



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NY 10007-1866

JAN 26 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7015 3010 0001 6837 6732

Scott Glezen
Glezen Farms, LLC
1024 Caldwell Hill Road
Lisle, NY 13797

Re: Notice of Proceeding to Assess a Class I Civil Penalty
Scott Glezen and Glezen Farms, LLC, Lisle, NY
Docket No. CWA-02-2016-3312

U.S. Environmental
Protection Agency-Reg 2
2016 FEB -2 PM 3: 34
REGIONAL HEARING
CLERK

Dear Mr. Glezen:

Enclosed is a Complaint which the United States Environmental Protection Agency ("EPA" or "Agency") is issuing to you and Glezen Farms, LLC as a result of our determination that you have violated Sections 301 and 402 of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §§1311 and 1342, in the operation of the Concentrated Animal Feeding Operation known as Glezen Farms, located at 1024 Caldwell Hill Road in Lisle, New York. This Complaint is filed pursuant to Section 309(g) of the Act, 33 U.S.C. §1319(g). Upon consideration of the factors in Section 309(g)(3), the Complaint proposes that a penalty of **\$20,000.00** be assessed against you for these violations.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or they are found to be true after you have had an opportunity for a hearing on them, you have the right to contest the penalty proposed in the Complaint. I have enclosed a copy of the Consolidated Rules of Practice ("CROP"), found at 40 Code of Federal Regulations Part 22, which the EPA follows in cases of this kind. Please note the requirements for an Answer at §22.15 of the CROP. **If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file an Answer within thirty (30) days of your receipt of the enclosed Complaint to the EPA Regional Hearing Clerk at the following address:**

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

If you do not file an Answer within thirty (30) days of receipt of this Complaint, you may be judged to have defaulted (See, §22.17 of the CROP). If a default order is entered against you, you may be ordered to pay the entire proposed penalty without further proceedings.

Regardless of whether you request a formal hearing, the EPA encourages you to pursue the possibility of settlement by requesting an informal conference with the Agency concerning the alleged violations and the amount of the proposed penalty. Please note that a request for an informal conference does not

substitute for a written Answer or affect what you may choose to say in an Answer, nor does it extend the thirty (30) day deadline by which you must file an Answer requesting a hearing.

The Agency also encourages you to propose and perform Supplemental Environmental Projects ("SEPs"), where appropriate, as part of any settlement. Enclosed is a copy of the 2015 Update to the EPA Supplemental Environmental Projects Policy (March 10, 2015) for your consideration.

You may represent yourself or be represented by an attorney at any stage of the proceedings, including any informal discussions and/or a formal hearing, whether in person or by telephone. Any hearing held in this matter will be conducted in accordance with the CROP.


If you have any questions or wish to discuss a settlement of this matter with the EPA by an informal conference, please immediately contact:

Christopher Saporita, Esq.
Assistant Regional Counsel
Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway - 16th Floor
New York, NY 10007-1866
Telephone: (212) 637-3203
Fax: (212) 637-3199

For your information, I am enclosing an Information Sheet which may be helpful if you are a small business as defined at 13 C.F.R. §121.201, in obtaining compliance assistance or if you wish to comment on this action to the Small Business and Agriculture Regulatory Enforcement Ombudsman and Regional Fairness Board.

Should you have any questions concerning this matter, please feel free to contact Christopher Saporita, Esq. at the phone number above or Ms. Justine Modigliani, Compliance Section Chief, at (212) 637-4268.

Sincerely,



Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

1. Complaint
2. CROP
3. EPA Supplemental Environmental Projects Policy and SEP Brochure
4. Information for Small Business

cc: Karen Maples, Regional Hearing Clerk (w/Complaint and enclosures)
Joseph DiMura, NYSDEC (w/Complaint only)
Joseph Zalewski, NYSDEC Region 7 (w/Complaint only)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JAN 26 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7015 3010 0001 6837 6749

Mr. Joe DiMura, P.E., Director
Bureau of Water Compliance Programs
Division of Water
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-3506

U.S. Environmental
Protection Agency-Reg 2
2016 FEB -2 PM 3: 34
REGIONAL HEARING
CLERK


Re: Notice of Proceeding to Assess a Class I Civil Penalty
Scott Glezen and Glezen Farms, LLC, Lisle, NY
Docket No. CWA-02-2016-3312
NPDES Tracking No. NYA000237

Dear Mr. DiMura:

Enclosed is a copy of the Complaint and Proposed Assessment of a Civil Penalty ("Complaint"), which the United States Environmental Protection Agency ("EPA") has issued to Scott Glezen and Glezen Farms, LLC, pursuant to Section 309(g) of the Clean Water Act ("Act"), 33 U.S.C. §1319(g). EPA has issued the Complaint to begin the process to administratively assess a civil penalty of **\$20,000** against Respondents for violations of the Act. Since the violations have occurred in the State of New York, EPA is offering an opportunity for you to confer with us regarding the proposed penalty assessment and settlement.

