factual or legal allegations not based on jurisdiction and not based on failure to state a claim.
8. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

## **II. TERMS OF SETTLEMENT**

9. Pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), the nature of the violations, Respondent’s agreement to perform a Supplemental Environmental Project (“SEP”) and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of twenty thousand (\$20,000.00) dollars.

10. For purposes of settlement, Respondent consents to the issuance of this Consent Agreement and consents to the payment of the civil penalty cited in the foregoing Paragraph as well as to the performance of a Supplemental Environmental Project (described in greater detail at II.B below).

### **II. A. Penalty**

11. No later than forty-five (45) days after the date of issuance of the executed Final Order signed by the Regional Administrator, U.S. EPA, Region 2, Respondent shall pay the penalty of twenty thousand (\$20,000.00) dollars by cashier's or certified check, payable to the "Treasurer of the United States of America", identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. This check shall be mailed to:

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

Respondents shall also send copies of this payment to each of the following:

Larry Gaugler, P.E.  
Acting Chief  
Compliance Section  
Water Compliance Branch  
U.S. EPA, Region 2  
290 Broadway, 20<sup>th</sup> Floor  
New York, NY 10007

and

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007

Payment must be received at the above address no later than forty-five (45) calendar days after the date of signature of the Final Order (at the end of this document). The date by which payment must be received shall hereafter be referred to as the "due date".

- a. Failure to pay the penalty in full according to the above provisions will result in a referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

- b. Further, if the payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30 day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.
  - c. In addition, pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. § 1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter.
  - d. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.
12. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondent's federal or state taxes.

### **II. B. Supplemental Environmental Project ("SEP")**

13. a. Respondent shall complete the following supplemental environmental project ("SEP"), which the Parties agree is intended to secure significant environmental or public health protection and improvement:

Respondent shall undertake a land conservation project located in the vicinity of Rochester, New York. The purpose of this environmental restoration and protection project is to preserve land, protect a wetland, reduce storm water pollution and protect the ecological resources of the property in order to ensure or advance the protection of water quality, habitat, ecological values, indigenous flora and fauna. The land to be preserved in perpetuity is a 21 acre parcel located on Howard Road, in Gates, New York valued at sixty-three thousand (\$63,000) dollars, and as shown in Attachment A (A map of the Site which delineates the property boundary). Respondent shall further donate one additional acre of land valued at twelve thousand (\$12,000) dollars, located on Hickey Road to include in the preservation.

- b. No later than sixty (60) calendar days after the date of signature of the Final Order, Respondent shall submit a Work Plan to accomplish the SEP stated in Paragraph 13. a. above, which includes, at a minimum:

- an assessment of the actual conditions at the land conversation project property, including, but not limited to, a current title study, proof of fee simple title to the property, specific location, current environmental condition, and any restoration work, must be provided, and;
- assurance in the form of a written certification from Respondent stating that upon reasonable inquiry (including, but not limited to, walking the property and knowledge of its prior use) the site is not contaminated with any hazardous waste, petroleum products or other pollutants to the best of its knowledge, and;
- assurances that pursuant to the conveyance to a third party as referenced below, the property will be maintained in perpetuity as a protected area through deed restrictions or covenants and free from uses that are not consistent with ecosystem protection, and;
- the date by which Respondent shall convey title to a third party with a covenant in the deed, and file the deed with the County Clerk's Office in Rochester, New York indicating that this parcel shall not be developed and shall be maintained in a natural state in perpetuity (establishing that the land will not be used for activities that are not consistent with the protection of the existing wetlands and resources, that the property will be maintained as a protected area, in its natural state, and that no more than 10% can be developed for public access or use), and; a schedule for all activities required to fulfill the Work Plan such that all activities, if any, are completed including submission of the SEP Completion Report by no later than 395 days from the date of signature of the Final Order, and;
- provide at least a one-time funding source to the third party for management and monitoring of the parcel in the amount of fifteen thousand (\$15,000.00) dollars, and
- the name and contact information for the third party that will take title to the site, if applicable.

Respondent may consult with EPA while developing the Work Plan, to ensure timely submission of an approvable Work Plan, including submittal of drafts of the Work Plan to EPA for EPA's review and comments.

- c. EPA will review the Work Plan submitted pursuant to paragraph 13.b above, if any, and will inform Respondent, in writing, of EPA's approval, modification and approval, or disapproval of such Work Plan, in whole or in part, and the specific grounds for any disapproval.

