



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY
NEW YORK, NY 10007-1866

SEP 19 2012

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II

2012 SEP 25 A 8:50
REGIONAL HEARING
CLERK

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5934 9496

Mr. Michael Kaplan, Owner
Kaplan & Sons Construction Corp.
433 River Road
Highland Park, NJ 08904

Re: Notice of Proposed Assessment of a Civil Penalty Class I
Kaplan & Sons Construction Corp.
Docket No. CWA-02-2012-3312

Dear Mr. Kaplan:

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 Kaplan & Sons Construction Corp. ("Respondent"), who owns and operates the facility located off of Ernston Road in Sayreville, New Jersey, 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 **\$37,500** be assessed to Kaplan & Sons Construction Corp. 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
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, §22.17 of the CROP). If a default order is entered, the entire proposed penalty may be assessed without further proceedings.

Regardless of whether or not 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 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.

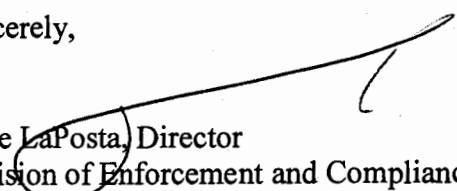
If you have any questions or wish to discuss a settlement of this matter with the EPA by an informal conference, please immediately contact:

Kara Murphy, Esq.
Office of Regional Counsel
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency
290 Broadway - 16th Floor
New York, New York 10007-1866
(212) 637-3211

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 Ms. Kara Murphy at the phone number above or Ms. Justine Modigliani, Compliance Section Chief, at (212) 637-4268.

Sincerely,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

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

cc: Marcedius Jameson, NJDEP



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

SEP 19 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5934 9502

Marcedius T. Jameson, Director
Division of Water and Land Use Enforcement
New Jersey Department of Environmental Protection
Mail Code 401-04F
401 East State Street
P.O. Box 420
Trenton, New Jersey 08625-0420

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2012 SEP 25 A 8:50
REGIONAL HEARING
CLERK

**RE: Notice of Proposed Assessment of a Civil Penalty Class I
Kaplan and Sons Construction Corp.
Docket No. CWA-02-2012-3312**

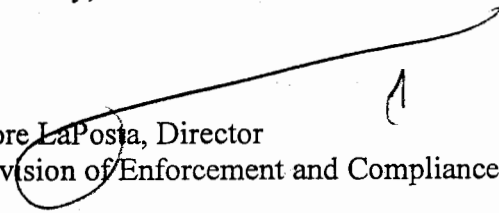
Dear Mr. Jameson:

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 Kaplan and Sons Construction Corp. 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 **\$37,500** against Respondent for violations of the Act.

Since the violations have occurred in the State of New Jersey, 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

bcc: Karen Maples, Regional Hearing Clerk (w/o enclosures)
Kara Murphy, ORC-WGL (w/o enclosures)
Justine Modigliani, DECA-WCB (w/o enclosures)
Katherine Mann, DECA-WCB (w/o enclosures)

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Kaplan and Sons Construction Corp.
433 River Road
Highland Park, NJ 08904

La Mer – Phases 5 & 6
Ernston Road
Sayreville, NJ 08859

NPDES Tracking No. NJG0175757
NPDES General Permit No. NJG0088323
Ch. 251 App. No. 0019-0032 and SCD RFA
No. 12-19-05-0010
Ch. 251 App. No. 0019-0046 and SCD RFA
No. 12-09-07-001

Proceeding pursuant to Sections 308 and
309(a) of the Clean Water Act, 33 U.S.C.
§§ 1318 and 1319(a)

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

DOCKET No. CWA-02-2012-3312

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2012 SEP 25 A 8:50
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. PRELIMINARY STATEMENT

1. This Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing (“Complaint”) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g)(2)(A) of the Clean Water Act (“Act” or “CWA”), 33 U.S.C. §1319(g)(2)(A). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 2, who in turn has delegated it to the Director, Division of Enforcement and Compliance Assistance (“DECA”) of EPA, Region 2 (“Complainant”).
2. Pursuant to Section 309(g)(2)(A) of the Act, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (“CROP”), 40 C.F.R. Part 22 (2001), a copy of which is attached, Complainant hereby requests that the

Regional Administrator assess a civil penalty against Kaplan and Sons Construction Corp. ("Respondent"), as a result of Complainant's determination that the Respondent is in violation of 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 Jersey Department of Environmental Protection ("NJDEP" or "Department") New Jersey Pollutant Discharge Elimination System ("NPDES") 5G3 Construction Activity Storm Water General Permit No. NJG0088323 at a facility it owns and operates.

