

Henry G. Page Jr.  
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April 14, 2011

Ms. Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007-1866

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.II  
2011 APR 25 A 11: 51  
REGIONAL HEARING  
CLERK

Re: **Frank Farm Subdivision – Phase II**  
**LaGrange, New York**  
**Docket No. CWA-02-2011-3404**

Dear Ms. Maples:

On April 13, 2011, we had an informal settlement conference meeting with Mr. Chris Saporita, Esq. and Ms. Kimberly McEathron of the EPA regarding Frank Farm Subdivision – Phase II, Docket No. CWA-02-2011-3404. We are now in the negotiation phase of the procedure and will work with Mr. Saporita & Ms. McEathron toward an amiable solution to this assessed fine.

Enclosed please find one {1} copy of our responses, minus the exhibits for your file. Both Mr. Saporita & Ms. McEathron have the complete package of responses & exhibits.

Thank you for your time and consideration in this matter. If you have any questions or concerns, please do not hesitate to contact me at {845} 452-2111.

Sincerely  
Henry G. Page, Jr. Development, LTD

  
James F. Bedore

cc: Henry G. Page, Jr.  
John Rittinger, Esq.  
Chris Saporita, Esq. - USEPA  
Kimberly McEathron – USEPA  
Christina Zolezi, P.E. – Povall Engineering

**SECTIONS I to IX**

**FRANK FARM SUBDIVISION – PHASE II**  
**RESPONSES TO EPA**

**DOCKET No. CWA-02-2011-3404**

Re: Henry G. Page, Jr. Development, LTD  
Frank Farm Subdivision – Phase II  
LaGrange, New York  
Docket No. CWA-02-2011-3404

## ANSWER TO COMPLAINT:

### I. STATUTORY AND REGULATORY AUTHORITIES

- 1-2 Comment noted and no response required except that it is denied that a civil penalty is appropriate in this case in the amount of \$55,000.

### II. DEFINITIONS AND STATORY AUTHORITIES

- 3-13 Comment noted and no response required except that it is denied that a civil penalty is appropriate in this case in the amount of \$55,000.

### III. FINDING OF VIOLATIONS

1. Henry G. Page, Jr. is the president of Henry G. Page, Jr. Development, LTD and is the respondent responsible in these allegations.
2. No response required. However, it is noted that except for the alleged violations pertaining to the inspection reports which are covered in the answer to Paragraphs 7a & 7b below, it appears that all of the alleged violations in the Complaint are supposed to have occurred in Phase II and not in Phase I. Phase I was sold to Toll Brothers in August of 2007. See Exhibit "A" for copies of Henry G. Page, Jr. Development, LTD SPDES - NYR10H923 & Toll Land V Limited Partnership SPDES- NYR10N204.
3. Construction for infrastructure in Phase II was completed with the exception of the wetland plantings and shrubs involving the two storm water management ponds {SMP-8 and SMP-8B} on July 16, 2010. See letter to Mr. Dave Gasper of NYSDEC dated July 19, 2010; Exhibit "B", Phase II was sold to Toll Brothers on June 25, 2010.
4. We concur based on rainfall data that on August 8, 2007, Poughkeepsie received 0.84 inches of rainfall and that this was the first rainfall for the month of August. For copy of the rainfall data, see Exhibit "C".
5. Comment noted and no response required.
6. Comment noted and no response required.