- d. In the event that EPA disapproves the Work Plan, in whole or in part, within thirty (30) calendar days of receipt of EPA's disapproval, Respondent shall revise and re-submit such Work Plan for EPA review and approval.
- e. Upon re-submission of the Work Plan pursuant to paragraph 13.b above, if such Work Plan is required, EPA will review such Work Plan and inform Respondent, in writing, of EPA's approval, modification and approval, or disapproval of the Work Plan, in whole or in part, and the specific grounds for any disapproval.
- f. If EPA elects to request modifications of the resubmitted Work Plan for the SEP, EPA will permit Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this paragraph within fourteen (14) calendar days of receipt of such notification. EPA and Respondent shall have an additional fourteen (14) calendar days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Work Plan, if any such Work Plan is required. If agreement cannot be reached on any such issue within this fourteen (14) calendar day period, EPA shall provide a written statement of its decision on the adequacy of the Work Plan, which decision shall be final and binding upon the Respondent.
- g. In the event that either of the parties proposes a change to the SEP and/or final EPA approved Work Plan, Respondents shall submit for EPA approval, modification and approval, or disapproval, a modified Work Plan incorporating such proposed changes following the procedures in Paragraphs 13a-f above.
- h. If EPA approves the Work Plan required by Paragraph 13. b. above, the EPA-approved Work Plan shall be incorporated by this reference into this Compliance Agreement and Final Order and shall be binding and enforceable.
- i. Respondent shall begin implementation of the Work Plan within 10 calendar days of receipt of EPA's written approval of the Work Plan.
- j. The SEP as described in Paragraph 13. a. above shall be achieved in accordance with the EPA-approved Work Plan, and if no Work Plan is required, then the SEP shall be deemed complete once the actions required to be undertaken by Respondent as set forth above in Paragraphs 13 a-b are complete and evidence of its completion has been submitted in accordance with Paragraph 17.
- k. **The SEP shall be completed no later than one year after signature of the Final Order.**
- l. Submittal of a quarterly status report every 90 days from the signature date of the Final Order until the quarter prior to the submittal of the SEP Completion Report.

14. **Federal Tax:** For Federal Income Tax purposes Dolomite Products Co., Inc. and Manitou Construction agree that neither will either capitalize into inventory or basis or deduct any costs or expenditures incurred in performing the SEP.
15. **SEP Cost:** The total expenditure for the SEP, at cost to the Respondent, shall be not less than \$90,000.00. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report
16. **Certification:** Respondent hereby certifies that, as of the date of this Consent Agreement and Final Order (“CA/FO”), Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent or Third Party (if applicable) required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.
17. **SEP Completion Report:** Respondent shall submit a SEP Completion Report to EPA by no later than 395 days following signature of the Final Order. The SEP Completion Report shall contain the following information:
  - a detailed description of the SEP as implemented, and;
  - a map of the SEP as implemented, and;
  - itemized costs  
In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, “acceptable documentation” includes invoices, purchase orders, appraisals or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made, and;
  - certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order, and;
  - description of the environmental, ecological and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible), and;

- a copy of the deed evidencing a restrictive covenant running with the land, requiring that the 21-acre parcel be maintained in perpetuity as a natural and self-sustaining wetland, and establishing that the land will not be used for activities that are not consistent with the protection of the existing resources and adjacent wetlands and natural areas; that the property will be maintained as a protected area, in its natural state, and that no more than 10% can be developed for public access or use, and;
  - evidence that the deed has been filed with County Clerk's Office in Rochester, New York, and ;
  - evidence that the one-time funding source to the third party for management and monitoring of the parcel in the amount of fifteen thousand (\$15,000.00) dollars has been paid.
18. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this Consent Agreement, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and complete by signing the following statement:
- “I hereby certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.”
19. **Periodic Reports/Submissions:** Respondent shall submit any additional reports or information required by the Work Plan, if any, to EPA in accordance with the schedule and requirements recited therein.
20. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this Consent Agreement for a term of five (5) years after the implementation of the SEP and shall provide the documentation of any such underlying research and data to EPA not more than ten (10) working days after a request for such information.
21. **Public Statements:** Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of the Clean Water Act."



22. **EPA Acceptance of SEP Completion Report:**

- a. After receipt of the SEP Completion Report described in Paragraph 17 above, EPA will notify Respondent, in writing, regarding: (i) any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or, (ii) indicate that EPA concludes that the project has been completed satisfactorily; or, (iii) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with Paragraph 23 below.
- b. If EPA elects to exercise option (i) above, i.e., if the SEP Completion Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of completed SEP itself, EPA shall give Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this Paragraph within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be reasonable and final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this Consent Agreement and Final Order. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 23 below.

23. **Stipulated Penalties:**

- a. In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in Section II.B above and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described in Paragraph 13 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
  - i. If Respondent timely submits a Work Plan, if any is required, but the Work Plan fails to satisfy EPA requirements as detailed in Paragraph 13. b. above, EPA shall provide written notice of the disapproval and the SEP shall not be performed and Respondent shall pay a stipulated penalty in the amount of \$90,000.
  - ii. If Respondent submits an EPA-approvable Work Plan but it is not submitted by sixty (60) calendar days after the date of signature of the

Final Order, the SEP shall not be performed and Respondent shall pay a stipulated penalty in the amount of \$90,000.

