



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

SEP - 2 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5939 3949

Mr. Joseph DiMura, P.E., Director
Bureau of Water Compliance Programs
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-4500

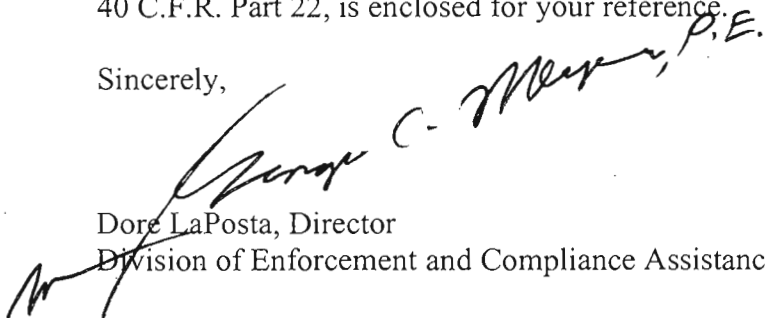
Re: Notice of Complaint and Proposed Assessment of a Civil Penalty
Dolomite Products Co., Inc.
Manitou Construction
Manitou-Redman Mine, Concrete Plant and Maintenance Facility, Rochester, New York
SPDES General Permit NYR00B138.
Docket No. CWA-02-2010-3403

Dear Mr. DiMura:

Enclosed is a copy of the Complaint and Proposed Assessment of a Civil Penalty, which the United States Environmental Protection Agency ("EPA" or "Agency") has issued to Dolomite Products Co., Inc., Manitou Construction, Manitou-Redman Mine, Concrete Plant and Maintenance Facility (collectively referred to as "Respondent") pursuant to Section 309(g) of the Clean Water Act (Act), 33 U.S.C. § 1319(g). EPA has issued the Complaint to begin the process to assess administratively a civil penalty of **\$135,000** against Respondent for violations of the Act. Because the violations have occurred in the State of New York, EPA is offering an opportunity for you 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 ("CROP"), 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

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Dolomite Products Co., Inc.
Manitou Construction
Manitou-Redman Mine, Concrete Plant and
Maintenance Facility
1150 Penfield Road, Rochester, New York
SPDES General Permit NYR00B138.
Docket No. CWA-02-2010-3403

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-02-2010-3403

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

I. STATUTORY AND REGULATORY AUTHORITIES

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)(B) of the Clean Water Act ("Act" or "CWA"), 33 U.S.C. § 1319(g)(2)(B). 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)(B) 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 Dolomite Products Co., Inc., Manitou Construction, Manitou-Redman Mine, Concrete Plant and Maintenance Facility (collectively referred to as "Respondent" or "Dolomite"), 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, for the unlawful discharge of pollutants into navigable waters, and/or failure to apply for or obtain a National Pollutant Discharge Elimination System ("NPDES") or State Pollutant Discharge Elimination System ("SPDES") permit in a timely manner.

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
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REGIONAL HEARING
CLERK

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), provides in part that “except as in compliance with this Section and Sections . . . 402 of the Act, the discharge of any pollutant by any person shall be unlawful.”
4. Section 402 of the Act, 33 U.S.C. § 1342, authorizes the Administrator to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the Act and such conditions as the Administrator determines are necessary.
5. Section 402(a) requires that permit coverage be obtained for the discharge of pollutants. Section 402(p) of the Act, 33 U.S.C. § 1342(p), requires a permit with respect to a storm water discharge associated with industrial activity.
6. The facility is a ready mix concrete manufacturer and sand and gravel operation, Standard Industrial Classification (“SIC”) codes 3273 and 1442 respectively.
7. The Administrator of EPA has promulgated regulations at 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(b)(14), which require operators to obtain a NPDES permit for storm water discharges associated with industrial activity and construction activity.
8. The regulations at 40 C.F.R. § 122.26(b)(14) regulate storm water discharges associated with industrial activity which include SIC Codes 3273 and 1442.
9. In accordance with Section 402 of the Act, the New York State Department of Environmental Conservation (“NYSDEC”) issued the SPDES Multi Sector General Permit for Stormwater Discharges Associated with Industrial Activity GP-0-06-002, which became effective on March 28, 2007 (“MSGP” or “MSGP 2007”). Prior to the current MSGP, MSGP 1998 GP-98-03 (“MSGP 1998”) was effective from November 1, 1998 to October 31, 2003, and thereafter was administratively extended until MSGP 2007 became effective. Manitou Construction submitted a Notice of Intent (“NOI”) that was received by the NYSDEC on November 5, 1998, and received coverage under the MSGP 1998 for the Manitou-Redman Quarry on or about November 7, 1998, under Permit Id No. NYR00B138. The MSGP 1998 remained in effect until Manitou Construction obtained coverage under the MSGP 2007. Manitou Construction applied for the renewed SPDES Permit, MSGP 2007, in a timely manner by submitting an NOI dated June 21, 2007, that was received by the NYSDEC on June 25, 2007, and thereby obtained coverage under the MSGP 2007 for the Manitou-Redman Pit.
10. Non-stormwater discharges that are not authorized by an MSGP, such as discharges of process wastewaters, must be covered under a SPDES individual permit in accordance with Section 301 and 402 of the Act. Furthermore, wastewater discharges at crushed stone or sand and gravel facilities are also regulated pursuant to 40 C.F.R. Part 436, Mineral Mining and Processing Point Source Category.
11. The Act and its implementing regulations and the applicable NPDES/SPDES permit contain the following definitions:
 - a. “Navigable waters” means the waters of the United States and territorial seas, pursuant to Section 502(7) of the Act, 33 U.S.C. § 1362(7). “Waters of the United States” means, but are not limited to, waters which are currently used or may be susceptible to use in interstate or

