

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

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-~~2101~~2101

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2011 NOV -1 A 9 31
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. 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 Lafarge Building Materials, Inc., Ravena Cement Plant (“Ravena”), 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.
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 CWA, 33 U.S.C. § 1342, authorizes the Administrator of EPA to issue a National Pollutant Discharge Elimination System (“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. The New York State Department of Environmental Conservation (“NYSDEC”) is the agency with the authority to administer the

Federal NPDES program in New York pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA. Additionally, under the authority granted to the NYSDEC by the EPA under Section 402(b) of the CWA, 33 U.S.C. § 1342(b), a State Pollutant Discharge Elimination System (“SPDES”) permit is required to be issued to facilities by the NYSDEC for the discharge of pollutants from said facilities from a point source to a navigable water of the United States.

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 manufactures hydraulic cement, Standard Industrial Classification (“SIC”) code 3241.
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 includes SIC Code 3241.
9. Non-stormwater discharges that are not authorized by a Multi-Sector General Permit (“MSGP”), such as discharges of process wastewaters, must be covered under a SPDES individual permit in accordance with Sections 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 411, Cement Manufacturing Point Source Category.
10. NYSDEC issued a SPDES Discharge Permit (the “Permit”), Permit No. NY0005037, to Respondent on December 1, 2000 for operations at its Ravenna facility. The Permit was renewed on December 1, 2005 and again on October 1, 2010, with a current expiration date of September 30, 2015.
11. On or about June 29, 2011, Respondent entered into a Tolling Agreement with the United States with regard to the SPDES violations at Ravenna Cement Plant. The Tolling Agreement states that the period April 1, 2008 to October 31, 2011, inclusive, shall not be included in computing the running of any statute of limitations potentially applicable to any action brought for these violations.
12. The Act and its implementing regulations, and the applicable 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 SPDES individual permit means the owner or operator of any facility or activity subject to regulation as defined in Part 2, General Conditions of the permit.

II. JURISDICTIONAL FINDINGS

- 13. Respondent is a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
- 14. At all relevant times since on or about 2001, Respondent has been the owner/operator of Ravena Cement Plant.
- 15. The Facility is located at 1916 Route 9W, Ravena, New York 12145.
- 16. Discharge from the Facility flows to surface water via several distinct outfall pipes:
 - a) Outfall No. 003 (A,C,M): Non-contact cooling water, storm water, sanitary wastewater, CKD leachate, quarry pump out, dust control & truck wash water; Discharges to Coeymans Creek.
 - b) Outfall No. 03A: Sanitary wastewater Treatment Effluent; Discharges to Outfall 003.
 - c) Outfall No. 03B: CKD Leachate; Discharges to Outfall 003.
 - d) Outfall No. 03C: Settling pond overflow; Discharges to Coeymans Creek.
 - e) Outfall No. 004: Quarry sewage sand filter discharge; Discharges to unnamed sub-tributary to Hannacroix Creek.
 - f) Outfall No. 005: Quarry garage oil/water separator; Discharges to unnamed sub-tributary to Hannacroix Creek.
 - g) Outfall No. 006: Storm water runoff – Aggregate processing plant; Discharges to Tributary 1 to Coeymans Creek.
 - h) Outfall No. 007: Storm water from former clay mining area and CKD management; Discharges to Coeymans Creek.
 - i) Outfall No. 008: Becraft pond dewatering; Discharges to unnamed sub-tributary to Hannacroix Creek.
 - j) Outfall No. 010: Quarry pumpout water; Discharges to Tributary 1 to Coeymans Creek.
 - k) Outfall No. 011: Storm water; Discharges to Hudson River.

- l) Outfall No. 012: Storm water;
Discharges to Hudson River.
 - m) Outfall No. 013: Storm water;
Discharges to Hudson River.
 - n) Outfall No. 014: Storm water;
Discharges to Coeymans Creek.
 - o) Outfall No. 015: Storm water;
Discharges to Coeymans Creek.
 - p) Outfall No. 016: Storm water;
Discharges to Coeymans Creek.
 - q) Outfall No. 017: Storm water;
Discharges to unnamed constructed tributary (restoration).
 - r) Outfall No. 018: Storm water;
Discharges to Coeymans Creek.
 - s) Outfall No. 019: Storm water;
Discharges to Coeymans Creek.
17. Coeymans Creek and Hannacroix Creek flow into the Hudson River, all are Waters of the United States.
18. 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

19. Complainant re-alleges Paragraphs 13 – 18 above.

Claim 1 – Numeric Effluent Violations

20. Part I. of NYSDEC's SPDES Permit No. NY0005037 requires compliance with numeric effluent limitations for relevant parameters. Based on a review of Respondent's Discharge Monitoring Reports ("DMRs"), submitted to NYSDEC monthly, in accordance with the SPDES Permit requirements, Respondent violated Part I. in each of the following instances:

Table 1: Ravana SPDES Permit Effluent Limit Violations

Date	Outfall	Parameter	Units	Days of Violation	Permitted Value	Reported Value
Sept-04	003-A	Temperature Difference sample/upstream	deg F	1	16	20.31
Sept-04	003-A	Temperature Difference up/downstream	deg F	1	4	5.11
Mar-05	03A	Total Residual Chlorine	mg/l	1	0.5	0
Mar-05	03A	Fecal Coliform	MPN/100ml	1	400	1600
Mar-05	03A	Fecal Coliform	MPN/100ml	30	200	268
Aug-05	003-A	Temperature Difference up/downstream	deg F	1	4	4.85
Jan-06	03A	BOD	mg/l	1	30	54
Mar-06	003-A	pH	s.u.	1	9	9.6
Mar-06	03A	Total Residual Chlorine	mg/l	1	0.5	0
Apr-06	003-A	pH	s.u.	1	9	9.6