II. STATUTORY AND REGULATORY PROVISIONS AND PERMIT REQUIREMENTS

3. 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 of the United States, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342.
4. Section 402(a)(1) of the CWA, 33 U.S.C. § 1342(a)(1), provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to that Section.
5. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. Under Section 402(b), EPA granted the NJDEP the authority to administer the federal NPDES program in New Jersey. EPA maintains concurrent enforcement authority with the authorized State for violations of the CWA. Additionally, NJDEP issues a NJPDES permit to facilities for the discharge of pollutants from said facilities from a point source to a navigable water of the United States.
6. Section 308(a)(A) of the Act, 33 U.S.C. § 1318(a)(A), provides, in relevant part, that the Administrator of EPA may require the owner or operator of any point source to, among other things: maintain such records; make such reports; install, use and monitor such equipment; sample such effluents; and provide such other information as may reasonably be required in order to carry out Section 402 of the Act, 33 U.S.C. § 1342.
7. "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.
8. "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.
9. "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.
10. "Navigable waters" is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), to include the waters of the United States.

11. "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.
12. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth the requirements for municipal and industrial stormwater discharges.
13. The Administrator of EPA has promulgated regulations, 40 CFR § 122.26(a)(1)(ii), § 122.26(b)(14), and § 122.26(b)(15), which require operators to obtain a NPDES permit for stormwater discharges associated with industrial activity. The regulations at 40 C.F.R. § 122.26(b)(14)(x) and 40 C.F.R. § 122.26(b)(15)(i) establish requirements for storm water discharges associated with industrial activity from construction sites which include clearing, grading and excavation activities that result in the disturbance of one (1) or more acres of total land area.
14. "Owner or operator" is defined by 40 C.F.R. § 122.2 as owner or operator of any "facility or activity" subject to regulation under the NPDES program.
15. "Stormwater" is defined by 40 C.F.R. § 122.26(b)(13) as storm water runoff, snow melt runoff, and surface runoff and drainage.
16. New Jersey promulgated the NJPDES rules, found at 7 N.J. ADMIN. CODE ("N.J.A.C.") tit. 7:14A-1 *et seq.*, to, among other things, govern the discharge of pollutants to waters of the State, including discharges to surface water and groundwater, stormwater discharges, significant indirect user discharges and residual management.
17. The terms "construction general permit" or "CGP" mean the NJPDES 5G3 – Construction Activity Storm Water General Permit No. NJG0088323. The current CGP was renewed on March 1, 2012.
18. Pursuant to N.J.A.C. 7:14A-1.2, stormwater discharge associated with small construction activity means the discharge to surface water, from a point source or a nonpoint source, of stormwater from, among other things, construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one (1) acre and less than five (5) acres.
19. The term "SPPP" means Stormwater Pollution Prevention Plan as defined in the NJPDES Construction General Permit.
20. Part E.1 of the CGP requires that construction activity that may result in a stormwater discharge authorized by the permit shall be executed only in accordance with a SPPP that consists of the erosion and sediment control component that meets the requirements of Part E.1.a, as well as a construction site waste control component set forth in Attachment B of the CGP.
21. Part E.3 of the CGP requires that the permittee conduct and document weekly inspections of the

areas of industrial activity or small construction activities to identify areas contributing to the stormwater discharge authorized by the CGP and evaluate whether the SPPP is being properly implemented and maintained, or whether additional measures are needed to implement the SPPP.

22. Attachment B, Part 3 of the CGP requires, among other things, that construction sites shall have one or more designated waste collection areas onsite or adjacent to the site, and an adequate number of containers for waste. Staged waste containers shall be maintained so as to prevent waste materials from overflowing, leaking, or blowing out of the container. Spills, leaks, and overflows, which do occur, shall be cleaned up immediately.
23. Attachment B, Part 4.b of the CGP prohibits concrete washout onsite outside designated areas. Additionally, as set forth in Attachment B, Parts 4.b.i and 4.b.ii, designated washout areas shall be lined and bermed to prevent discharges to the surface and ground water, and hardened concreted from the concrete washout shall be removed and properly disposed of.
24. 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.