foreign commerce, including all waters which are subject to the ebb and flow of the tide and including wetlands, rivers, streams (including intermittent streams) (40 C.F.R. § 122.2).

- b. "Pollutant" means, but is not limited to, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge, and industrial, municipal and agricultural waste discharged into water, pursuant to Section 502(6) of the Act, 33 U.S.C. § 1362(6).
- c. "Point source" means "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, ..." pursuant to Section 502(14) of the Act, 33 U.S.C. § 1362(14).
- d. "Discharge of a pollutant" means any addition of any pollutant to navigable waters from any point source, pursuant to Section 502(12) of the Act, 33 U.S.C. § 1362(12).
- e. "Person" means, but is not limited to, an individual, corporation, partnership or association, pursuant to Section 502(5) of the Act, 33 U.S.C. § 1362(5).
- f. "Owner" or "Operator," for the purpose of the MSGP means the owner or operator of any facility or activity subject to regulation as defined in Appendix A of the MSGP.

II. JURISDICTIONAL FINDINGS

- 12. Dolomite is a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
- 13. At all relevant times, Respondent was the owner/operator of Manitou-Redman Mine, Concrete Plant and Maintenance Facility and its various ready mix and sand and gravel facilities ("Facility," "Site," or "industrial facility") since on or about 1963.
- 14. The Facility is located at 1150 Penfield Road, Rochester, New York 14625.
- 15. Discharge from the Facility flows into a quarry pond, which discharges via pipe into the Irondequoit Creek. Other discharge flows into the Penfield Municipal Separate Storm Sewer System (MS4) which also discharges into Irondequoit Creek.
- 16. Irondequoit Creek flows into Lake Ontario, both Waters of the United States.
- 17. Respondent's Site was and is, at all relevant times, a point source as defined in Section 502 (14) of the Act, 33 U.S.C. § 1361(4).

III. FINDINGS OF VIOLATION

- 18. Complainant re-alleges Paragraphs 12 – 17 above.
- 19. On May 19, 2009, duly authorized representatives of EPA Region 2 and NYSDEC Region 8 ("inspectors") conducted a NPDES/SPDES Compliance Evaluation Inspection ("CEI" or "inspection") at the Site.

20. On December 3, 2009, EPA sent Respondent a Request for Information (“RFI”) letter (“CWA-IR-10-001”) pursuant to Section 308 of the CWA along with the CEI report.
21. The Respondent submitted its response to the RFI dated February 24, 2010 (“February 24, 2010, Response”).

Claim 1 – Unauthorized Non-Stormwater Discharge

22. An individual NPDES/SPDES permit is required for sand and gravel washwater discharge under 40 C.F.R. Part 436 and Sections 301 and 402 of the CWA. Part I.D of the MSGP identifies that discharges from industrial activity that are mixed with sources of non-stormwater are ineligible for coverage under the MSGP, and Part II.A of the MSGP prohibits such non-stormwater discharges. Discharge of unauthorized non-stormwater was also prohibited in Part I.C.1 and II.A. of MSGP 1998. Respondent has never had, nor has it ever applied for, coverage under a SPDES individual permit. Although the Facility had MSGP coverage, process wastewater discharges are not eligible for coverage under the MSGP. Inspectors at the CEI noted that process wastewater from concrete truck washout, surplus concrete, and exterior truck wash water was actively discharging into the dredge pond at the time of the inspection. These unauthorized discharges continued until May 20, 2009, when the outlet gate from the dredge pond to Irondequoit Creek was closed and truck washout procedures were changed. Based on Respondent’s February 24, 2010, Response, unauthorized sand and gravel wash water discharged into the dredge pond and to Irondequoit Creek until September 2007, when the sand and gravel wash facility was shut down. Based on EPA’s CEI report and the February 24, 2010, Response, unauthorized non-stormwater discharges took place from on or before September 1, 2005, until on or about May 20, 2009.

