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October 17, 2012

VIA FEDERAL EXPRESS

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

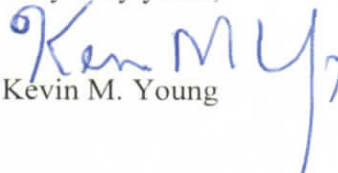
RE: In the Matter of Burton F. Clark, Inc.
Docket No. CWA-02-2012-3311

Dear Ms. Maples:

Enclosed for filing are an original and one copy of an Answer to the Administrative Complaint in the above-referenced matter. A copy of the Answer also has been served on Kara Murphy, Office of Regional Counsel, U.S. EPA Region 2, as counsel for the complainant.

If you have any questions, please do not hesitate to call or e-mail.

Very truly yours,


Kevin M. Young

Enclosure (original and one copy)

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2012 OCT 18 A 10:22
REGIONAL HEARING
CLERK

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Burton F. Clark, Inc.
5057 State Highway 12
Norwich, NY 13815

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

Proceeding pursuant to Sections 308(a) and
309(a)(3) of the Clean Water Act, 33 U.S.C.
§§ 1318(a) and 1319(a)(3)

DOCKET No. CWA-02-2012-33

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2012 OCT 18 A 10:22
REGIONAL HEARING
CLERK

RESPONDENT

**ANSWER TO ADMINISTRATIVE COMPLAINT
FINDINGS OF VIOLATION, NOTICE OF PROPOSED
ASSESSMENT OF AN ADMINISTRATIVE PENALTY, AND
NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

Burton F. Clark, Inc. ("Respondent"), by and through its attorneys, Young, Sommer, Ward, Ritzenberg, Baker & Moore, LLC, as and for its Answer to the U.S. Environmental Protection Agency's ("Agency") Administrative Complaint, issued September 18, 2012 ("Complaint"), responds as follows:

I. PRELIMINARY STATEMENT

1. With respect to the allegations set forth in paragraph 1 of the Complaint, Respondent respectfully refers the Agency to the statute referenced therein for a complete and accurate statement of its content and import.
2. With respect to the allegations set forth in paragraph 2 of the Complaint, Respondent respectfully refers the Agency to the statute and regulations referenced therein for a complete and accurate statement of their content and import. Respondent also incorporates by reference its responses to the allegations contained in paragraphs 22 through 28 by reference.

II. STATUTORY AND REGULATORY PROVISIONS
AND PERMIT REQUIREMENTS

3. With respect to the allegations set forth in paragraph 3 of the Complaint, Respondent respectfully refers the Agency to the statute referenced therein for a complete and accurate statement of its content and import.
4. With respect to the allegations set forth in paragraph 4 of the Complaint, Respondent respectfully refers the Agency to the statute referenced therein for a complete and accurate statement of its content and import.
5. With respect to the allegations set forth in paragraph 5 of the Complaint, Respondent respectfully refers the Agency to the statute referenced therein for a complete and accurate statement of its content and import.
6. With respect to the allegations set forth in paragraph 6 of the Complaint, Respondent respectfully refers the Agency to the statute referenced therein for a complete and accurate statement of its content and import.
7. With respect to the allegations set forth in paragraph 7 of the Complaint, Respondent respectfully refers the Agency to the statute referenced therein for a complete and accurate statement of its content and import.
8. With respect to the allegations set forth in paragraph 8 of the Complaint, Respondent respectfully refers the Agency to the statute referenced therein for a complete and accurate statement of its content and import.
9. With respect to the allegations set forth in paragraph 9 of the Complaint, Respondent respectfully refers the Agency to the statute referenced therein for a complete and accurate statement of its content and import.
10. With respect to the allegations set forth in paragraph 10 of the Complaint, Respondent respectfully refers the Agency to the statute referenced therein for a complete and accurate statement of its content and import.
11. With respect to the allegations set forth in paragraph 11 of the Complaint, Respondent respectfully refers the Agency to the statute referenced therein for a complete and accurate statement of its content and import.
12. With respect to the allegations set forth in paragraph 12 of the Complaint, Respondent respectfully refers the Agency to the statute referenced therein for a complete and accurate statement of its content and import.