III. FINDINGS OF FACT

25. Paragraphs 1 – 24 are re-alleged and incorporated herein by reference.
26. Respondent owns and operates Phase 5 and 6 of the La Mer construction site (“Site” or “Facility”) located off of Ernston Road in Sayreville, New Jersey. Phases 1 through 4 have already been completed and stabilized.
27. Respondent has conducted construction activities on approximately 40 acres in Phases 5 and 6 at the Site.
28. Respondent gained coverage under the CGP for Phase 5 of the Site on June 1, 2005 under Ch. 251 App. No. 0019-0032 and SCD RFA No. 12-19-05-0010. Coverage under the CGP became effective for Phase 6 of the Site on August 1, 2006 under Ch. 251 App. No. 0019-0046 and SCD RFA No. 12-09-07-001.
29. Storm water discharges from the Site drain to Cheesequake Creek. For Phases 5 and 6, stormwater discharges to sediment basins onsite, which discharge into a wetland area that is immediately adjacent to and hydraulically connected to Cheesequake Creek.
30. EPA conducted a Compliance Evaluation Inspection (“CEI”) at the Site on April 25, 2012 and identified the following stormwater Best Management Practices (“BMPs”) that did not conform to the erosion and sediment control component of the Respondent’s SPPP:
 - a) Accumulated sediment was identified in sediment basin #3, especially near the outfall from the basin. Although the basin discharges to a Vortech stormwater treatment system before discharging to the adjacent wetland area, sediment was observed covering the rip rap and filter fabric apron at the outfall from the treatment system. Both basin #3 and the

apron were in need of maintenance. Additionally, a double line of silt fencing between the outfall from the treatment system and the adjacent wetland area had fallen over and was in need of repair.

- b) Silt fencing along the temporary haul road on the southeastern side of the Site was not staked into the ground, had fallen over, and/or was filled with sediment. EPA also found evidence of sediment movement beyond the line of compromised silt fencing and into the adjacent wetland/ wooded area.
- c) Silt fencing on the northern side of the temporary haul road receiving runoff from the slopes of Phases 4 and 5 of the development was not effectively staked into the ground and in need of repair.
- d) Sediment and/or unstabilized soils were identified in sediment basin #1, especially near the inlet from the active section of Phase 5. Slopes of the basin were generally stabilized except for the northeastern slope of the basin near the end of the temporary haul road.
- e) The outfalls from sediment basin #1 were sediment-laden, and vegetation and debris were identified in one of the outfalls. Additionally, the gabion apron at the base of the outfalls was covered in sediment and in need of maintenance.
- f) At least twenty-two (22) catch basins located in Phase 5 were unprotected, contained filter fabric that had been ripped and was no longer providing adequate protection, and/or had controls that were otherwise deficient and in need of maintenance.
- g) In its April 13, 2012 weekly self-inspection, Respondent indicated that silt fencing was down on Giordano Avenue in order to install utilities. However, at the time of the April 25, 2012 CEI, silt fencing had not yet been replaced. Furthermore, additional silt fencing along Giordano Avenue had either collapsed or was filled with sediment and was in need of maintenance.
- h) There was significant tracking of silt and sediment outside the construction zone onto Giordano Avenue.
- i) Construction entranceways in Phase 5 were covered in sediment and in need of maintenance.
- j) Stock piles in Phase 5 were not temporarily stabilized and were not surrounded by silt fencing. EPA identified a flow path around an unprotected stock pile in the southeastern corner of Phase 5 that was diverted down a vegetated hillside disturbing a recently seeded area, and into the temporary haul road. Trash and debris were observed in the flow path at the time of the CEI.
- k) The remaining area in Phase 5 (buildings 11 – 27) had been cleared but had not been stabilized. Significant erosion was observed in the disturbed lots in areas that were not

actively under construction, including but not limited to, the area beneath the retaining wall between buildings 10 and 11.