- iii. Except as provided in subparagraph iv immediately below, if the SEP described above in Paragraph 13 is not completed satisfactorily pursuant to this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty in the amount of \$90,000.
  - iv. If the SEP is not completed satisfactorily in accordance with Paragraph 13, but the Complainant determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certify, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP as described in Paragraph 13, Respondent shall not be liable for any stipulated penalty under this paragraph.
  - v. If the SEP is completed satisfactorily in accordance with Paragraph 13, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in a dollar amount equal to the difference of the amount spent and 90,000.
  - vi. If the SEP is completed satisfactorily in accordance with Paragraph 13, and the Respondents spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.
  - vii. For failure to submit the SEP Completion Report required by Paragraph 17 above, Respondent shall pay a stipulated penalty in the amount of \$500.00 for each day after the report was due until the report is submitted.
  - viii. For failure to submit any other report required by Paragraph 13 above, Respondent shall pay a stipulated penalty in the amount of \$250.00 for each day after the report was originally due until the report is submitted.
- b. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
  - c. Respondent shall pay stipulated penalties within thirty (30) days after receipt of written demand by EPA for such penalties. Payment of stipulated penalties shall be made payable to the "Treasurer of the United States of America." Such check shall be mailed to:

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

The checks shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document.

A copy of the check and any transmittal letter shall be sent to each of the following:

Larry Gaugler, P.E.  
Acting Chief  
Compliance Section  
Water Compliance Branch  
U.S. EPA, Region 2  
290 Broadway, 20<sup>th</sup> Floor  
New York, NY 10007

and

Regional Hearing Clerk  
U.S. EPA, Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007

Interest and late charges on stipulated penalties shall be paid as stated in Paragraph 11 above.

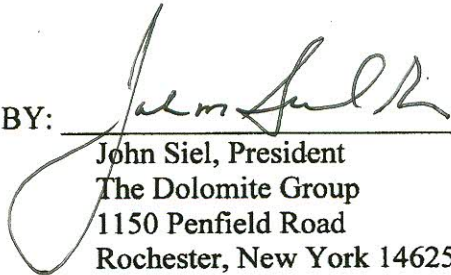
### **II. C. General Provisions**

24. Respondent shall submit all notices and reports required by this Consent Agreement and Final Order by first class mail to:

Larry Gaugler, P.E.  
Acting Chief  
Compliance Section  
Water Compliance Branch  
U.S. EPA, Region 2  
290 Broadway, 20<sup>th</sup> Floor  
New York, NY 10007

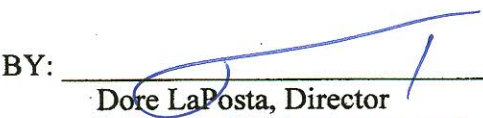
25. The Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Director or the Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
26. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law, nor waiver of any defense, objection or response the Respondent may assert in response to any claim that the agreement is violated.
27. This Consent Agreement and Order shall not relieve 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, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent, if any, in connection with the SEP undertaken pursuant to this Agreement.
28. This Consent Agreement and Final Order constitutes a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act for the violations alleged in the Complaint. Nothing in this Consent Agreement and Final Order is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent. Compliance with this Consent Agreement and Final Order shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.
29. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
30. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this Consent Agreement and Order.

RESPONDENT:

BY:   
John Siel, President  
The Dolomite Group  
1150 Penfield Road  
Rochester, New York 14625

DATE: 4.11.12

COMPLAINANT:

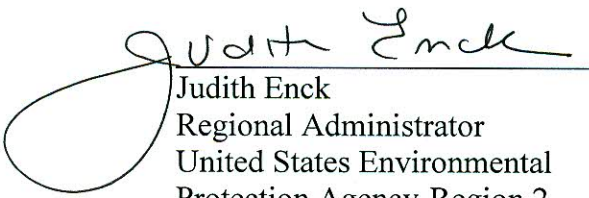
BY:   
Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance  
U.S. EPA, Region 2  
290 Broadway, 21<sup>st</sup> Floor  
New York, New York 10007-1866


DATE: MAY 3, 2012

### III. FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, NY.

5-9-12  
Date

  
Judith Enck  
Regional Administrator  
United States Environmental  
Protection Agency-Region 2  
290 Broadway  
New York, NY 10007-1866



Town of Gates, NY  
Tax # 262000 119.18-1-2  
21.00 Acres

note: property lines are  
approximate

Hinchey Road

