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September 8, 2009

Via Electronic Mail ([maples.karen@epa.gov](mailto:maples.karen@epa.gov); 4 Pages) and Overnight Delivery

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

Re: Notice of Complaint and Proposed Assessment of Civil Penalty  
Park Square, Rahway, New Jersey  
NPDES Tracking Number NJU002030  
Docket No. CWA-02-2009-3405  
**ANSWER TO COMPLAINT AND REQUEST FOR ADMINISTRATIVE HEARING**

U.S. ENVIRONMENTAL  
PROTECTION AGENCY REGION II  
2009 SEP -9 AM 11:30  
REGIONAL HEARINGS  
NEW YORK

Dear Ms. Maples:

This office represents Landmark at Rahway, LLC (“Landmark”). Landmark is the owner and developer of “Park Square at Rahway”. Landmark hereby answers EPA’s June 29, 2009 Notice of Complaint and Proposed Assessment of Civil Penalty as follows. Please note that by Order dated July 21, 2009, Helen Ferrara, Regional Judicial Officer for USEPA Region II, granted an extension in time in which to file an answer to the Complaint through September 8, 2009. This answer and hearing request is therefore, timely.

## **I. STATUTORY AND REGULATORY AUTHORITIES**

The respondent does not contest paragraphs 1 and 2 of the Administrative Complaint, as they constitute a recital of Statutory and regulatory authorities.

## **II. DEFINITIONS AND STATUTORY PROVISIONS**

The respondent does not contest Paragraphs 3 through 13 of the Administrative Complaint, as they constitute a recital of definitions and statutory provisions.

**III. FINDINGS OF VIOLATION**

Paragraph 14. Admitted

15. Admitted.

16. Admitted.

17. Admitted.

18. Admitted.

19. It is admitted that representatives of the Respondent advised EPA that construction began on or about January 1, 2007 and is scheduled to be completed on or about May 1, 2010. Respondent is without knowledge as to the dates, times and findings of EPA inspectors.

a. It is neither admitted nor denied that a completed, signed and certified copy of the RFA was on site at the time of the December 3, 2008 compliance inspection. Respondent is without specific knowledge as to this issue.

b. Admitted.

c. it is admitted that the designated concrete truck washout area was not identified on the erosion and sediment control plan but it is denied that a designated concrete truck washout area was not designated on the site and known to the site supervisor.

d. Admitted.

e. It is admitted that site representatives informed EPA inspectors that weekly inspection as contemplated by the SPPP had not been conducted at the site, but respondents assert that site representatives exercise constant oversight over the site and its soil erosion and sediment control measures.

f. Admitted.

g. Admitted.

h. Respondents deny that there was a lack of adequate silt fencing along the perimeter, that there was poor maintenance of the existing filter fence and that there was excessive sediment loading.

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i. Respondents contest the conclusion that inlet protection had not been adequately maintained in accordance with K.2.ii. of the CGP Permit.

j. Respondent denies that temporary BMPs within the interior portions of the site were inadequate and that unprotected material storage piles were located outside of the designated areas specified in the approved plan.

k. It is neither admitted nor denied that EPA inspectors observed that no stone driveways were installed at either construction entrance at the December 3, 2008 compliance inspection. The agencies left with proofs.

l. The Respondent is without the knowledge as to whether EPA inspectors observed off-site tracking and sediment on Elizabeth and Elm Avenues in the course of their December 3, 2008 compliance inspection.

20. Admitted.

21. Admitted.

22. Admitted.

23. The Respondent is without knowledge as to what conditions EPA inspectors observed in the course of their March 11, 2009 compliance inspection.

24. It is admitted that spill kits were not available on-site during the March 11, 2009 compliance inspection. Said spill kits had been ordered and may have been in Respondent's possession as of that date.

25. Paragraph constitutes a legal conclusion for which no answer is required.

#### **IV. CIRCUMSTANCES OR ARGUMENTS THAT ARE ALLEGED TO CONSTITUTE THE GROUNDS AND CONSENTS**

A. Respondents contend that NJDEP and USEPA have failed to promulgate, in a meaningful and easily understood manner, the requirements for SPPPs and other related requirements of the CGP. The Respondent, its agents and consultants were unaware of said requirements, and said requirements were not readily obtainable or understood at the time the permit was issued and re-issued.

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B. The proposed penalty of \$130,000 is, as compared to the alleged violations and to other penalties assessed within Region 2 and other regions, arbitrary, excessive and unreasonable.

C. The assessment of penalty in these circumstances constitutes selective enforcement.

**V. HEARING REQUEST**

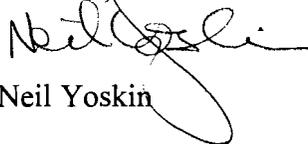
Respondent hereby request an Administrative Hearing.

Copies of this answer have been served on the following individuals and agencies:

Chris Saporita, Esq., Assistant Regional Counsel  
USEPA Region II  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
USEPA Region II  
290 Broadway, 16<sup>th</sup> Floor  
New York, NY 10007-1866

Sincerely,  
SOKOL, BEHOT & FIORENZO



Neil Yoskin

NY/cl

cc: Landmark at Rahway LLC  
James Hamilton, NJDEP  
Chris Saporita, Esq., Office of Regional Counsel, EPA ([saporita.chris@epa.pamail.gov](mailto:saporita.chris@epa.pamail.gov))  
Dore LaPosta, Dir., Div. Enforcement and Compliance Assistance, USEPA Region II