13. With respect to the allegations set forth in paragraph 13 of the Complaint, Respondent respectfully refers the Agency to the regulations referenced therein for a complete and accurate statement of their content and import.
14. With respect to the allegations set forth in paragraph 14 of the Complaint, Respondent respectfully refers the Agency to the regulations referenced therein for a complete and accurate statement of their content and import.
15. With respect to the allegations set forth in paragraph 15 of the Complaint, Respondent respectfully refers the Agency to the regulations referenced therein for a complete and accurate statement of their content and import.
16. With respect to the allegations set forth in paragraph 16 of the Complaint, Respondent respectfully refers the Agency to the general permits referenced therein for a complete and accurate statement of their content and import.
17. With respect to the allegations set forth in paragraph 17 of the Complaint, Respondent respectfully refers the Agency to the regulations and general permit referenced therein for a complete and accurate statement of their content and import.
18. With respect to the allegations set forth in paragraph 18 of the Complaint, Respondent respectfully refers the Agency to the general permit referenced therein for a complete and accurate statement of its content and import.
19. With respect to the allegations set forth in paragraph 19 of the Complaint, Respondent respectfully refers the Agency to the general permit referenced therein for a complete and accurate statement of its content and import.
20. With respect to the allegations set forth in paragraph 20 of the Complaint, Respondent respectfully refers the Agency to the general permit referenced therein for a complete and accurate statement of its content and import.

III. FINDINGS OF FACT

21. Respondent incorporates its responses to the allegations contained in Paragraphs 1 through 20 by reference.
22. Respondent denies the allegations set forth in paragraph 22 of the Complaint. Respondent leases the property located on the west side of State Highway 12, south of Grotsinger Road in Norwich, New York (the "site" or "facility") from the Wayne Hymers, its owner. The site is subleased to Burrell Excavating, Inc. (Burrell) under an agreement which authorizes Burrell to mine the property; in exchange, Burrell pays Respondent per cubic yard of material removed. Respondent does not own or operate the mine. Also, the correct SIC Code for the facility is 1442 (Sand and Gravel) not 1429 (Crushed and Broken Stone, Not Elsewhere Classified).

23. Respondent admits that it is a corporation organized under the laws of the State of New York.
24. Respondent admits that the property where the facility is located is owned by Wayne Hymers. Respondent entered into a lease agreement with Mr. Hymers. Under the lease agreement, Respondent pays Wayne Hymers for each cubic yard of material removed. As set forth in paragraph 22 above, the actual removal activity is performed and controlled by Burrell.
25. Respondent admits that the Agency inspected the facility on or about August 3, 2011.
26. Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 25.
27. Respondent denies that it was the owner/operator of the site at the time of the Agency inspection and was obliged to seek coverage under the Multi-Sector General Permit (MSGP). Respondent neither admits nor denies that it was ineligible for a "No Exposure" certification.
28. Respondent admits that the Agency issued an Administrative Order (AO), dated November 1, 2011, and refers the Agency to that AO for the content thereof.
29. Respondent admits that it received the AO.
30. Respondent admits that it requested an extension until February 28, 2012 to complete and submit a Notice of Intent (NOI) form and Stormwater Pollution Prevention Plan (SWPPP) to the Agency and that EPA granted the extension in a letter dated January 12, 2012.
31. Respondent admits that it submitted a response to the AO, including a signed NOI and certified SWPPP to EPA on February 22, 2012. Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 9 relating to the date of receipt of the AO by EPA.
32. Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 32 relating to the date the New York State Department of Environmental Conservation (NYSDEC) received the NOI.
33. Respondent admits that it received acknowledgement from DEC concerning its grant of MSGP coverage effective March 26, 2012. Respondent admits that the DEC issued a mining permit to it (DEC Permit No. 7-0842-00039/00001; Facility No. 703-3-30-0108) with an effective date of July 10, 2003 and that the facility covered by the permit has been in operation since at least 2003.

