

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

**IN THE MATTER OF:**

Mack Studios, Inc.  
and  
Peter Maciulewicz  
5500 Technology Park Blvd.  
Auburn, NY 13021

**RESPONDENTS**

**SPDES Permit No. NYR10X412**

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

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

**DOCKET No. CWA-02-2015-3404**

U.S. Environmental  
Protection Agency-Reg 2  
2015 JUN 10 PM 3:43  
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. STATEMENT OF AUTHORITY**

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 (“Administrator” or “EPA”) by Section 309(g)(2)(B) of the Clean Water Act (“Act” or “CWA”), 33 U.S.C. § 1319(g)(2)(B). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Division of Enforcement and Compliance Assistance (“DECA”) of EPA, Region 2 (“Complainant”).
2. Pursuant to Section 309(g)(2)(B) 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 Peter Maciulewicz and Mack Studios, Inc. (“Respondents”), as a result of Complainant’s determination that Respondents violated Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, for failing to comply with the terms of the New York State Department of Environmental Conservation’s (“NYSDEC’s”) State Pollutant Discharge Elimination System (“SPDES”) General Permit for Stormwater Discharges from Construction Activity on a construction site 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. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), this prohibition also applies to discharges of stormwater associated with industrial activity.
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 “waters of the United States” is 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. 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.
8. The Administrator has promulgated regulations, at 40 C.F.R. § 122.26, that require permits for stormwater discharges associated with, among other things, industrial activity, including discharges associated with construction activities that include clearing, grading and excavation, and that result in the disturbance of one (1) or more acres of total land area.
9. “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.

10. "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 the NPDES program.
11. 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 SPDES permit, and must comply with all of its terms.
12. NYSDEC issued a SPDES General Permit for Stormwater Discharges from Construction Activity, GP-0-10-001 ("Permit" or "CGP"), which became effective on January 29, 2010 and expired on January 28, 2015.
13. Under the CGP, the term "Construction Activity(ies)" means any clearing, grading, excavation, filling, demolition or stockpiling activities that result in soil disturbance. Clearing activities can include, but are not limited to, logging equipment operation, the cutting and skidding of trees, stump removal and/or brush root removal. Construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.
14. Under the CGP, the term "Final Stabilization" means that all soil disturbance activities have ceased and a uniform, perennial vegetative cover with a density of eighty (80) percent over the entire pervious surface has been established, or other equivalent stabilization measures, such as permanent landscape mulches, rock rip-rap or washed/crushed stone have been applied on all disturbed areas that are not covered by permanent structures, concrete or pavement.
15. Under the CGP, the term "Owner or Operator" means the person, persons or legal entity which owns or leases the property on which the construction activity is occurring and/or an entity that has operational control over the construction plans and specifications, including the ability to make modifications to the plans and specifications.
16. A corporate officer can be held personally liable for violations of the Clean Water Act if he or she had "authority with respect to the conditions that formed the basis of the alleged violations" (*United States v. Iverson*, 162 F.3d 1015, 1024 (9th Cir. 1998) (quoting *United States v. Park*, 421 U.S. 658 (1975))).
17. Pursuant to 40 C.F.R. § 122.41(a), permittees must comply with all conditions of their permit, and any permit noncompliance constitutes a violation of the CWA and is grounds for enforcement action.
18. 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)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted by 40 C.F.R. § 19.4, authorizes the assessment of a penalty of up to \$16,000 per day of violation, and not exceeding \$177,500.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondents are a corporation and an individual, and are therefore “persons” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
2. According to the Notice of Intent (“NOI”) filed with the NYSDEC by Respondents and received by the NYSDEC on November 15, 2013, Respondent Mack Studios, Inc.<sup>1</sup> owns and operates the construction site located southwest of the intersection of Allen Street and Technology Park Boulevard in the City of Auburn, Cayuga County, New York (the “Site” or “Facility”). Therefore, Respondent Mack Studios, Inc. is an owner and an operator within the meaning of 40 C.F.R. § 122.2.
3. According to the abovementioned NOI, Respondent Peter Maciulewicz is the contact person for Mack Studios, Inc. regarding activities at the Site, and, upon information and belief, Peter Maciulewicz is the chief executive officer of Mack Studios, Inc. Therefore, Respondent Peter Maciulewicz is an owner and an operator within the meaning of 40 C.F.R. § 122.2.
4. On November 22, 2013, Respondents obtained permit coverage for construction activities at the Site under the CGP.
5. Stormwater from the Site is conveyed via an open channel near the northwest corner of the Site, then flows south via a roadside drainage ditch, and then west via a vegetated swale located south of the Auburn Sewage Treatment Plant, from which it discharges to a wetland that flows into the Owasco Outlet and on into the Seneca River.
6. The abovementioned open channel, roadside drainage ditch, and vegetated swale are point sources pursuant to Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
7. The abovementioned wetland, the Owasco Outlet and the Seneca River are waters of the United States pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2.
8. On May 16, 2014, the EPA conducted a Compliance Evaluation Inspection (“CEI”) at the Site.
9. At the time of the CEI, EPA identified approximately four (4) acres of disturbance at the Site.
10. During the May 16, 2014 CEI and EPA’s review of records submitted subsequent to the CEI, EPA identified the following violations of the Site’s NYSDEC SPDES CGP (NYR10X412):
  - a. Part IV.C.2.a of the CGP requires that for construction sites where soil disturbance activities are on-going, the owner or operator of the site shall have a qualified inspector conduct a site inspection at least once every seven (7) calendar days. Based on review of inspection reports submitted to EPA on May 28, 2014 and June 13, 2014, between December 17, 2013 and May 29, 2014, there were six (6) instances in which inspections were not conducted once every seven (7) calendar days, in violation of Part IV.C.2.a of the CGP:

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<sup>1</sup> The NOI lists the owner/operator as “Mack Studios,” but a search of public records shows no such entity, but instead, shows one named “Mack Studios, Inc.”.

- i. 12/25/13 – 1/6/14 (12 days)
- ii. 1/6/14 – 1/16/14 (10 days)
- iii. 1/23/14 – 2/6/14 (14 days)
- iv. 2/12/14 – 3/7/14 (23 days)
- v. 4/30/13 – 5/8/14 (8 days)
- vi. 5/15/14 – 5/29/14 (14 days)

b. Part IV.C.5 of the CGP requires that within one (1) business day of the completion of an inspection, the qualified inspector shall notify the owner or operator and appropriate contractor or subcontractor of any corrective actions that need to be taken. The contractor or subcontractor shall begin implementing the corrective actions within one (1) business day of this notification and shall complete the corrective actions in a reasonable time frame. Based on review of inspection reports submitted to EPA on May 28, 2014 and June 13, 2014, required corrective actions cited in the qualified inspector’s weekly reports continued for consecutive weeks and were not implemented at the Site within a reasonable time frame, in violation of Part IV.C.5 of the CGP:

<u>Corrective Action Required</u>	<u>Dates of Reports Requiring Corrective Action</u>
Install silt fence around soil stockpiles	12/17/13, 12/20/13, 12/25/13, 1/6/14, 1/16/14, 1/23/14, 3/14/14, 3/20/14, 3/27/14, 4/3/14, 4/10/14, 4/16/14, 4/23/14, 4/30/14, 5/8/14, 5/15/14, 5/29/14, 6/2/14
Stabilize open soils	1/6/14, 1/16/14, 3/20/14, 3/27/14, 4/3/14, 4/10/14, 4/16/14, 4/23/14, 4/30/14, 5/8/14, 5/15/14, 5/29/14, 6/2/14
Repair / replenish construction entrance (e.g., additional stone)	3/20/14, 3/27/14, 4/3/14, 4/10/14, 4/16/14, 4/30/14, 5/8/14, 5/15/14, 5/29/14, 6/2/14
Clean out silt / sediment from pipe inlet west of site along Allen Street	4/23/14, 4/30/14, 5/8/14
Clean channels along Allen Street	5/15/14, 5/29/14, 6/2/14
Repair silt fencing	4/23/14, 4/30/14, 5/8/14, 5/15/14, 5/29/14, 6/2/14

c. Part II.C.1 of the CGP requires the owner or operator to ensure that the provisions of the Stormwater Pollution Prevention Plan (“SWPPP”) are implemented from the commencement of construction activity until all areas of disturbance have achieved final stabilization and a Notice of Termination (“NOT”) has been submitted to the NYSDEC in accordance with Part V of the Permit. In addition, Part IV.A.1 of the CGP requires the owner or operator to ensure that all erosion and sediment control practices identified in the SWPPP are maintained in effective operating conditions at all times. The following SWPPP elements had not been implemented and/or maintained in effective operating conditions at the time of the EPA CEI, in violation of Parts II.C.1 and IV.A.1 of the Permit:

- i. In accordance with the SWPPP, the construction entrance shall be inspected periodically and after each rainfall, and cleaned, repaired or replaced, as required. At the time of the CEI, the construction entrance was not adequately maintained. Sediment tracking was observed from the entrance onto Allen Street.