You may confer with me at (212) 637-4000. A copy of 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), is enclosed for your reference.

Sincerely,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

cc: Karen Maples, Regional Hearing Clerk

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Scott Glezen and Glezen Farms, LLC
1024 Caldwell Hill Road
Lisle, NY 13797

Respondents,

SPDES Permit No. NYA000237

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

**PROCEEDING TO ASSESS A CLASS I CIVIL
PENALTY**

DOCKET NO. CWA-02-2016-3312

U.S. Environmental
Protection Agency-Reg 2
2016 JAN 33 PM 3:33
REGIONAL HEARING
CLERK

**ADMINISTRATIVE COMPLAINT
FINDINGS OF VIOLATION, NOTICE OF PROPOSED
ASSESSMENT OF AN ADMINISTRATIVE PENALTY, AND
NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

I. STATUTORY AND REGULATORY AUTHORITIES

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing (“Complaint”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g)(2)(A) of the Clean Water Act (“Act” or “CWA”), 33 U.S.C. § 1319(g)(2)(A). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who, in turn, has delegated it to the Director of the Division of Enforcement and Compliance Assistance (“DECA”) of EPA, Region 2 (“Complainant”).
2. Pursuant to Section 309(g)(2)(A) of the Act, and 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 (“CROP”), 40 C.F.R. Part 22, a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against Scott Glezen and Glezen Farms, LLC (“Respondents”), as a result of Complainant’s determination that Respondents violated Section 301 of the Act, 33 U.S.C. § 1311, by failing to comply with certain terms of the New York State Department of Environmental Conservation’s (“NYSDEC”) State Pollutant Discharge Elimination System (“SPDES”) General Permit for Concentrated Animal Feeding Operations (“CAFOs”), issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, at a CAFO that Respondents own and operate.

II. APPLICABLE LEGAL REQUIREMENTS

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into navigable waters, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342.
2. “Discharge of a pollutant” is defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12), to include any addition of any pollutant to navigable waters from any point source.
3. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water.
4. “Person” is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include, among other things, an individual, corporation, partnership, association or municipality.
5. “Point source” is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
6. “Navigable waters” is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), as the waters of the United States, including the territorial seas, and further defined by 40 C.F.R. § 122.2, to include: all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; all interstate waters, including interstate “wetlands;” all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, “wetlands,” sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce, including tributaries thereto.
7. “Storm water” is defined by 40 C.F.R. § 122.26(b)(13) as storm water runoff, snow melt runoff, and surface runoff and drainage.
8. “Owner or operator” is defined by 40 C.F.R. § 122.2 as the owner or operator of any facility or activity subject to regulation under CWA Section 402.
9. “Process wastewater” is defined by 40 C.F.R. § 122.23(b)(7) as water directly or indirectly used in the operation of the animal feeding operation (“AFO”) for any or all of the following: spillage or overflow from animal or poultry watering systems; washing or cleaning or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes in contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