IV. CONCLUSIONS OF LAW/FINDINGS OF VIOLATIONS

34. Respondent admits that it is a "person" within the meaning of Clean Water Act § 502(5), 33 U.S.C. § 1362(5).
35. Respondent denies the allegations set forth in paragraph 35. Currently, all of the stormwater that comes into contact with raw materials, waste products, by-products, overburden, stored materials and fuels on the site, including drainage from haul roads and/or access roads at the facility, is contained within the facility and discharges solely to groundwater. To the extent this paragraph refers to the discharge set forth in paragraph 26 of the Complaint, Respondent was not the operator of the site at the time the discharge occurred and so denies that it discharged stormwater as specified in paragraph 35.
36. Respondent denies the allegations set forth in paragraph 36 of the Complaint. At the time of the violations alleged in the Complaint, the facility was being operated by Burrell.
37. Respondent denies the allegations set forth in paragraph 37 of the Complaint. At the time of the violations alleged in the Complaint, the facility was being operated by Burrell.
38. Respondent denies the allegations set forth in paragraph 38 of the Complaint. At the time of the violations alleged in the Complaint, the facility was being operated by Burrell.

GENERAL RESPONSE TO ALLEGATIONS/DEFENSES

1. The Complaint is premised on the assertion that Respondent is the operator of the sand and gravel mine located on the west side of State Highway 12, south of Grotsinger Road in Norwich, New York. That site is owned by Wayne Hymers, who entered into a lease agreement that authorized Respondent to remove sand and gravel from the site. Respondent, in turn, entered into a sublease agreement with Burrell to conduct day-to-day mining operations at the site. Burrell pays Respondent a fee for mining the land on a cubic yard basis. Respondent, in turn, pays a portion of the per cubic yard fee to Mr. Hymers. All mining activities during the period covered by the Complaint were performed by Burrell. Respondent was thus neither the owner nor operator of the facility at issue at the time of the violations alleged in the Complaint.
2. Upon receipt of the AO, Respondent investigated to determine the best approach to acquiring covering under the MSGP. At that time, representatives of the NYSDEC suggested that the NOI and SWPPP be prepared in Respondent's name to ensure consistency with the existing mining permit. Also, Burrell expressed some concern about the expense of preparing the NOI and SWPPP. To accommodate these concerns, Respondent agreed to assume responsibility for preparing the NOI and SWPPP. However, Burrell, as the actual operator of the mine, remains responsible for implementing the SWPPP. Respondent's responsibilities under the SWPPP are limited to oversight of development and revision of the SWPPP and signatory authority; it also shares joint responsibility for record keeping and spill response.

Responsibility for day-to-day operations rests with employees of Burrell. Activities for which Burrell has assumed responsibility under the SWPPP include: implementing and maintaining control measures; record keeping; spill response; monitoring, sampling and recordkeeping; quarterly inspections and routine visual inspections; housekeeping; employee training; and annual comprehensive site compliance review.

3. Upon information and belief, all of the stormwater that comes into contact with raw materials, waste products, by-products, overburden, stored materials and fuels on the site, including drainage from haul roads and/or access roads at the facility, currently is contained within the facility and discharges solely to groundwater. Accordingly, implementation of the SWPPP has effectively eliminated the discharge that necessitated coverage under the MSGP.

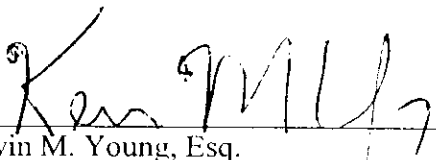
**RESPONSE TO NOTICE OF PROPOSED ORDER
ASSESSING CIVIL PENALTY**

1. The Respondent requests information from EPA providing the basis for the proposed penalty calculation and reserves the right to supplement this answer to respond to the proposed assessment.

REQUEST FOR A HEARING

1. Respondent requests a hearing in this matter.

Dated: October 17, 2012



Kevin M. Young, Esq.
Attorney for Respondent Burton F. Clark, Inc.
Young/Sommer LLC
5 Palisades Drive
Albany, NY 12205
(518) 438-9907

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
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DOCKET No. CWA-02-2012-3311

RESPONDENT

CERTIFICATION OF SERVICE

I certify on the date noted below, I caused to be sent, by Federal Express, a copy of the foregoing **Answer to Administrative Complaint** in the above-referenced action, to the following person at the address listed below:

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

Date: October 17, 2012

Name: ELIZABETH B. WYKES

Title: LEGAL ASSISTANT TO KEVIN M. YOUNG, ESQ.

Address: YOUNG SOMMER LLC
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ALBANY, NY 12205