



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

JAN 13 2011

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**Article Number: 7005 3110 0000 5939 4632**

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

RE: Notice of Proposed Assessment of a Civil Penalty Class II  
Henry G. Page, Jr. Development, LTD Lagrange, New York  
Docket No. CWA-02-2011-3404

Dear Mr. DiMura:

Enclosed is a copy of the Complaint and Proposed Assessment of a Civil Penalty, which the United States Environmental Protection Agency ("EPA") has issued to Henry G. Page, Jr. Development, LTD pursuant to §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 \$55,000 against Respondent for violations of the Act.

Since the violations have occurred in the State of New York, EPA is offering you an opportunity to confer with us regarding the proposed assessment. 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

1. Complaint
2. CROP

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.11  
2011 JAN 28 A 10: 28  
REGIONAL HEARING  
CLERK



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

JAN 13 2011

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

**Article Number: 7005 3110 0000 5939 4625**

Mr. Henry G. Page, Jr., Owner  
Henry G. Page, Jr. Development, LTD  
66 Firemans Way  
Poughkeepsie, NY 12603

RE: Notice of Proposed Assessment of a Civil Penalty Class II  
Frank Farm Subdivision – Phase II, Lagrange, New York  
Docket No. CWA-02-2011-3404

Dear Mr. Page:

Enclosed is a Complaint which the U.S. Environmental Protection Agency (“EPA” or “Agency”) is issuing to you as a result of our determination that Henry G. Page, Jr. Development, LTD (“Respondent”), 66 Firemans Way, Poughkeepsie, New York has violated Sections 301 and 402 of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. §1311 and §1342. 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), **the Complaint proposes that a penalty of \$55,000 be assessed against Henry G. Page, Jr. Development, LTD 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 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 Section 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, New York 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, Section 22.17 of the CROP). If a default order is entered, the entire proposed penalty may be assessed without further proceedings.

Regardless of whether you request a formal hearing, EPA encourages you to pursue the possibility of settlement by requesting an informal conference with the Agency concerning the alleged violations

REGIONAL HEARING  
CLERK

2011 JAN 28 A 10:28

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.11

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.

The Agency also encourages Respondents to propose and perform Supplemental Environmental Projects ("SEPs"), where appropriate, as part of any settlement. Enclosed is a copy of the Final EPA Supplemental Environmental Projects Policy (May 1, 1998) 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:

Chris Saporita, Esq.  
Water & General Law Branch  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
290 Broadway - 16th Floor  
New York, New York 10007-1866  
(212) 637-3203  
[Saporita.chris@epa.gov](mailto:Saporita.chris@epa.gov)

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 Mr. Chris Saporita, Esq. at (212) 637-3203 or Ms. Justine Modigliani, NPDES Team Leader at (212) 637-4268.

Sincerely,



Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosures

1. Complaint
2. Consolidated Rules of Practice
3. Supplemental Environmental Projects
4. Information for Small Business

cc: Joseph DiMura, NYSDEC w/enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

**IN THE MATTER OF:**

Henry G. Page, Jr. Development, LTD  
66 Firemans Way  
Poughkeepsie, NY 12603

SPDES General Permit No. NYR10H923

**Respondent**

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-02-2011-3404**

U.S. ENVIRONMENTAL  
PROTECTIVE AGENCY-REG. II  
2011 JAN 28 A 10:28  
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)(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 (2001), a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against Henry G. Page, Jr. Development, LTD ("Respondent"), as a result of Complainant's determination that the Respondent violated Sections 301 and 402 of the Act, 33 U.S.C. §§1311 and 1342, respectively, by failing to comply with the terms of the New York State Department of Environmental Conservation's ("NYSDEC") State Pollutant Discharge Elimination System ("SPDES") General Permit for Stormwater Discharges from Construction Activity on a construction site it owns and operates.