7. The total disturbance including both the lot development and infrastructure did not exceed 4.9 acres at any given time during construction.
- 7a. A professional engineering and land development consulting firm, Morris Associates P.S., LLC, was hired as the qualified professional to conduct site inspections and inspection reports in accordance with the NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activity Permit No. GP-02-01. Morris Associates has provided the owner with 22 of the missing inspection reports for the time period of 11/8/2006 to 6/27/2007. Morris Associates has not provided the owner with inspection reports from July 2007 to January 2010. It is noted that no construction activity occurred on the site from early November of 2007 to the middle of April 2008, from early November 2008 to the beginning of April 2009, and for a two-month period when site contractor was again off the job; beginning of June 2009 to beginning of August 2009. These time periods should have resulted in Morris Associates doing monthly inspections only. Copies of the 22 missing inspection reports are provided in Exhibit "D".
- 7b. As stated in our response to comment III.7.a., a professional engineering and land development consulting firm, Morris Associates PS, LLC, was hired as the qualified professional to conduct the site inspections and inspection reports in accordance with the NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activity Permit No. GP-02-01. We have contacted and received a response from Morris Associates regarding the alleged duplicated inspection reports; see Exhibit "E" for correspondence to/from Morris Associates, dated April 7, 2011.
- Please note that after the EPA inspection on December 17, 2009 during which the EPA brought the missing inspection reports to our attention, we immediately hired a new professional engineering consultant, Povall Engineering, PLLC, to perform all required inspections in accordance with the NYSDEC General Permit for Stormwater Discharges from Construction Activity. Povall Engineering has been performing inspections since January 12, 2010 and continues to perform the inspections to this date. See Exhibit "F", sheet "O" for copies of first inspection, 1/12/10 & latest inspection, 4/04/11 by Povall Engineering.
- 7c. The erosion and sediment control practices were installed and maintained in accordance with the project plans. Any deficiencies that were noted during the inspection or during the construction day were corrected.

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- 7c.i. At the time of the EPA inspection, SMP-8 was not complete {being utilized as a temporary siltation trap}, and therefore non-functioning. The rip-rap lined swale utilized as outlet protection {SMP-8}, was installed prior to completion of the detention pond as shown in photos, sheet "E" & "J" respectively, Exhibit "F".
- 7c.ii. The rip-rap lined swale to protect the stream traversing under Ridgeline Drive was installed adjacent to the detention pond {SMP-8} after the EPA inspection, upon completion of detention pond as shown in photos, sheet "J", Exhibit "F".
- 7c.iii. Based upon the existing site topography, it was not feasible to use temporary sediment traps along Ridgeline Drive. Therefore, alternative erosion and sediment control methods were utilized, such as road side swales and the detention pond SMP-8 was temporarily used as a sediment basin. See photos, sheets "D", "E" & "F" in Exhibit "F".
- 7c.iv. Seeding of the disturbed soil was performed in October 2009 and it took; however, within two weeks that area had turned brown because of weather conditions. The area that turned brown along Ridgeline Drive was re-hydroseeded in order to provide soil stabilization. See invoices, Sheets "A" & "B" and photos, Sheets "F", "H", "I", "J" & "K" in Exhibit "F".
- 7c.v. All damaged silt fencing adjacent to the material stockpiles was repaired and/or replaced, also stockpiles seeded & stabilized. See photos, sheets "L" & "M" in Exhibit "F".
- 7d. These documents were corrected and provided on January 22, 2010 after it was brought to our attention. Please see the contractors Certification page in Exhibit "G".
- 7e. Although the original SWPPP, dated 10/21/04, which covered all six phases of the Frank Farm Subdivision did not depict how construction equipment was to be fueled, greased or have oil changed, the following methods were used:
- Fueling operations were carried out daily by pick up truck with a fuel-mounted tank. Any fuel spillage or grease droppings were scooped up by hand shovels and deposited in leak proof bags for disposal utilizing a NYSDEC approved method.

7e. {cont.}

- All oil changes, when necessary, were done at the contractor's workshop. The construction equipment was returned to the site after the oil change had been performed.

Prior to the commencement of any of the future phases, the SWPPP will be amended to include a description of the pollution prevention measures that will be used to control litter, construction chemicals {fuel & oil}, and construction debris from becoming a pollutant source. This amendment will be reviewed with the Town of LaGrange's Stormwater Management Officer and the NYSDEC, if necessary.

