

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.11
2012 MAR 29 A 10:50
REGIONAL HEARINGS
CLERK

IN THE MATTER OF:

Lafarge Building Materials, Inc.
Ravena Cement Plant
1916 Route 9W, Ravena, New York
SPDES Permit NY0005037

Respondent

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

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

DOCKET NO. CWA-02-2012-3401

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

COMES NOW Respondent Lafarge Building Materials, Inc. Ravena Cement Plant (hereinafter "Respondent" or "Lafarge") and hereby files this its Answer to the Administrative Complaint Findings of Fact, Notice of Proposed Assessment of an Administrative Penalty, and Notice of Opportunity to Request a Hearing issued by the United States Environmental Protection Agency Region 2 on October 31, 2011 (hereinafter "the Complaint") as follows:

Lafarge denies each and every allegation in the Complaint not specifically admitted herein, but responds to the allegations contained in the Complaint, paragraph by paragraph, as follows:

I. STATUTORY AND REGULATORY AUTHORITIES

1. Paragraph 1 of the Complaint contains an averment that Respondent need not admit or deny. Respondent states that the CWA speaks for itself and denies all other allegations contained in Paragraph 1.

2. Respondent admits that Complainant issued this Complaint pursuant to Section 309(g)(2)(B) of the Clean Water Act ("CWA" or "the Act") and 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") and requests assessment of a civil penalty against Lafarge pursuant to alleged determinations made in the Complaint. Respondent states that the CWA and CROP speak for themselves and denies that it is in violation of Sections 301 and 402 of the Act for the unlawful discharge of pollutants into navigable waters.
3. Paragraph 3 of the Complaint contains an averment that Respondent need not admit or deny. Respondent further states that Section 301 of the CWA speaks for itself. To the extent that a response is required, the allegations contained in Paragraph 3 are denied.
4. Paragraph 4 of the Complaint contains an averment that Respondent need not admit or deny. Respondent further states that Section 402 of the CWA speaks for itself. To the extent that a response is required, Lafarge admits that Section 402 of the CWA authorizes the Administrator to issue National Pollutant Discharge Elimination System ("NPDES") permits, the New York States Department of Environmental Conservation ("NYSDEC") is the agency with authority to administer the federal NPDES permit program in New York and that EPA maintains concurrent jurisdiction over the New York NPDES program. Respondent also admits that a State Pollutant Discharge Elimination System ("SPDES") permit is required under Section 402 of the CWA for discharges of pollutants from a point source to a navigable water of the United States. All other allegations contained in Paragraph 4 are denied.

5. Paragraph 5 of the Complaint contains an averment that Respondent need not admit or deny. To the extent a response is required, Respondent states that Section 402 of the CWA speaks for itself.
6. To the extent Paragraph 6 refers to the Lafarge Ravena Cement Plant located at 1916 Route 9W, Ravena, New York (the "Ravena facility"), Lafarge admits that the Ravena facility manufactures hydraulic cement, which is categorized under SIC Code 3241. All other allegations contained in Paragraph 6 are denied.
7. Paragraph 7 of the Complaint contains an averment that Respondent need not admit or deny. To the extent a response is required, Respondent states that 40 C.F.R. § 122.26 speaks for itself. All other allegations contained in Paragraph 7 are denied.
8. Paragraph 8 of the Complaint contains an averment that Respondent need not admit or deny. To the extent that a response is required, Lafarge states that 40 C.F.R. § 122.26 speaks for itself. All other allegations contained in Paragraph 8 are denied.
9. Paragraph 9 of the Complaint contains an averment that Respondent need not admit or deny. To the extent that a response is required, Lafarge states that Sections 301 and 402 of the CWA and 40 C.F.R. Part 411 speak for themselves. All other allegations contained in Paragraph 9 are denied.
10. Lafarge admits that NYSDEC issued SPDES Discharge Permit No. NY00050037 ("the Permit") to the Ravena facility on December 1, 2000 and that the Permit was renewed on December 1, 2005 and on October 1, 2010 with a current expiration date of September 30, 2015. All other allegations contained in Paragraph 10 are denied.

11. Lafarge admits that it entered into a confidential Tolling Agreement with the United States on or around June 29, 2011 concerning the Ravenna facility. All other allegations contained in Paragraph 11 are denied.
12. Paragraph 12 of the Complaint contains an averment that Respondent need not admit or deny. To the extent that a response is required, Lafarge states that the Permit, Section 502 of the Act and 40 C.F.R. § 122.2 speak for themselves. All other allegations contained in Paragraph 12 are denied.

II. JURISDICTIONAL FINDINGS

13. Lafarge states that Section 502 of the CWA speaks for itself. Lafarge admits that it is a corporation, partnership or association and, thus, is considered a "person" under Section 502(5) of the CWA.
14. Admitted.
15. Admitted.
16. Lafarge admits that it has a permit that authorizes it to discharge to and through various outfalls and that the permit speaks for itself. All other allegations contained in Paragraph 16 are denied.
17. Lafarge admits that Coeymans Creek and Hannacroix Creek flow into the Hudson River and that the Hudson River is considered a Water of the United States. All other allegations contained in Paragraph 17 are denied.
18. Lafarge states that Section 502 of the CWA speaks for itself. All other allegations contained in Paragraph 18 are denied.

III. FINDINGS OF VIOLATION

19. To the degree a response is required to this Paragraph of the Complaint, Respondent alleges its responses to Paragraphs 13 - 18 above.