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

3. Section 301(a) of the CWA, 33 U.S.C. §1311(a), provides, in relevant part, that "Except as in compliance with [33 U.S.C. §1312], the discharge of any pollutant by any person shall be unlawful."
4. The term "person" includes an individual, corporation, partnership, association or municipality, pursuant to Section 502(5) of the CWA, 33 U.S.C. §1362(5).
5. The term "discharge of a pollutant" means any addition of any pollutant to navigable waters from any point source, pursuant to Section 502(12) of the CWA, 33 U.S.C. §1362(12).
6. The term "pollutant" includes, among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water, pursuant to Section 502(6) of the CWA, 33 U.S.C. §1362(6).
7. The term "point source" means any discernible, confined and discrete conveyance, including, as relevant here, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, or container, pursuant to Section 502(14) of the CWA, 33 U.S.C. §1362(14).
8. The term "navigable waters" includes the waters of the United States pursuant to Section 502(7) of the CWA, 33 U.S.C. §1362(7).
9. Section 402 of the CWA, 33 U.S.C. §1342, authorizes the Administrator of EPA to grant a National Pollutant Discharge Elimination System ("NPDES") permit authorizing the discharge of storm water to waters of the United States, under certain conditions. A NPDES permit is required for stormwater discharges associated with construction activity that results in the disturbance of land equal to or greater than one acre, or construction activity that results in the disturbance of less than one acre, but which is part of a larger common plan of development or sale that will ultimately disturb equal to or greater than one acre. 40 C.F.R. §§122.26(b)(14)(x) and (b)(15)(i).
10. The Section 402 permit program has been delegated to the State of New York, so that Persons regulated under 40 C.F.R. §122.26(b)(14)(x) or 40 C.F.R. §122.26(b)(15)(i) may comply with the permit requirement of Section 402 of the CWA by obtaining coverage under a State Pollutant Discharge Elimination System ("SPDES") permit from the New York State Department of Environmental Conservation ("NYSDEC"). 33 U.S.C. §1342(b). NYSDEC's SPDES General Permit for Stormwater Discharges from Construction Activity GP-02-01 became effective on January 8, 2003 and GP-0-08-001 became effective on May 1, 2008 ("CGP").
11. Pursuant to 40 C.F.R. §122.41(a), permittees are required to comply with all conditions of their permit, and any permit noncompliance constitutes a violation of the CWA and is grounds for enforcement action.

12. Compliance with the New York CGP requires the preparation of a Stormwater Pollution Prevention Plan ("SWPPP"). The SWPPP requires, among other things, the implementation of stormwater best management practices ("BMPs"), weekly inspections, and the preparation and maintenance of weekly inspection reports.
13. Sections 309(a) of the CWA, 33 U.S.C. §1319(a) authorizes the Administrator to commence an administrative action for violations of Section 301 of the CWA, 33 U.S.C. §1311, or any permit condition or limitation implementing, inter alia, Section 301, and contained in a permit issued under Section 402 of the CWA, 33 U.S.C. §1342.

### **III. FINDINGS OF VIOLATION**

1. Henry G. Page, Jr. Development, LTD ("Respondent") is a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. §1362(5).
2. Respondent owned and operated a 61.28 acre Frank Farm Subdivision – Phase I construction site ("Phase I") off Overlook Road in Lagrange, New York, since November 2004, where Respondent conducted, among other things, clearing, grading and excavation activities at the site, resulting in the total disturbance of approximately 29.17 acres of land as documented in the Respondents submission received by EPA on April 9, 2010 ("submission"). According to the Respondent's submission, Henry G. Page Jr. sent in a Notice of Termination ("NOT") for the Phase I portion of the site on June 2007 at the conclusion of construction activities conducted by Respondent.
3. Respondent has owned and operated an 88.20 acre Frank Farm Subdivision – Phase II construction site ("Site" or "Facility") off Overlook Road in Lagrange, New York, since August 2007, where Respondent has conducted, among other things, clearing, grading and excavation activities at the site, resulting in the total disturbance of approximately 22.29 acres of land as documented in the Respondent's submission. According to Henry G. Page Jr. officials, construction at the Phase II site is scheduled to be completed by May 2010.
4. Based on climatic data from the National Weather Service's Poughkeepsie, New York weather station, it rained 0.84" on August 8, 2007. Therefore, discharges of storm water associated with the Respondent's construction activity began on or before August 8, 2007.
5. Storm water runoff that occurs from the site discharges to an unnamed tributary of the Wappinger Creek, a water of the United States pursuant to Section 502(7) of the CWA, 33 U.S.C. §1362(7).
6. Coverage for the Frank Farm Subdivision – Phase I and Phase II New York State Department of Environmental Conservation's ("NYSDEC") SPDES General Permit for Stormwater Discharges from Construction Activity Stormwater General Permit (GP-02-01) began on October 28, 2004 (five business days after their NOI was received by NYSDEC).
7. On December 17, 2009, EPA inspectors conducted a Compliance Evaluation Inspection ("CEI") at the site. At the time of the CEI, the EPA inspectors observed that construction activity resulted in the disturbance of approximately five acres of land was ongoing at the site, and found the following violations of the SPDES CGP:

- a. For construction sites where soil disturbance activities are ongoing, a qualified inspector must conduct site inspections of temporary erosion and sediment controls once every seven (7) calendar days and after rain events greater than 0.5" over 24 hours, as required by Part IV.C.2.a of the Permit. With the exclusion of three (3) inspection reports dated in 2007, records of weekly inspections conducted after April 2006 were not available at the time of the EPA inspection.
- b. Part IV.C.4 of the Permit requires the qualified inspector to prepare an inspection report subsequent to each inspection. The inspection report dated 06/01/07 was copied, and this copied version was used for inspections stated to be conducted on 05/25/07 and 06/05/07. Copied versions of a single inspection report were used in the following four instances:

<u>Instance:</u>	<u>Dates shared by single inspection report:</u>
1	10/15/2005, 10/22/2005, 10/25/2005
2	12/09/2005, 01/03/2006, 01/11/2006, 01/14/2006
3	02/10/2006, 02/17/2006, 02/24/2006
4	05/25/2007, 06/01/2007, 06/05/2007

- c. Part IV.A.1 of the Permit requires that the owner or operator must ensure that all erosion and sediment control practices identified in the SWPPP are maintained in effective operating condition at all times. The following erosion and sediment control practices observed on site at the time of the inspection were inconsistent with those identified in the SWPPP:
  - i. The SWPPP specifies a rip rap lined swale as outlet protection for Stormwater Management Plan #8 (SMP-8) detention basin (AKA FF #8A). At the time of the inspection, the outlet to SMP-8 had exposed and disturbed soil with no sediment and erosion control.
  - ii. The SWPPP specifies rip rap lined swale as inlet/outlet protection to the stream traveling under Ridgeline Road, adjacent to SMP-8. At the time of the inspection the banks of the stream at the inlet and outlet had no erosion and sediment control.
  - iii. Temporary diversion swales and temporary sediment traps located approximately 100' apart along Ridgeline Drive are specified in SWPPP for erosion control. Significant gully erosion was observed along Ridgeline Drive at the time of the inspection. Temporary diversion swales and temporary sediment traps were not in place as specified in the SWPPP.
  - iv. Disturbed soil was observed along Ridgeline Drive at the time of the inspection. EPA inspectors observed that seeding had taken place but was not providing adequate erosion and sediment control. According to Mr. Page, hydro-seeding had been conducted in October; however, this did not result in stabilization.

According to the SWPPP, temporary seeding shall consist of 100 lbs pure live seed per acre of cereal rye during the late fall or early winter and all seeding shall be covered with 2 lbs/acre of small grain straw mulch.

- v. Silt fencing specified in SWPPP was buried at the time of the inspection by adjacent material stock piles.
  - d. Part III.A.5 of the Permit requires the owner or operator to have each of the contractors and subcontractors identified in Part III.A.5 sign a copy of the SWPPP certification statement. Additionally, the certification page must identify the specific elements of the SWPPP for which each contractor and subcontractor will be responsible. The SWPPP reviewed at the time of the inspection indicated a prime contractor; however, the certification statement had not been signed by this or any additional contractor. The certification page failed to identify specific elements of the SWPPP for which each contractor would be responsible.
  - e. According to Mr. Page, a fueling truck comes on site to fuel construction vehicles, and a contractor comes on site to change vehicle oil. The SWPPP did not contain a description of the pollution prevention measures that will be used to control litter, construction chemicals (including fuel/oil) and construction debris from becoming a pollutant source in the storm water discharges, as required by Part III.B.1.j of the 2008 CGP.
  - f. Part I.B of the Permit requires that there shall be no increase in turbidity that will cause a substantial visible contrast to natural conditions from a discharge. Turbid water was observed flowing from the detention basin and into the stream, causing substantial visible contrast to the natural conditions of the stream.
8. On February 17, 2010, pursuant to Section 309 of the CWA, EPA issued an Administrative Order (“AO” or “Order”) (CWA-02-2010-3022), which directed Respondent to develop a complete SWPPP, conduct routine inspections, and implement and maintain BMPs. Respondent timely complied with the Order, and its submissions in response thereto demonstrated that routine (minimum weekly) site inspections began on January 1, 2010.
9. On May 5, 2010, EPA inspectors conducted a follow-up Compliance Evaluation Inspection (“CEI”) at the site. At the time of the follow-up CEI, the EPA inspectors observed construction activity that resulted in the disturbance of approximately five acres of land was ongoing at the site, and found the following violations of the SPDES CGP:
- a. Part IV.A.1 of the Permit requires that the owner or operator must ensure that all erosion and sediment control practices identified in the SWPPP are maintained in effective operating condition at all times. The following erosion and sediment control practices observed on site at the time of the inspection were inconsistent with those observed in the SWPPP:
    - i. Sediment tracking was observed on Sommerset Road and Ridgeline Drive;
    - ii. Silt fencing not extended across the entire disturbed slope;

- iii. Gully erosion was observed on bank of the detention basin near the Brook;
  - iv. Sediment build up was observed in outlet structure of the detention basin;
  - v. Unstabilized disturbed soil was observed along the recently paved Ridgeline Drive at the time of the inspection;
  - vi. Catch basins along Ridgeline Drive draining to the detention basin, did not have sediment protection and contained turbid water at the time of the inspection;
  - vii. Silt fencing located south of the model home along a dirt road was buried at the time of the inspection by soil and appears to be used as a construction entrance;
  - viii. Silt fencing was not keyed into ground at two locations south of the model home;
  - ix. Gully erosion and sediment build up was observed along the silt fence downhill of the disturbed soil pile south of the model home.
10. Respondent timely addressed the potential noncompliance items listed in the May 5, 2010 CEI report and submitted a response to EPA dated June 14, 2010 and was received by EPA on June 21, 2010.
11. Based on the Findings above, Respondent violated Sections 301 and 402 of the Act, 33 U.S.C. §§1311 and 1342.