Claim 2 – Inaccurate Non-Stormwater Discharge Certification Forms

23. Part IV.A.1.b of the MSGP requires that annual dry weather flow inspections be conducted to determine the presence of non-stormwater discharges to the stormwater drainage system. Parts II.A and III.D.3.g(2) of the MSGP 1998 contain similar requirements. Part IV.A.1.b(3) of the MSGP requires that the Permittee notify the NYSDEC within 14 days of non-authorized discharge. Respondent failed to identify there were ongoing unauthorized non-stormwater discharges from the dredge pond associated with concrete truck washout, surplus concrete, external truck washdown, etc. and with sand and gravel washing. Review of the annual dry weather reports initialed by a Facility representative on September 4, 2007, and September 24, 2008, identified the dry weather discharge as “normal dredge pond discharge.” The annual certification report for 2007 and 2008 submitted by the Facility said that there were no unauthorized discharges identified. Respondent violated the terms of the MSGP by failing to identify non-stormwater discharge and failing to notify the NYSDEC, as required by Part IV.A.1.

Claim 3 – Inadequate SWPPP and Site Map

24. The 2007 Storm Water Pollution Prevention Plan (“SWPPP”) submitted to EPA following the inspection contained an 8.5”x11” Mining Plan Map dated May 4, 2001, and an 11” x 17” version of the Mining Plan Map with additional handwritten notation. As identified in the report from the May 19, 2009, CEI, both Site maps failed to comply with the requirements for a SWPPP/Site Map in Part III.C.2.c of the MSGP as follows:

- a. Directions of stormwater flow are not clearly shown on the Mining Plan Map as required by Part III.C.2.c(1) of the MSGP;
- b. Locations of potential pollutant sources (such as concrete washout, truck wash and washout), vehicle maintenance area, fueling station, cement/aggregate loading rack, add-mixture tanks, unstable materials from former sand and gravel operations, the concrete loading rack, and other loading and processing areas where materials are exposed to precipitation are not clearly identified on the map as required by Part III.C.2.c(4), (6), and (10) of the MSGP;
- c. Locations of stormwater flows with significant potential for causing erosion are not contained in the map, as required by Part III.C.2.c(9) of the MSGP.

Claim 4 – Inadequate Stormwater Best Management Practices (BMPs)

25. Part VIII.J.2.c of the MSGP requires Best Management Practices (“BMPs”) to be prepared prior to the commencement of any construction activity that will result in a land disturbance of one or more acres of land. Part III.C.6.b(2)(a) and Part III.C.6.b(2)(b) of the MSGP require erosion and sediment control and management of runoff, respectively. The CEI report identified unstable materials from former sand and gravel operations adjacent to the quarry pond and Respondent did not have a BMP to control stormwater run-on and run-off control systems that were needed during the mine construction, operation, and reclamation phases.
26. Part III.C., Part VIII.E and Part VII.J of the MSGP contain good housekeeping requirements. The CEI report identified that a fire destroyed the vehicle maintenance shop and that a dumpster and portions of the building and debris were exposed to stormwater. Respondent did not have stormwater BMPs in place for this area.
27. Part III.C.6.b(1) of the MSGP requires that all exposed areas be kept in a clean, orderly manner where such exposed areas could contribute pollutants to stormwater discharges. The CEI report identified deposits of sediment material around the loading rack area. Respondent failed to comply with good housekeeping requirements in Part III.C.6.b(1).