- l) According to Respondent, the disturbed area in Phase 6 east of the construction trailer had been cleared in February 2012. The area was not temporarily stabilized.
- m) The large stock pile in Phase 6 was not temporarily stabilized and was not surrounded by silt fencing.

- 31. During the CEI, EPA identified the following waste control practices in Attachment B of the CGP that were not implemented and/or maintained:
 - a) The concrete washout adjacent to Phase 5 of the Site was in need of maintenance, as it was full and had spilled over the bermed area and onto the ground.
 - b) Uncovered dumpsters in Phase 5 containing construction waste materials were not maintained in a manner that prevented waste materials from blowing out of the container. Construction debris was observed on the ground near the dumpster.
- 32. On May 29, 2012, EPA issued a CEI report requiring Respondent to address the SPPP deficiencies and BMP violations identified by EPA at the time of the April 25, 2012 CEI within thirty (30) days of receipt of the CEI report. Respondent received the CEI report on May 31, 2012.
- 33. On June 20, 2012, pursuant to Section 309 of the CWA, EPA issued an Administrative Order ("AO" or "Order") (CWA-02-2012-3051), which directed Respondent to address SPPP deficiencies and BMP violations identified by EPA at the time of the April 25, 2012 CEI within thirty (30) days of receipt of the AO. Respondent received the AO on June 28, 2012.
- 34. Respondent submitted a response to the EPA CEI report on June 28, 2012.
- 35. Respondent submitted a response to the AO on July 20, 2012. The response included Respondent's June 28, 2012 response to the EPA CEI report as well as photographic documentation of the actions taken to address the Ordered Provisions in the AO.

IV. CONCLUSIONS OF LAW/FINDINGS OF VIOLATION

From the Findings of Fact set forth above:

- 36. Respondent is a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
- 37. Respondent discharges stormwater associated with industrial activity, a "pollutant" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6), via the above mentioned site drain and sediment basins, "point sources" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to the Cheesecake Creek, a "navigable water" of the United States

pursuant to Section 502(7) of the Act, 33 U.S.C. § 1362(7), and as such, discharges pollutants pursuant to Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

38. Respondent's failure to follow the stormwater BMPs, as listed above in paragraphs 30 (a)-(m), in the erosion and sediment control component of the Respondent's SPPP is a violation of Part E.1 of the CGP.
39. Respondent's failure to implement and/or maintain waste control practices, as listed above in paragraphs 31 (a) and (b), is a violation of Attachment B of the CGP.
40. 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 **\$37,500**. 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 eighty-four (84) 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 to affirmatively 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 the CROP, at 40 C.F.R. §§ 22.21-22.26.

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 it believes 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:

Kara Murphy, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone (212) 637-3211

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 waives 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, **\$37,500**, 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-02-2012-3312

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

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

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 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 (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.

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:

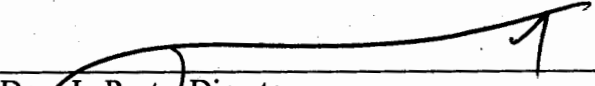
Kara Murphy, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

IX. 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 19th DAY OF SEPTEMBER, 2012.



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:

Kaplan and Sons Construction Corp.
433 River Road
Highland Park, NJ 08904

La Mer – Phases 5 & 6
Ernston Road
Sayreville, NJ 08859

NPDES Tracking No. NJG0175757
NJPDES General Permit No. NJG0088323
Ch. 251 App. No. 0019-0032 and SCD RFA No. 12-19-05-0010
Ch. 251 App. No. 0019-0046 and SCD RFA No. 12-09-07-001

Proceeding pursuant to Sections 308 and 309(a) of the Clean
Water Act, 33 U.S.C. §§ 1318 and 1319(a)

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

DOCKET No. CWA-02-2012-3312

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:

Michael Kaplan, Owner
Kaplan & Sons Construction Corp.
433 River Road
Highland Park, NJ 08904

Copy by Certified Mail
Return Receipt Requested

Mr. Marcedius T. Jameson, Director
Division of Water and Land Use Enforcement
New Jersey Department of Environmental Protection
Mail Code 401-04F
401 East State Street
P.O. Box 420
Trenton, New Jersey 08625-0420

Dated: SEP 24 2012



Ediodicta Rodriguez, Secretary
New York, NY