10. An AFO is defined by 40 C.F.R. § 122.23(b)(1) as a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.
11. A “concentrated animal feeding operation” or “CAFO” is defined by 40 C.F.R. § 122.23(b)(2) as an AFO that is, inter alia, a medium CAFO.
12. A “medium CAFO” is defined by 40 C.F.R. § 122.23(b)(6) as, inter alia, an animal feeding operation that stables or confines 200-699 mature dairy cows, whether milked or dry, and which, as relevant here, discharges pollutants into waters of the United States through a man-made ditch, flushing system, or other similar man-made device.
13. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), authorizes the Administrator to issue a National Pollutant Discharge Elimination System (“NPDES”) permit for the discharge of any pollutant, or combination of pollutants, notwithstanding the prohibition in Section 301(a) of the CWA, upon the condition that any such discharges will meet the requirements of the CWA and its implementing regulations.
14. The Administrator of EPA has promulgated regulations, at 40 C.F.R. § 122.23, which require owners or operators of concentrated animal feeding operations to obtain and comply with a NPDES permit to control discharges of pollutants from the CAFO.
15. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), allows any State, upon application to and approval by EPA, to directly administer the NPDES permitting program. EPA has authorized the New York State Department of Environmental Conservation (“NYSDEC”) to directly administer the NPDES program in New York. Accordingly, any person who will discharge pollutants from a point source to waters of the United States within New York State must first obtain a New York State Pollutant Discharge Elimination System (“SPDES”) permit, and must comply with all of its terms.
16. Pursuant to Section 402(b) of the CWA, the New York State Department of Environmental Conservation issued a SPDES General Permit for Concentrated Animal Feeding Operations (GP-04-02) (“CAFO General Permit”), on June 24, 2004. The CAFO General Permit became effective on July 1, 2004, expired on June 30, 2009, and has been administratively extended. The current CAFO General Permit supersedes the previous one (GP-99-01) which was issued on June 18, 1999 with an effective date of July 1, 1999 and an expiration date of June 30, 2004.
17. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes the Administrator, upon a finding that any person has violated, among other things, Section 301(a) of the Act, or has violated any permit condition or limitation implementing such section in a permit issued under Section 402 of the Act, to assess a civil penalty, and Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), as adjusted by 40 C.F.R. § 19.4, authorizes the assessment of a penalty of up to \$16,000 per violation, but not exceeding \$37,500.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent Scott Glezen is a natural person, and is, therefore, a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

2. Respondent Glezen Farms, LLC is a limited liability corporation, formed under the laws of New York state, and is, therefore, a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
3. According to the Notice of Intent (“NOI”) filed with the NYSDEC by Respondents on December 10, 1999, Respondents own and operate Glezen Farms, LLC (“Facility”), which consists of two sites, located at 1024 Caldwell Hill Road in Lisle, New York 13797 (“Main Farm”) and 287 Owen Hill Road, Lisle, New York, 13797 (“Dutches Farm”), respectively. Therefore, Respondents are owners and operators within the meaning of 40 C.F.R. § 122.2.
4. The Facility confines and feeds or maintains approximately 690 mature dairy cows, 536 heifers and 40 calves on-site for a total of forty-five (45) days or more in any twelve-month period, and neither crops, vegetation, forage growth, nor post-harvest residues are sustained in the normal growing season over any portion of the lot or facility. Therefore, the Facility is a Medium AFO as defined by 40 C.F.R. § 122.23(b)(1) and (6).
5. The Facility discharges stormwater into Dudley Creek and Nanticoke Creek, both of which are waters of the United States and tributary to the Susquehanna River and Chesapeake Bay, which are also waters of the United States, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.
6. Respondents applied for coverage for the Facility under the CAFO General Permit on December 10, 1999. Permit coverage was effective starting on December 25, 1999. When the CAFO General Permit was reissued on June 24, 2004 with an effective date of July 1, 2004, the Facility’s permit coverage was automatically renewed.
7. On June 9, 2010, the EPA conducted a Federal lead Compliance Evaluation Inspection (“CEI”) at the Site and EPA identified violations of the Facility’s CAFO General Permit (NYA000237) and subsequently issued an Administrative Order (“AO” or “Order”) (Docket No. CWA-02-2011-3004) on November 16, 2010. The Order was mailed to Respondents along with a copy of the CEI Report. That Order directed Respondents to correct their violations and come into compliance with the Clean Water Act. The EPA’s inspection and subsequent investigations identified the following violations of the Facility’s CAFO General Permit (NYA000237):
 - a) Section VII.A of the CAFO General Permit requires all CAFOs to develop CNMPs that are designed, constructed and operated in accordance with NRCS Conservation Practice Standard No. NY312, NY312 states, among other things, that clean water shall be excluded from concentrated waste areas to the fullest extent practical, and Section VII.E of the permit requires all permittees to comply with all provisions of the CNMP. During the inspection, EPA inspectors observed that clean water was not excluded from the concentrated waste areas to the fullest extent practicable, due to a lack of roof gutters or clean water diversions at three (3) barns (Freestall Barns #1 and #3 at the Main Farm and the Heifer Barn at Dutch’s Farm). Specifically, EPA observed that stormwater came into contact with exposed manure at the northwestern end of Freestall Barn #1, came into contact with exposed bedding, feed and manure at the south end of Freestall Barn #3, and came into contact with exposed bedding and manure outside the western entrance to the Heifer Barn. In an undated letter received by EPA on March 15, 2011, Respondents stated that sidewalk alleys had been curbed and dry cows closed out of an outside pen. These actions taken by the Respondent have diverted roof water from the concentrated waste areas and prevented the concentration of waste in areas where

precipitation falls. In light of the March 15, 2011 correspondence, EPA assumes February 28, 2011 is the date that all of the aforementioned corrective actions were effective. Therefore, Respondents failed to comply with the required CNMP provisions requiring the exclusion of clean water from concentrated waste areas to the fullest extent practical, in violation of Section VII.E. of the CAFO General Permit, for 40 days.

