



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

APR 19 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7015 0640 0001 0675 9300

Mr. Peter Maciulewicz, Owner
Mack Studios, Inc.
5500 Technology Park Boulevard
Auburn, New York 13021

U.S. Environmental
Protection Agency-Reg 2
2016 APR 20 AM 7:49
REGIONAL HEARINGS
CLERK

Re: In the Matter of Mr. Peter Maciulewicz and Mack Studios, Inc.
Docket No. CWA-02-2015-3404

Dear Mr. Maciulewicz:

Enclosed is a fully executed Consent Agreement and Final Order (CAFO) that resolves the above referenced matter.

Thank you for your cooperation and assistance to bring this matter to a mutually satisfactory resolution.

Sincerely yours,

Tim Murphy, Esq.
Office of Regional Counsel
Water & General Law Branch

Enclosures

cc: Karen Maples, Regional Hearing Clerk

bcc: D. McKenna, DECA/WCB
J. Modigliani, DECA/WCB
K. Mann, DECA/WCB
P. Feinmark, ORC/WGLB
T. Murphy, ORC/WGLB

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II
290 Broadway
New York, NY 10007-1866

IN THE MATTER OF:

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

SPDES Permit No. NYR10X412

RESPONDENTS

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

CONSENT AGREEMENT
AND
FINAL ORDER

DOCKET NO. CWA-02-2015-3404

U.S. Environmental
Protection Agency-Reg 2
2016 APR 20 AM 7:48
REGIONAL HEARINGS
CWA-02-2015-3404

I. PRELIMINARY STATEMENT

Complainant, the United States Environmental Protection Agency ("EPA"), having filed the Complaint referenced herein on June 8, 2015, against Mr. Peter Maciulewicz and Mack Studios, Inc. ("Respondents"); and

Complainant and Respondents having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order ("CAFO" or "Agreement") without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby Ordered and Adjudged as follows:

II. PROCEDURAL AND FACTUAL FINDINGS

1. The following Procedural and Factual Findings are made and the Final Order is issued pursuant to the authority vested in the Administrator of the United States EPA by the Clean Water Act, 33 U.S.C. § 1251 *et. seq.* ("CWA" or "Act"), which authority has been duly delegated to the Regional Administrator of EPA Region 2.
2. EPA is concluding this proceeding for the assessment of a civil penalty, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.18(b) 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" ("CROP"), which sets forth procedures for conclusion of administrative civil penalty assessment proceedings through issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

3. EPA filed a Class II Administrative Complaint, CWA-02-2015-3404, ("Complaint"), pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g) on June 8, 2015.
4. The Complaint alleges that Respondents are in violation of the CWA by their failure to implement their Stormwater Pollution Prevention Plan ("SWPPP") and comply with the conditions of the New York State Department of Environmental Conservation ("NYSDEC") State Pollution Discharge Elimination System ("SPDES") Construction General Permit ("CGP") in the operation of its construction site located southwest of the intersection of Allen Street and Technology Park Boulevard in the City of Auburn, New York, which resulted in, among other things, the discharge of stormwater pollution into waters of the United States, in violation of Sections 301 and 402 of the Act, 33 U.S.C. § 1311 and § 1342, respectively.
5. Respondents have not filed an Answer or requested a hearing pursuant to 40 C.F.R. Part 22.

III. CONSENT AGREEMENT

6. Paragraphs 1 through 5, above, are re-alleged and incorporated herein by reference.
7. EPA and Respondents agree that it is in the public interest to resolve the issues alleged in this Consent Agreement without further litigation and the expense and effort that litigation entails.
8. Based upon the foregoing and pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), and the CROP, it is hereby agreed by and between EPA and Respondents, and Respondents voluntarily and knowingly agree as follows:

A. TERMS OF SETTLEMENT

9. For the purpose of this proceeding, Respondents admit the jurisdictional allegations of the Complaint as well as this CAFO but neither admit nor deny the factual allegations contained herein.
10. Respondents waive any defenses they might have as to jurisdiction or venue, and waive their right to contest the allegations, at a judicial or administrative hearing, or to appeal this CAFO.
11. Respondents consent to the terms of this Agreement, and consent to the payment of the civil penalty in the amount of *Forty-Eight Thousand Five Hundred Dollars (\$48,500.00)*, as stated in Paragraph 12, below.

B. PAYMENT OF CIVIL PENALTY

12. Respondents shall pay a civil penalty in the amount of *Forty-Eight Thousand Five Hundred Dollars (\$48,500.00)* to the "Treasurer of the United States of America."
13. Respondent shall pay the full penalty amount within thirty (30) days of its receipt of the Final Order adopting this Agreement. If the due date for payment falls on a weekend or legal federal holiday, the due date is the next business day. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered received that day.