Claim 1 - Numeric Effluent Violations

20. Lafarge admits that Part I. of the Permit requires compliance with numeric effluent limitations for relevant parameters. Respondent further states that the Permit and the Discharge Monitoring Reports ("DMRs") for the Ravenna facility referenced in Paragraph 20 speak for themselves. Lafarge denies all other allegations contained in Paragraph 20 and Table 1 contained therein and requires proof supporting such allegations and numbers. In support of this denial, Lafarge relies upon the DMRs and the information contained therein discussed by EPA in Paragraph 20, witnesses who observed conditions on site and any and all reports or other documents memorializing those conditions. As the investigation into the allegations in the Complaint is on-going, Lafarge hereby reserves the right to amend its response to Paragraph 20 to assert any fact which may become available or appear during discovery and/or upon further investigation into the allegations.

21. Respondent states that Sections 301 and 402 of the CWA and the Permit speak for themselves and denies the allegations in Paragraph 21. In support of this denial, Lafarge relies upon the DMRs and the information contained therein discussed by EPA in Paragraph 20, witnesses who observed conditions on site and any and all reports or other documents memorializing those conditions. As the investigation into the allegations in the Complaint is on-going, Lafarge hereby reserves the right to amend its response to

Paragraph 21 to assert any fact which may become available or appear during discovery and/or upon further investigation into the allegations.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

The Complaint is barred in whole or in part because Lafarge's activities were in accordance with the applicable standards of care under all applicable laws, regulations and permits and Lafarge's activities were in accordance with standards of care and reasonable as a matter of law.

SECOND DEFENSE

Lafarge has at all times acted reasonably, in good faith and with the skill, prudence and diligence exercised by others in its industry, and, moreover, breached no duty in regard to its activities.

THIRD DEFENSE

Lafarge's activities were in compliance with best management practices set forth by the applicable laws and regulations.

FOURTH DEFENSE

Subject to the terms of the confidential Tolling Agreement, the claims in the Complaint are barred by the applicable statutes of limitations.

FIFTH DEFENSE

The claims in the Complaint are barred, in whole or in part, to the extent that the activities of Lafarge complained of are wholly past.

SIXTH DEFENSE

The Complaint is barred in whole or in part by the doctrine of laches.

SEVENTH DEFENSE

As the investigation into the allegations in the Complaint is on-going, Lafarge hereby reserves the right to amend its Answer to assert any defense which may become available or appear during discovery and/or upon further investigation into the allegations.

IV. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

Respondent states that Section 309 of the CWA and the Debt Collection Improvement Act of 1996 speak for themselves. Lafarge denies the proposed penalty, as assessed. Lafarge also denies the findings as alleged in Section III of the Complaint and denies it violated the Act in 499 instances. In support of these denials, Lafarge relies upon the DMRs and the information contained therein discussed by EPA in Paragraph 20, witnesses who observed conditions on site and any and all reports or other documents memorializing those conditions. As the investigation into the allegations in the Complaint is on-going, Lafarge hereby reserves the right to amend its response to Section IV to assert any fact which may become available or appear during discovery and/or upon further investigation into the allegations.

V. PROCEDURES GOVERNING THIS ADMINISTRATIVE ACTION

A. Answering the Complaint

Pursuant to the requirements of 40 C.F.R. § 22.15(a), Lafarge states that it properly and timely filed an original and a copy of its Answer to the Complaint admitting or denying all allegations in the Complaint with the Regional Hearing Clerk of EPA, Region 2. Lafarge also states that it properly set forth herein the circumstances or arguments that it alleges constitute the grounds of a defense, the facts in dispute and the basis for opposing the proposed relief.

B. Opportunity to Request a Hearing

Pursuant to 40 C.F.R. § 22.15(c), Lafarge requests a hearing in this matter on the issues raised by the Complaint and Answer.

C. Failure to Answer

Lafarge refers Complainant to its response to Section V(a) above and states that it timely and properly filed an Answer and admitted, denied or explained all material factual allegations contained in the Complaint.

VI. INFORMAL SETTLEMENT CONFERENCE

Pursuant to 40 C.F.R. § 22.18(b), Lafarge states that it remains open to settlement discussions with the Complainant and requests an informal conference with a representative of the Complainant to discuss the allegations contained in the Complaint and the calculation of the proposed penalty. Such a request constitutes neither an admission nor a denial of any of the matters alleged in the Complaint.

VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

As indicated by the filing of this Answer, Lafarge has elected not to pay the total amount of the proposed penalty in lieu of contesting the allegations in the Complaint, holding a Hearing on those allegations and appealing any Final Order to Federal Court.

VIII. FILING OF DOCUMENTS

Lafarge states that its Answer and Hearing Request were properly filed with the Regional Hearing Clerk and Assistant Regional Counsel Diane Gomes.

IX. GENERAL PROVISIONS

The Answer and the information contained herein do not constitute a waiver of any of Lafarge's rights under the Act or the Permit. Lafarge acknowledges that the Permit remains in effect and recognizes its continuing obligations under the Permit.

Respectfully submitted this 28th day of March, 2012.



Adam G. Sowatzka, Esq.
Counsel for Lafarge Building Materials, Inc.

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**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
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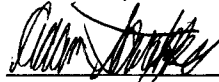
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CERTIFICATE OF SERVICE

This is to certify that I have this day, March 28, 2012, filed Respondent's ANSWER TO ADMINISTRATIVE COMPLAINT FINDINGS OF VIOLATION, NOTICE OF PROPOSED ASSESSMENT OF AN ADMINISTRATIVE PENALTY, AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING with the following by express mail as follows:

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|---|--|
| Regional Hearing Clerk U.S. Environmental Protection Agency, Region 2 290 Broadway, 16th Floor New York, NY 10007-1866 | Diane Gomes, Assistant Regional Counsel Water & General Law Branch Office of Regional Counsel U.S. Environmental Protection Agency 290 Broadway, 16th Floor New York, NY 10007-1866 |
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Respectfully submitted this 28th day of March, 2012.



Adam G. Sowatzka, Esq.

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