b) Section VII.A of the CAFO General Permit requires permittees to develop CNMPs to assure compliance with the limitations and conditions of the CAFO General Permit, and Section VI.A of the permit prohibits the discharge of process wastewater pollutants to the surface waters of the State. Section V.II.A of the permit specifically requires permitted facilities to be designed, constructed and operated in accordance with the NRCS Conservation Practice Standard No. NY312, which includes, among other things, requirements to control silage leachate. During the inspection, EPA and NYSDEC inspectors did not observe silage leachate control measures in place, and observed a discharge of process wastewater pollutants from the bunk silo to a wetland that drains to the Nanticoke Creek, which is both a surface water of New York State and a water of the United States. In an undated letter received by EPA on March 15, 2011, Respondents stated that they had constructed a total collection pond for bunk leachate and runoff. On September 6, 2013, Respondents stated that the pond had been in use since February 2011. In light of the March 15, 2011 and September 6, 2013 correspondence, the EPA assumes February 28, 2011 is the date of operation for the total collection pond. Therefore, Respondents failed to design, construct, and operate its facility and address silage leachate in accordance with NRCS Standard No. NY312 and Part VII.A of the CAFO General Permit, for 40 days.

8. Based on the foregoing Findings of Fact and Conclusions of Law, Respondents are liable for eighty (80) days of violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

IV. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

Based on the foregoing findings, and pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), and the Debt Collection Improvement Act of 1996, EPA, Region 2 hereby proposes to issue a Final Order Assessing Administrative Penalties (“Final Order”) to Respondents assessing a penalty of **\$20,000**. EPA determined the proposed penalty after taking into account the applicable factors identified at Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3). EPA has taken account of the nature, circumstances, extent and gravity of the violations, and Respondents’ prior compliance history, degree of culpability, economic benefit or savings accruing to Respondents by virtue of the violations, and any information that Respondents have provided regarding their ability to pay the proposed penalty. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after Respondents’ receipt of this Notice, unless Respondents file an Answer to this Complaint within that time and request a Hearing on this Notice pursuant to the following section.

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE ACTION

The rules of procedure governing this civil administrative litigation have been set forth in the CROP, 40 C.F.R. Part 22. A copy of these rules accompanies this Complaint.

A. Answering The Complaint

Where Respondents intend to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondents are entitled to judgment as a matter of law, Respondents must file with the Regional Hearing Clerk of EPA, Region 2, both an original and one copy of a written Answer to the Complaint, and such Answer must be filed within thirty (30) days after service of the Complaint. 40 C.F.R. § 22.15(a). The address of the Regional Hearing Clerk of EPA, Region 2, is:

**Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007-1866**

Respondents shall also then serve one copy of the Answer to the Complaint upon Complainant and any other party to the action. 40 C.F.R. § 22.15(a). Respondents' Answer to the Complaint must clearly and directly admit, deny, or explain each of the factual allegations that are contained in the Complaint and with regard to which Respondents have any knowledge. 40 C.F.R. § 22.15(b). Where Respondents lack knowledge of a particular factual allegation and so state in the Answer, the allegation is deemed denied. 40 C.F.R. § 22.15(b). The Answer shall also set forth: (1) the circumstances or arguments that are alleged to constitute the grounds of defense, (2) the facts that Respondents dispute (and thus intend to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether Respondents request a Hearing. 40 C.F.R. § 22.15(b).

Respondents' failure to affirmatively raise in the Answer facts that constitute or that might constitute the grounds of a defense may preclude Respondents, at a subsequent stage in this proceeding, from raising such facts and/or from having such facts admitted into evidence at a Hearing.

B. Opportunity To Request A Hearing

If requested by Respondents in an Answer, a Hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. § 22.15(c). If however, Respondents do not request a Hearing, the Presiding Officer (as defined in 40 C.F.R. § 22.3) may hold a Hearing if the Answer raises issues appropriate for adjudication. 40 C.F.R. § 22.15(c).