- ii. In accordance with the SWPPP, temporary grass-lined swales and channels shall be installed to divert runoff to sediment traps. The channels shall be inspected weekly and after each rainfall, and cleaned, repaired and reseeded, as required. Furthermore, the erosion control plan requires that erosion control measures be installed in all drainage channels. At the time of the CEI, the channel near the northwest corner of the site adjacent to Allen Street was not grass-lined or otherwise stabilized and was in need of cleaning. Erosion was identified down the slopes of the channel. Turbid water was identified in, and flowing out of the channel to the drainage ditch along Allen Street. In addition, the short channel receiving discharges from the wet swale/temporary sediment trap at the Site also was not stabilized and was in need of cleaning.
- iii. In accordance with the SWPPP, the owner/contractor shall initiate stabilization measures within seven (7) days after construction activity in a portion of the site has temporarily or permanently ceased. Based on review of inspection reports submitted to EPA on May 28, 2014 and June 13, 2014, the requirement to stabilize open soils was noted in each inspection report from March 20, 2014 to June 2, 2014. At the time of the CEI, disturbed soils at the Site, including the slopes of the wet swale/temporary sediment trap, had not been temporarily or permanently stabilized as required by the SWPPP.
- iv. In accordance with the SWPPP, temporary silt fencing shall be used to intercept sediment-laden runoff along the borders of disturbed site areas during construction. The filter fabric requires periodic maintenance and must be checked for tears and clogging with silt or debris. In addition, the erosion control plan requires perimeter silt fencing and states that topsoil stockpiles area shall be enclosed with silt fencing. At the time of the CEI, silt fencing at the Site was not adequately installed or maintained, as follows:
  - 1) Unstabilized soils were identified on the far side of the silt fencing, outside the construction limits on the west side of the site (silt fencing must extend to the border of disturbance, or disturbed soils outside the silt fencing must immediately be stabilized);
  - 2) Sediment build-up was identified on both sides of the silt fencing near the southwest corner of the Site, which was in need of maintenance;
  - 3) A gap was identified in the silt fencing on the southeast side of the Site and required maintenance;
  - 4) Silt fencing on east side of the Site adjacent to unstabilized soils and a stockpile had fallen off the stake and was in need of maintenance;
  - 5) Silt fencing on the east side of the Site adjacent to unstabilized soils had collapsed and was in need of maintenance (turbid water was identified on the far side of the silt fencing);
  - 6) Silt fencing on the east-northeast side of the site was in need of general maintenance;
  - 7) Silt fencing was not installed around soil stockpile areas in accordance with the SWPPP; and
  - 8) Perimeter silt fencing was not installed as identified on the erosion control plan. In particular, silt fencing was not installed on the northwest side of the building, where it would prevent or reduce sediment loading to the channel near the northwest corner of the Site. Existing vegetation that was identified in the construction drawings to remain near the northwest corner of the Site had also been removed. Likewise, existing vegetation that was identified in the construction drawings to remain on the east side of the Site had been

removed, with the silt fencing extending beyond the boundaries identified in the plan to incorporate a larger area of disturbance.

- v. In accordance with the SWPPP, a site map shall be maintained on-site indicating the extent of all disturbed on-site areas and drainage ways throughout the duration of construction. A site map was not maintained on-site at the time of the CEI.
  - d. Part I.B.1 of the CGP requires that there be no increase in turbidity that will cause a substantial visible contrast to natural conditions. At the time of the CEI, the EPA inspector observed a turbid discharge from the Site that was conveyed into the existing wetlands hydraulically connected to the Owasco Outlet, in violation of Part I.B.1 of the CGP.
  - e. Part II.C.2 of the CGP requires that the owner or operator maintain a copy of the CGP, NOI, NOI Acknowledgement Letter, SWPPP, and inspection reports at the construction site until all disturbed areas have achieved final stabilization and the NOT has been submitted to the NYSDEC. At the time of the CEI, a copy of the CGP, NOI, NOI Acknowledgement Letter, SWPPP, and inspection reports were not maintained at the construction Site, in violation of Part II.C.2 of the CGP.
  - f. Part III.A.6 of the CGP requires that the owner or operator shall have each of the contractors and subcontractors (1) identify a trained contractor who is responsible for implementation of the SWPPP; (2) sign a copy of the certification statement included in Part III.A.6 of the CGP; and (3) identify specific elements of the SWPPP that each contractor and subcontractor is responsible for. Based on review of the SWPPP provided to EPA following the CEI, the owner or operator had not required each of the contractors and subcontractors to (1) identify a trained contractor who is responsible for implementation of the SWPPP; (2) sign a copy of the certification statement included in Part III.A.6 of the CGP; and (3) identify specific elements of the SWPPP that each contractor and subcontractor is responsible for, in violation of Part III.A.6 of the CGP.
  - g. Part VII.H.2 of the CGP requires that the SWPPP be signed by a person described in Part VII.H.1 (i.e., responsible corporate officer, general partner or proprietor) or a duly authorized representative of that person. Based on review of the SWPPP provided to EPA following the CEI, the SWPPP was not signed by a person described in Part VII.H.1 or a duly authorized representative of that person, in violation of Part VII.H.2 of the CGP.
11. On July 2, 2014, EPA issued an Information Request and Administrative Compliance Order (CWA-02-2014-3047) (together the "Order") and transmitted the Order with the CEI Report to Respondents.
  12. The Order required Respondents to, among other things, address the CGP violations identified in Order and in the CEI Report, and provide EPA with documentation, including accompanying photographs, describing the measures taken to address each violation. The Order required Respondents to submit a written response to EPA within forty-five (45) calendar days of receipt of the Order.
  13. Based on the certified mail return receipt, Respondents received the Order on July 11, 2014; therefore, Respondents were required to submit a response to EPA on or before August 25, 2014.