- 7f. Turbidity was immediately corrected after the EPA site inspection visit.
8. Comment noted, no further response required.
9. The total disturbance including both the lot development and infrastructure did not exceed 4.9 acres at any given time during construction.
- 9a. Any deficiencies noted within the inspections reports were corrected to ensure effective operating conditions.
- 9a.i. Sediment tracking was corrected on a daily or a maximum biweekly basis by machine sweeping the roadway at the end of the day depending on the severity of the sediment tracking. See Invoices, Sheet "P" in Exhibit "F".
- 9a.ii. The portion of the silt fence in question was located north of FF #8A. The silt fence was removed since construction of the detention pond and lot 144 development were occurring. The silt fence was replaced following construction activities. No construction was performed during rainfall events. See photo, sheet "K" in Exhibit "F".
- 9a.iii. The gully erosion on the bank of detention pond FF # 8B was corrected at on daily basics {end of day} during construction of the detention pond. See photo, sheet "I" in Exhibit "F".
- 9a.iv. The accumulated sediment was removed from the outlet control structure prior to being in service. See photo, sheet "N" in Exhibit "F"

- 9a.v. All unstabilized soil all recently paved Ridgeline Drive was stabilized by hydroseeding, see photos, sheets "F", "H", "J" & "K" in Exhibit "F".
- 9a.vi. The inlet protection for the catch basins along Ridgeline Drive was removed in order to allow the detention basin to temporary act as a siltation trap. The catch basins have a minimum one foot sump to capture sediment. Also, at the time of the EPA inspection, the detention basins were not complete, being utilized as temporary sediment traps. See photo, Sheet "G" in Exhibit "F".
- 9a.vii. The silt fence along the south side of the model home was repaired by end of the day, see photos, sheets "L" & "M" in Exhibit "F"
- 9a.viii. The silt fence, south of the model home was keyed back into the ground in accordance with the project plans by the end of the day, see photos, sheets "L" & "M" in Exhibit "F".
- 9a.ix. The gully erosion was corrected and the accumulated sediment was removed by the end of the day. See photo in Exhibit "F".
10. Comment noted, no response required.
11. Any violations were unintentional and were promptly corrected when brought to our attention.

#### IV. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

We do not believe a fine in the amount of \$55,000 is justified based upon our above responses and provided documentation. It is unclear which violation has continued for at least 972 days. However, it can be assumed this is in reference to the site inspections and inspection reports. As stated in III.7a., we have been able to retrieve 22 of the missing reports from Morris Associates for time period of 11/8/2006 to 6/27/2007. Also as stated in III.7a., no construction activity was performed during the time periods of early November 2007 to middle of April 2008, early November 2008 to beginning of April 2009 and beginning of June 2009 to beginning of August 2009. Therefore for at least fourteen months of this 972 days (approximately 240 days) there was no construction activity taking place at the site, which would have result in monthly site inspections and site report only. Furthermore, once this deficiency was brought to our attention, we immediately hired a second professional engineering consultant to perform the site inspections and inspection reports in January 2010.

V. PROCEDURE GOVERNING THIS ADMINISTRATIVE HEARING

Not pertinent at this time.

VI. INFORMAL SETTLEMENT CONFERENCE

We respectfully request an informal settlement conference.

VII. RESOLUTION OF THIS PROCEDURE WITHOUT HEARING OR CONFERENCE

Not applicable at this time.

VIII. FILING OF DOCUMENT

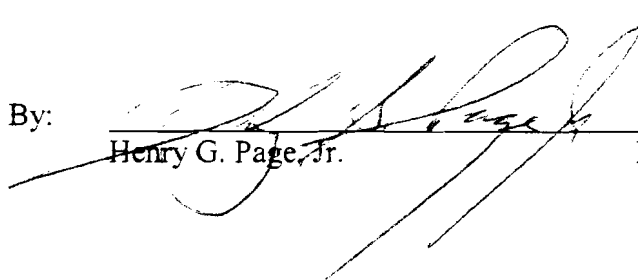
No response required at this time.

IX. GENERAL PROVISIONS

No response required at this time.

HENRY G. PAGE, Jr. DEVELOPMENT, LTD.

By:

  
Henry G. Page, Jr.

  
Dated

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