Any Hearing in this proceeding will be held at a location determined in accordance with 40 C.F.R. § 22.21(d). A Hearing of this matter will be conducted in accordance with the applicable provisions of the Administrative Procedure Act, 5 U.S.C. §§ 551-59, and the procedures set forth in Subpart D of the CROP, at 40 C.F.R. §§ 22.21-22.26.

Should Respondents request a Hearing, members of the public to whom EPA is obligated to give notice of this proposed action will have a right under Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), to be heard and to present evidence on the appropriateness of the penalty assessment. Should Respondents not request a Hearing, EPA will issue a Final Order, and only members of the public who submit timely comment on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order and to hold a Hearing thereon. EPA will grant the petition and will hold a Hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order.

C. Failure To Answer

If Respondents fail in any Answer to admit, deny, or explain any material factual allegation contained in the Complaint, such failure constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). If Respondents fail to file a timely Answer to the Complaint [i.e. not in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)], Respondents may be found in default upon motion by Complainant. 40 C.F.R. § 22.17(a). Default by Respondents constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondents' right to contest such factual allegations. 40 C.F.R. § 22.17(a). Following a default by Respondents for a failure to timely file an Answer to the Complaint, any order issued therefore shall be issued pursuant to 40 C.F.R. § 22.17(c).

Any penalty assessed in the default order shall become due and payable by Respondents without further proceedings thirty (30) days after the Default Order becomes final pursuant to 40 C.F.R. § 22.27(c). 40 C.F.R. § 22.17(d). If necessary, EPA may then seek to enforce such Final Order of Default against Respondents, and to collect the assessed penalty amount, in federal court.

VI. INFORMAL SETTLEMENT CONFERENCE

Regardless of whether Respondents requests a formal Hearing, EPA encourages settlement of this proceeding consistent with the provisions of the Act and its applicable regulations. 40 C.F.R. § 22.18(b). At an informal conference with a representative(s) of Complainant, Respondents may comment on the charges made in this Complaint and Respondents may also provide whatever additional information they believe to be relevant to the disposition of this matter, including: (1) actions Respondents have taken to correct any or all of the violations herein alleged, (2) any information relevant to the amount of the proposed penalty, (3) the effect the proposed penalty would have on Respondents' ability to continue in business and/or (4) any other special facts or circumstances Respondents wish to raise. Note that no penalty reduction will be made simply because an informal settlement conference is held.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, in response to any relevant information previously not known to Complainant that demonstrates that any of the findings herein are without merit, or that the proposed penalty is not warranted. Respondents are referred to 40 C.F.R. § 22.18.

Any request for an informal conference or any questions that Respondents may have regarding this Complaint should be directed to:

Christopher Saporita, Esq.
Assistant Regional Counsel
Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone: (212) 637-3203
Fax: (212) 637-3199

The parties may engage in settlement discussions regardless of whether Respondents have requested a Hearing. 40 C.F.R. § 22.18(b)(1). Respondents' request for a formal Hearing does not prevent Respondents from also requesting an informal settlement conference; the informal conference procedure may be pursued simultaneously with the formal adjudicatory hearing procedure. A request for an informal settlement conference constitutes neither an admission nor a denial of any of the matters alleged in the Complaint.

A request for an informal settlement conference does not affect Respondents' obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. § 22.15.

Any settlement that may be reached as a result of an informal settlement conference shall be embodied in a written Consent Agreement. 40 C.F.R. § 22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 C.F.R. § 22.18(b)(3). In accepting the Consent Agreement, Respondents waive any right to contest the allegations in the Complaint and waive any right to appeal the Final Order. 40 C.F.R. § 22.18(b)(2).

Entering into a settlement through the signing of such Consent Agreement and complying with the terms and conditions set forth in such Consent Agreement and Final Order would terminate this administrative litigation and these civil proceedings against Respondents. Entering into a settlement agreement would not extinguish, waive, satisfy or otherwise affect Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance, and EPA would retain authority to initiate a new enforcement action based on evidence of new or continued violations.

VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, Respondents may choose to pay the total amount of the proposed penalty, **\$20,000**, within thirty (30) days after receipt of the Complaint, provided that Respondents file with the Regional Hearing Clerk, Region 2 (at the address noted above), a copy of the check or other instrument of payment. 40 C.F.R. § 22.18(a). A copy of the check or other instrument of payment should be provided to the EPA attorney identified in Section VI above. Payment of the penalty assessed should be made by sending a cashier's or certified check payable to the "Treasurer, United States of America," in the full amount of the penalty assessed in this Complaint to the following addressee:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
Docket No. CWA-02-2016-3312

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