Claim 5 – Recordkeeping/Monitoring Violations

28. Part IV.A.1.c of the MSGP requires benchmark monitoring of discharges associated with industrial activity. Part IV.A.2.c. of the MSGP requires a permittee to provide the date and duration of the storm event, rainfall estimate or measurement of the storm that generated runoff, the duration of the storm event sampled and the end of the previous measurable storm event, and an estimate of the total volume of discharge sampled. Part IV.A.1.c(2) of the MSGP requires samples to be collected in accordance with Part IV.A.2.b of the MSGP and the results to be reported and retained. Part IV.A.2.b of the MSGP requires collection and analysis of samples. Based on documents from the Facility that were compiled in the CEI report, for benchmark monitoring collected in December 2008, there was no information on the date, duration, and time of the storm in violation of Part IV.A.2.c. Without this information, the Facility cannot demonstrate that it met the monitoring requirements related to duration and time of storm and sampling contained in Part IV.A.1.c(2) and IV.A.2.b. Review of the quarterly visual monitoring reports from 7/16/07,

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on the date, duration, and time of the storm, in violation of Part IV.A.2.c.

29. Part III.C.6.b(1)(e) of the MSGP requires at least quarterly routine facility inspections and follow-up corrective actions as necessary. Documentation was not available or provided that demonstrate routine facility inspections occurred as required by the MSGP for 11 quarters dating from April 1, 2007, to December 31, 2009.
30. Part IV.C.2 of the MSGP requires that maintenance records be maintained for five years. Part III.D of the MSGP requires that all BMPs listed in the SWPPP be maintained in effective operating condition. The CEI report identified that there was no information in the SWPPP to document the maintenance schedule for all BMPs as required by Part III.D. and IV.C.2 of the MSGP. No forms or records were included or provided to document BMP Maintenance.
31. Part III.I.3 and IV.B of the MSGP, and Part III.D.4 of MSGP 1998, require annual Comprehensive Site Compliance Evaluations to be conducted and reports of such inspections to be included in the SWPPP. Based on the CEI report, there was no documentation for the period of 2005 through 2008.
32. Based on the Findings above, Respondent violated Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, by failing to adhere to relevant monitoring, reporting, and pollutant control requirements of this part of the Act and to apply for and/or obtain SPDES Permit coverage for its facility for the period starting on or before April 1, 2004 and extending until August 2008.

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 **\$135,000**. 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 has been found to have violated the Act in **1,386** instances. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after Respondent's receipt of this Notice, unless Respondent within that time files an Answer to the Complaint 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, New York 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 grounds for 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 40 C.F.R. Part 22.

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 [i.e. in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)] an Answer to the Complaint, 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

Whether or not 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 is believed 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, to reflect any settlement agreement reached with Respondent, to reflect any relevant information previously not known to Complainant or to dismiss any or all of the charges, if Respondent can demonstrate that the relevant allegations are without merit and that no cause of action as herein alleged exists. 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:

Lauren Fischer, Esq.
Assistant Regional Counsel
Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone (212) 637-3231

The Parties may engage in settlement discussions irrespective 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. Complainant does not deem a request for an informal settlement conference as a request for a Hearing as specified in 40 C.F.R. § 22.15(c).

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. No penalty reduction, however, 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 (\$135,000) 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
PO Box 979077
St. Louis, MO 63197-9000

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 in accordance with 40 C.F.R. § 22.18(a)(3). In accordance with 40 C.F.R. § 22.45(c)(3), no Final Order shall issue 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
290 Broadway, 16th Floor
New York, New York 10007-1866

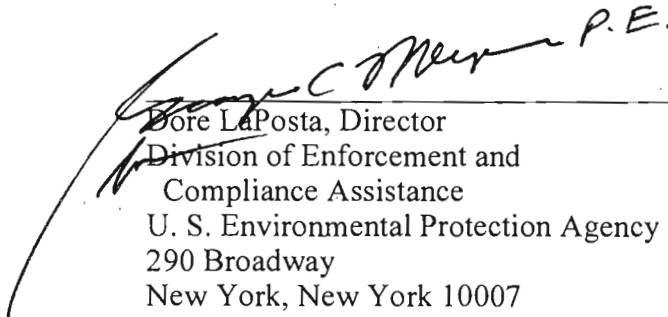
A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Lauren Fischer, Esq.
Assistant Regional Counsel
Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone (212) 637-3231

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 2nd DAY OF September, 2010.


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:

Dolomite Products Co., Inc.
Manitou Construction
Manitou-Redman Mine, Concrete Plant and
Maintenance Facility, 1150 Penfield Road,
Rochester, New York
SPDES General Permit NYR00B138.
Docket No. CWA-02-2010-3403

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-02-2010-3403

I certify that on Edna Kodice, 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:

John M. Odenbach, President
1150 Penfield Road
Rochester, NY 14625

Copy by Certified Mail
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Mr. Joe DiMura, P.E., Director
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Dated: 9/7/2010

Edna Kodice
NAME OF SECRETARY, Secretary
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