14. Payments can be made by debit/credit card, check, or electronically. Electronic payments fall into two categories: wires and Automated Clearinghouse (ACH). Wires are same day and more costly. ACH is the next day or any future scheduled day and is less expensive. Please note that wires and ACH payments must be conducted through the sender's bank. The checks (cashier's or certified checks only) shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document. Payment methods are described below:

Type of Payment	Payment Information	
Debit and Credit Card Payments	https://www.pay.gov/paygov/	
Checks from U.S. Banks Finance Center Contacts: Craig Steffen (513-487-2091)	U.S. Postal Service	UPS, Federal Express, or Overnight Mail
	US Environmental Protection Agency Fines and Penalties Cincinnati Finance Center PO Box 979077 St. Louis, MO 63197-9000	U.S. Bank Government Lockbox 979077 US EPA Fines & Penalties 1005 Convention Plaza SL-MO-C2-GL St. Louis, MO 63101 314-418-1028
Checks drawn on foreign banks with no USA branches (any currency)	Cincinnati Finance US EPA, MS-NWD 26 W ML King Drive Cincinnati, OH 45268-0001	
Wire Transfers (any currency) Details on format and content of wire transfer – www.epa.gov/ocfo/finservices/required_info.htm	Federal Reserve Bank of New York ABA: 021030004 Account Number: 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"	

ACH - Automated Clearinghouse for receiving US currency Finance Center Contacts:	US Treasury REX / Cashlink ACH Receiver ABA: 051036706
John Schmid (202-874-7026)	Account Number: 310006, Environmental Protection Agency CTX Format Transaction Code 22 – checking
REX (Remittance Express) 1-866-234-5681	Physical location of US Treasury facility: 5700 Rivertech Court Riverdale, MD 20737

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Department of Treasury. This payment option can be accessed from the following information: WWW.PAY.GOV. Enter sfo 1.1 in the search field. Open form and complete required fields.

15. Respondents shall send a copy of the check, or record of payment if made by other means, immediately following payment, to:

Katherine Mann
 Division of Enforcement and Compliance Assistance
 U.S. EPA, Region 2
 290 Broadway, 20th Floor
 New York, New York 10007

and

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

16. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for Collection.
17. Further, if the payment is not received on or before the due dates, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due dates through the date of payment. In addition, a late payment handling charge of \$15.00 will be assessed for each 30-day period (or any portion thereof) following the due dates in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.
18. In addition, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), if payment is not received by the due dates, a quarterly nonpayment penalty will be imposed for each calendar

quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter. Respondents also may be required to pay attorney's fees and costs for collection proceedings in connection with nonpayment.

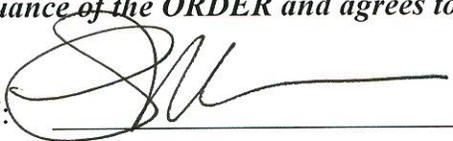
19. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondents' federal or State of New York taxes.

C. GENERAL PROVISIONS

20. The provisions of this CAFO shall be binding upon Respondents, their officers, directors, agents, servants, authorized representatives and successors or assigns, including, but not limited to, subsequent purchasers. No transfer of ownership or operation shall relieve Respondents of their obligation to comply with this CAFO.
21. The Respondents waive any right they may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with, or to be served with and to reply to, any memorandum or communication addressed to the Director or the Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.
22. Except for the specific violations alleged herein, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondents' violation of any applicable provision of law.
23. This CAFO shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.
24. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations by the Respondents alleged herein. Nothing in this CAFO is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of the Respondents. Compliance with this CAFO shall not be a defense to any actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is the responsibility of Respondents to comply with such laws and regulations.
25. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Agreement and to execute and legally bind that party to it.
26. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this CAFO.

For Respondents: Mr. Peter Maciulewicz and Mack Studios, Inc. hereby consent to the issuance of the ORDER and agrees to be bound thereby.

BY:



DATE:

DEC. 14, 2015

Mr. Peter Maciulewicz, Owner
Mack Studios, Inc.
5500 Technology Park Boulevard
Auburn, New York 13021

For the Complainant, the United States Environmental Protection Agency:

BY:



Dore LaPosta, Director

P. DURACK for D.L.

Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

DATE:

APRIL 4, 2014

IV. FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

Judith A. Enck

JUDITH A. ENCK

Regional Administrator

United States Environmental Protection Agency, Region 2

290 Broadway

New York, New York 10007

4.11.16

Date

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, NY 10007-1866

IN THE MATTER OF:

Peter Maciulewicz
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Mack Studios, Inc.
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CONSENT AGREEMENT
AND
FINAL ORDER

DOCKET NO. CWA-02-2015-3404

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I served the foregoing fully executed Consent Agreement and Final Order, bearing the above referenced docket number, on the persons listed below, in the following manner:

Original and One Copy by Mail and One Copy by Email:

Sybil Anderson, Headquarters Hearing Clerk
Office of Administrative Law Judges
1200 Pennsylvania Avenue, N.W., Mail Code 1900R
Washington, DC 20460

Copy by Mail:

Honorable Susan L. Biro
U.S. Environmental Protection Agency
1099 14th Street, N.W., Suite 350
Washington, DC 20005

Copy by Certified Mail Return Receipt Requested:

Mr. Peter Maciulewicz, Owner
Mack Studios, Inc.
5500 Technology Park Boulevard
Auburn, NY 13021

Dated: 4/19/16
New York, New York