14. Respondents' initial response to the Order, dated September 9, 2014, was received by EPA on September 12, 2014 and was incomplete. Respondents submitted supplemental information to EPA electronically on September 24, 2014 and October 8, 2014.
15. On October 20, 2014, Respondents submitted a NOT to the NYSDEC certifying that all disturbed areas of the Site had achieved final stabilization and all post-construction stormwater management practices were installed in conformance with the SWPPP.
16. Based on the foregoing Findings of Fact and Conclusions of Law, Respondents are liable for 1,401 violations of Section 301 of the Clean Water Act, 33 U.S.C. § 1311, over the course of two hundred and seventy-four (274) days, for violating the permit issued to them under Section 402 of the Act, 33 U.S.C. § 1342.

#### **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 **\$65,000**. 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 Respondents' 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 the 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 their 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 on this proposed penalty assessment, 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)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), 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 request 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:

Tim Murphy, 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) 637-3236

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 terminates this

administrative litigation and these civil proceedings against Respondents. Entering into a settlement agreement does not extinguish, waive, satisfy or otherwise affect Respondents' obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance, and EPA may 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, **\$65,000**, 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-02-2015-3404

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

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency".

Pursuant to 40 C.F.R. § 22.18(a)(3), if Respondents elect to pay the full amount of the penalty proposed in the Complaint within thirty (30) days of receiving the Complaint, then, upon EPA's receipt of such payment, the Regional Administrator of EPA, Region 2 (or, if designated, the Regional Judicial Officer), shall issue a Final Order pursuant to 40 C.F.R. § 22.18(a)(3). In accordance with 40 C.F.R. § 22.45(c)(3), no Final Order shall be issued until at least ten (10) days after the close of the comment period on this Complaint. Issuance of a Final Order terminates this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Further, pursuant to 40 C.F.R. § 22.18(a)(3), the making of such payment by Respondents shall constitute a waiver of Respondents' right both to contest the allegations made in the Complaint and to appeal said Final Order to federal court. Such payment does not extinguish, waive, satisfy or otherwise affect Respondents' obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance, and EPA may initiate a new enforcement action based on evidence of new or continued violations.

### **VIII. FILING OF DOCUMENTS**

The Answer and any Hearing Request and all subsequent documents filed in this action should be sent to:

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


A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Tim Murphy, 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) 637-3236  
Fax: (212) 637-3199

### **IX. GENERAL PROVISIONS**

1. Respondents have a right to be represented by an attorney at any stage of these proceedings.
2. This Complaint does not constitute a waiver, suspension or modification of the requirements of the Act, regulations promulgated there under, or any applicable permit.
3. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309(g) of the Act will affect Respondents' continuing obligation to comply with the Act, and with any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), for the violations alleged herein.

ISSUED THIS 3<sup>rd</sup> DAY OF JUNE, 2015.

  
\_\_\_\_\_  
Dore LaPosta, Director  
Division of Enforcement and  
Compliance Assistance  
U. S. Environmental Protection Agency - Region 2  
290 Broadway  
New York, New York 10007

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

**IN THE MATTER OF:**

Mack Studios, Inc.  
and  
Peter Maciulewicz  
5500 Technology Park Blvd.  
Auburn, NY 13021

**RESPONDENTS**

**SPDES Permit No. NYR10X412**

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

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

**DOCKET No. CWA-02-2015-3404**

**CERTIFICATION OF SERVICE**

**JUN 08 2015**

I certify that on \_\_\_\_\_, I served the foregoing fully executed Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing, bearing the above referenced docket number, on the persons listed below, in the following manner:

Original and One Copy  
By Hand:

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


Copy by Certified Mail  
Return Receipt Requested:

Peter Maciulewicz  
Mack Studios, Inc.  
5500 Technology Park Blvd.  
Auburn, New York 13021

Copy by Certified Mail  
Return Receipt Requested

Mr. Joseph DiMura, P.E., Director  
Bureau of Water Compliance Programs  
NYSDEC  
625 Broadway  
Albany, New York 12233-4500

Dated: 6/8/15

  
Branch Secretary  
New York, New York