

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

DATE: April 30, 2012

SUBJECT: **Dependable Towing & Recovery, Inc.**
And David A. Whitehill
2160 Lafayette Street
P.O. Box 266
Falconer, New York 14733

Docket No. CWA-02-2011-3601

FROM: Eduardo J. Gonzalez
Assistant Regional Counsel

TO: Karen Maples
Regional Hearing Clerk

**U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II**

2012 MAY -3 A 6:55

**REGIONAL HEARING
CLERK**

Attached, for filing, please find a Motion for EPA to be Allowed to Withdraw the instant Complaint Without Prejudice.

If you have any questions, please contact me at 637-3223.

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

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2012 MAY -3 A 6 55
REGIONAL HEARING
CLERK

IN THE MATTER OF:

**Dependable Towing & Recovery, Inc.
And David A. Whitehill**
2160 Lafayette Street
P.O. Box 266
Falconer, New York 14733

Respondents.

Proceeding to Assess a Class II
Administrative Penalty Pursuant to
Section 309(g) of the Clean Water Act,
33 U.S.C. §1319(g)

Docket No. CWA-02-2011-3601

Proceeding Pursuant to § 309(g) of the Clean
Water Act, 33 U.S.C. §1319(g) to Assess Class II
Civil Penalty

**MOTION FOR EPA TO BE ALLOWED TO WITHDRAW
THE INSTANT COMPLAINT WITHOUT PREJUDICE**

EPA Region 2 ("EPA") files this motion pursuant to 40 C.F.R. § 22.14(d) for permission for EPA to withdraw the instant Complaint without prejudice, based upon the following information:

1. On or about April 8, 2011, EPA filed the instant Complaint concerning the Respondents' facility situated in Falconer, New York.
2. On or about May 11, 2011, Respondents filed its answer, essentially admitting the violation, but claiming to have acted in good faith.
3. On October 5, 2011, this Court issued a prehearing order setting a schedule for Complainant's and Respondents' prehearing exchange. That order, in part, directed that the Complainant's prehearing exchange, Respondent's prehearing and the Complaint's rebuttal prehearing exchange be filed with the Court.
4. On January 5, 2012, this Court issued an "Order Scheduling Hearing." That order, *inter alia*, specified that a joint set of stipulated facts, exhibits and testimony be filed by March 16, 2012. On March 16, 2012, the parties submitted a "Joint Motion for Extension of the Submissions Required by Order Scheduling Hearing," jointly seeking an extension of time to file stipulated facts, exhibits, testimony and prehearing briefs, and jointly requesting that the hearing be rescheduled.

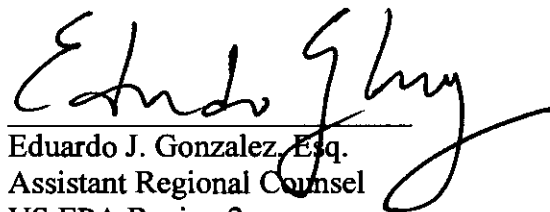
5. On March 20, 2012, base upon good cause shown, this Court granted the motion. Accordingly, this Court directed the parties to file a joint set of stipulated facts, exhibits and testimony on or before April 30, 2012, and prehearing briefs on or before June 5, 2012. In addition, the hearing was rescheduled on June 26, 2012 in or around Buffalo, New York.
6. EPA has attempted to negotiate settlement throughout the instant penalty proceeding, but Respondents have failed to take any actions towards restoration of the environment, as required by EPA's administrative injunctive order (CWA-02-2010-3501) previously issued and as required by the goals and objectives of the Clean Water Act.
7. As restoration of the affected environment is the primary goal of EPA in this matter, EPA has decided to assess its options pursuant to the Clean Water Act, which include the referral of this matter to Department of Justice ("DOJ") to obtain the injunctive relief and further penalties, which are not available in this administrative proceeding.
8. As such, EPA seeks permission of this Court to withdraw the instant Complaint without prejudice. If the motion is granted, EPA will assess referral of this matter to the DOJ for commencement of a proper judicial action.

THEREFORE, the Complainant, petitions this Court to grant its motion to withdraw EPA's Complaint without prejudice.

WHEREFORE, Complainant prays that this Court grant the aforementioned motion to withdraw the instant Complaint without prejudice.

Respectfully submitted,

For Complainant US EPA Region 2



Eduardo J. Gonzalez, Esq.
Assistant Regional Counsel
US EPA Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
(212) 637-3223

Date: 4/30/12

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

IN THE MATTER OF:

**Dependable Towing & Recovery, Inc.
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CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2012, the original of this motion was given to the Regional Hearing Clerk, U.S. EPA, Region 2 and copies were sent to the Administrative Law Judge and the Respondents' counsel by electronic delivery.

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 Electronic Mail and Mail

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David Whitehill
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Copy by Electronic Mail and Mail:

Hon. M. Lisa Buschmann
Administrative Law Judge
Jennifer Wolff
Staff Assistant
Fax: (202) 565-0044
U.S. EPA
Office of Administrative Law Judges
Mail Code 1900L
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dated: 04/30/2012 BY JUNE LEE, New York, New York