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

Based on the foregoing Findings of Violation, 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 Respondent assessing a penalty of **\$55,000**. 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 violation (or violations), and Respondent’s prior compliance history, degree of culpability, economic benefit or savings accruing to Respondent by virtue of the violations, and Respondent’s ability to pay the proposed penalty. Based on the Findings set forth above, the Respondent is liable for **violations of the Act, one of which has continued for at least nine hundred and seventy-two (972) days**. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after Respondent’s receipt of this Notice, unless Respondent files an Answer to the Complaint within that time and requests 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 Respondent intends to contest any material fact upon which the Complaint is based, to contend that the proposed penalty is inappropriate or to contend that Respondent is entitled to judgment as a matter of law, Respondent 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**

Respondent 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). Respondent's 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 Respondent has any knowledge. 40 C.F.R. §22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states 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 Respondent disputes (and thus intend to place at issue in the proceeding), (3) the basis for opposing the proposed relief and (4) whether Respondent requests a Hearing. 40 C.F.R. §22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of a defense may preclude Respondent, 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 Respondent in its Answer, a Hearing upon the issues raised by the Complaint and Answer may be held. 40 C.F.R. §22.15(c). If, however, Respondent does 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 40 C.F.R. Part 22.

Should Respondent 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 Respondent 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 Respondent fails 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 Respondent fails 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)], Respondent may be found in default upon motion. 40 C.F.R. §22.17(a). Default by Respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. 40 C.F.R. §22.17(a). Following a default by Respondent 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 Respondent 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 Respondent, and to collect the assessed penalty amount, in Federal court.

### **VI. INFORMAL SETTLEMENT CONFERENCE**

Regardless of whether Respondent 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, Respondent may comment on the charges made in this Complaint and Respondent may also provide whatever additional information is believed to be relevant to the disposition of this matter, including: (1) actions Respondent has taken to correct any or all of the violations herein alleged, (2) any information relevant to Complainant's calculation of the proposed penalty, (3) the effect the proposed penalty would have on Respondent's ability to continue in business and/or (4) any other special facts or circumstances Respondent wishes to raise.

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. Respondent is referred to 40 C.F.R. §22.18.

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

Chris 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

The parties may engage in settlement discussions regardless of whether Respondent has requested a Hearing. 40 C.F.R. §22.18(b)(1). Respondent's requesting a formal Hearing does not prevent

Respondent 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 Respondent's obligation to file a timely Answer to the Complaint pursuant to 40 C.F.R. §22.15. Note that no penalty reduction will be made simply because an informal settlement conference is held.

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 accepting the Consent Agreement, Respondent waives any right to contest the allegations in the Complaint and waive any right to appeal the Final Order that is to accompany the 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).

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 Respondent (note that a new enforcement action may be initiated based on continued non-compliance). Entering into a settlement agreement does 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.

## **VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE**

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty \$55,000 within 30 days after receipt of the Complaint, provided that Respondent files 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-02-2011-3404

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 Respondent elects 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 in accordance with 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 (note that a new enforcement action may be initiated based on continued non-compliance). Further, pursuant to 40 C.F.R. §22.18(a)(3), the making of such payment by Respondent shall constitute a waiver of Respondent's 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 Respondent's obligation and responsibility to comply with all applicable statutory and regulatory requirements, and to maintain such compliance.

## **VII. 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, Region2  
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:

Chris Saporita, Esq.  
Assistant 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

## **VIII. GENERAL PROVISIONS**

1. Respondent has 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 Respondent's 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 12<sup>th</sup> DAY OF FEBRUARY 2011 BY THE 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:**

Henry G. Page, Jr. Development, LTD  
66 Firemans Way  
Poughkeepsie, NY 12603

SPDES General Permit No. NYR10H923

Respondent

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-02-2011-3404**

I certify that on JAN 18 2011, 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:

Mr. Henry G. Page, Jr., Owner  
Henry G. Page, Jr. Development, LTD  
66 Firemans Way  
Poughkeepsie, NY 12603

Copy by Certified Mail  
Return Receipt Requested:

Mr. Joseph 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

Dated: 1/18/11

  
Secretary  
New York, New York