

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

IN THE MATTER OF:

Robert Menté
6351 State Route 13
Cayuta, New York 14824

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

**ADMINISTRATIVE ORDER ON
CONSENT**

DOCKET NUMBER
CWA-02-2023-3601

I. PRELIMINARY STATEMENT

This Administrative Order on Consent (“Order” or “AOC”) is entered into voluntarily by the United States Environmental Protection Agency, Region 2 (“EPA”) and Robert Menté (“Respondent”) under the Clean Water Act (“CWA” or the “Act”), as amended, 33 U.S.C. § 1251 *et. seq.*, and in particular Section 309(g) of the Act, 33 U.S.C. § 1319(g).

II. FINDINGS OF FACT AND LAW

1. Robert Menté (“Respondent”) is the owner of tax parcels 109.00-2-50.3 and 109.00-2-50.4, consisting of 75 acres located at 6351 State Route 13, Town of Cayuta, Schuyler County, New York (“the Property”). See Exhibit A.
2. Respondent is a “person” as defined under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
3. The Property consists of primarily undeveloped land and contains both wetlands and uplands.
4. Sometime between March 2022 and July 2022, Respondent illegally discharged fill material into approximately 0.2 acres of wetlands on the Property, in the location depicted in Exhibit B, while excavating a stream on the Property.
5. The wetlands abut, and are therefore adjacent to, the stream that was excavated.

6. The stream that was excavated is an unnamed tributary that eventually flows to the Susquehanna River.
7. The Susquehanna River is a traditional navigable water of the United States.
8. The wetlands that comprise the areas of discharge are therefore waters of the United States, which came under the jurisdiction of EPA and the United States Army Corps of Engineers (“Corps”) effective September 1, 1976.
9. The fill material consisted of earthen material and was dredged from the stream and discharged into adjacent wetlands using mechanized construction equipment.
10. The mechanized construction equipment utilized to accomplish the discharge is a “point source” within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).
11. The fill material that was discharged constitutes a “pollutant” within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).
12. The discharge of fill material into waters of the United States constitutes a “discharge of pollutants” as defined by Section 502(12) of the Act, 33 U.S.C. § 1362(12).
13. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into waters of the United States except as in compliance with Sections 301, 302, 306, 307, 318, 402 and 404 of the Act, 33 U.S.C. §§ 1311, 1312, 1316, 1317, 1328, 1342, 1344.
14. Section 404 of the Act, 33 U.S.C. § 1344, authorizes the Secretary of the Army to authorize discharges of dredged and fill material into navigable waters of the United States.
15. The discharge of pollutants, consisting of dredged and fill material, into navigable waters of the United States without authorization from the Secretary of the Army as provided by Section 404 of the Act, 33 U.S.C. § 1344, from a point source is unlawful under Section 301(a) of the Act, 33 U.S.C. § 1311(a).
16. The Secretary of the Army has not issued authorization pursuant to Section 404 of the Act for the discharge of fill material at the Property.

III. CONCLUSIONS OF LAW AND JURISDICTION

17. Based on the Findings set forth above, EPA finds Respondent to be in violation of Section 301 of the Act, 33 U.S.C. § 1311, for the discharge of pollutants consisting of earthen fill into waters of the United States from point sources without authorization by the Secretary of the Army as provided by Section 404 of the Act, 33 U.S.C. § 1344.
18. EPA has jurisdiction over the subject matter of this action and over Respondent pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

III. CONSENT AGREEMENT

19. Paragraphs 1–18 are re-alleged and incorporated herein by reference.
20. EPA and Respondent agree that it is in the public interest to resolve the issues alleged in this AOC without further litigation and the expense and effort that litigation entails.
21. Based upon the foregoing and pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), it is hereby agreed by and between EPA and Respondent, and Respondent voluntarily and knowingly agrees as follows.

IV. TERMS OF SETTLEMENT

22. Respondent admits the factual violations asserted in this Order, admits that EPA has authority under Section 309 of the Act, 33 U.S.C. § 1319, to issue this Order, and agrees to be bound by this Order.
23. Respondent expressly waives any right to contest the allegations or to appeal the Final Order.
24. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the nature of the violations alleged herein, and other relevant factors, EPA and Respondent agree that an appropriate civil penalty to settle this proceeding is in the amount of **two thousand seven hundred dollars (\$2,700)**.

V. PAYMENT OF CIVIL PENALTY

25. No later than thirty (30) days after the date of signature on the Order by the Director, Enforcement and Compliance Division of Region 2 of the EPA, Respondent shall pay the penalty of **two thousand seven hundred dollars (\$2,700)** using a method described at <http://www.epa.gov/financial/additional-instructions-making-payments-epa>, and shall identify such payment with “Docket No. CWA 02-2023-3601.”

Respondent shall not make payment until after the effective date of the Order. Any payment received before the effective date of the Order will be returned and Respondent will be required to issue a new payment.

26. Respondent shall send a copy of the check, or record of payment if made by other means, simultaneously with payment to:

Zoe Oldham
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007

oldham.zoe@epa.gov

and

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, NY 10007
maples.karen@epa.gov

27. Payment must be received at the above address no later than thirty (30) calendar days after the date of signature of the Order. The date by which payment must be received shall hereafter be referred to as the "due date."
28. If payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Improvement Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. 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 date, 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.
29. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from the Respondent's federal or state taxes.
30. Failure to pay the penalty in full according to the above provisions will result in a referral of this matter to the United States Department of Justice or the United States Department of Treasury for collection.

V. EFFECT OF SETTLEMENT

31. Respondent waives any and all claims for relief and otherwise available rights to administrative or judicial review of any issue of law or fact, or any other provision, set forth in this Order, including, but not limited to, any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.
32. 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 Respondent's violation of this Agreement or, except for the specific violations alleged herein, of the statutes and regulations upon which this Agreement is based, or for Respondent's violation of any applicable provision of law.
33. This Order shall not relieve Respondent of its 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. This Order is not a permit under the CWA for any discharges of fill that remain on the Property.

34. This Order constitutes a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations by the Respondent alleged herein. Nothing in this Agreement is intended to, nor shall be construed to, operate in any way to resolve any criminal liability of the Respondent. Compliance with this Order 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 Respondent to comply with such laws and regulations.
35. Each undersigned representative of the parties to this Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Agreement and to execute and legally bind that party to it.
36. Each party shall bear its own costs and attorney's fees in connection with the action resolved by this Final Order.

VI. EFFECTIVE DATE

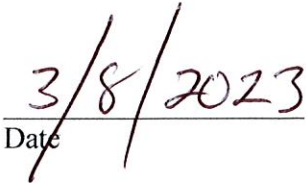
37. This Order shall become effective upon the date of execution by the Director, Enforcement and Compliance Division of EPA, Region 2.

**IN THE MATTER OF
Robert Mente
Proceeding pursuant to § 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)
Docket No. CWA 02-2023-3601**

FOR RESPONDENT:



Robert Mente



Date

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Dore LaPosta, Director
Enforcement and Compliance Division
U.S. Environmental Protection Agency,
Region 2

Date