Apr-06	003-A	Total Suspended Solids	mg/l	1	30	222
May-06	003-A	pH	s.u.	1	9	9.3
Jun-06	003-A	Total Suspended Solids	mg/l	1	30	59
Jul-06	003-A	pH	s.u.	1	9	9.1
Jul-06	003-A	Total Suspended Solids	mg/l	1	30	120
Jul-06	003-A	Total Suspended Solids	mg/l	30	25	40
Oct-06	03A	Fecal Coliform	MPN/100ml	1	400	1600
Oct-06	03A	Fecal Coliform	MPN/100ml	30	200	322
Oct-06	03A	Total Residual Chlorine	mg/l	1	0.5	0
Dec-06	003-A	pH	s.u.	1	9	9.3
Jan-07	003-A	pH	s.u.	1	9	9.4
Feb-07	03A	Fecal Coliform	MPN/100ml	1	400	1600
Feb-07	03A	Fecal Coliform	MPN/100ml	30	200	402
Feb-07	03A	Total Residual Chlorine	mg/l	1	0.5	0.29
Mar-07	003-A	Total Suspended Solids	mg/l	1	30	51
Mar-07	003-A	Total Suspended Solids	mg/l	1	30	39.5
Mar-07	003-A	Total Suspended Solids	mg/l	30	25	29
Mar-07	003-A	pH	s.u.	1	9	9.2
Jun-07	03A	BOD	mg/l	1	30	37
Jun-07	003-A	Total Residual Chlorine	mg/l	1	0.1	0.11
Sep-07	003-A	Temperature Difference up/downstream	deg F	1	4	4.5
Sep-07	003-A	Temperature Difference sample/upstream	deg F	1	16	21.75
Nov-07	003-A	Total Suspended Solids	mg/l	1	30	78
Feb-08	003-A	pH	s.u.	1	9	9.4
Feb-08	003-A	Total Residual Chlorine	mg/l	1	0.1	0.12
Mar-08	003-A	Total Residual Chlorine	mg/l	1	0.1	0.13
May-08	007	pH	s.u.	1	9	9.4
Jul-08	003-A	pH	s.u.	1	9	9.2
Aug-08	003-A	pH	s.u.	1	6	4.8
Aug-08	03A	Total Residual Chlorine	mg/l	1	0.5	0.01
Nov-08	03A	Total Residual Chlorine	mg/l	1	0.5	0.2
Nov-08	006	Total Suspended Solids	mg/l	1	45	57
Feb-09	003-A	Total Suspended Solids	mg/l	1	30	35
Mar-09	003-A	pH	s.u.	1	9	9.6
Apr-09	003-A	pH	s.u.	1	9	9.1
Apr-09	03A	BOD	mg/l	1	30	53
May-09	007	pH	s.u.	1	9	10
Jun-09	03A	Total Residual Chlorine	mg/l	1	0.5	0
Jul-09	03A	Total Residual Chlorine	mg/l	1	0.5	0.16
Nov-09	007	pH	s.u.	1	9	10.3
Nov-09	007	Total Suspended Solids	mg/l	1	65	142
Jan-10	003-A	Total Suspended Solids	mg/l	1	30	59
Mar-10	003-A	Total Suspended Solids	mg/l	1	30	102
Mar-10	003-A	Total Suspended Solids	mg/l	30	25	46
Apr-10	03A	Fecal Coliform	MPN/100ml	1	400	1600
Apr-10	03A	Fecal Coliform	MPN/100ml	30	200	400
May-10	003-A	Total Suspended Solids	mg/l	1	30	39
Jun-10	003-A	Total Suspended Solids	mg/l	1	30	126
Jun-10	003-A	Total Suspended Solids	mg/l	30	25	30
Oct-10	003-C	Total Suspended Solids	mg/l	1	30	144
Oct-10	003-C	Total Suspended Solids	mg/l	30	25	27

Oct-10	003-C	Settleable Solids	ml/l	1	0.1	0.2
Oct-10	03A	Total Residual Chlorine	mg/l	1	2.0	2.4
Nov-10	003-M	Total Suspended Solids	mg/l	1	30	70
Nov-10	003-C	Settleable Solids	ml/l	1	0.1	0.3
Nov-10	003-C	Total Suspended Solids	mg/l	1	30	43
Nov-10	003-C	Total Suspended Solids	mg/l	30	25	43
Dec-10	03A	Total Residual Chlorine	mg/l	1	2.0	2.85
Dec-10	006	Total Suspended Solids	mg/l	1	45	365
Dec-10	006	Settleable Solids	ml/l	1	0.1	1.2
Jan-11	003-A	Total Residual Chlorine	mg/l	1	2.0	2.5
Mar-11	003-A	Settleable Solids	ml/l	1	0.3	0.4
Mar-11	003-A	Total Residual Chlorine	mg/l	1	2.0	2.1
Mar-11	003-M	pH	s.u.	1	9	9.8
Mar-11	003-M	Total Suspended Solids	mg/l	1	30	169
Mar-11	003-M	Total Suspended Solids	mg/l	30	25	28.9
Mar-11	003-M	Settleable Solids	ml/l	1	0.1	0.9
Mar-11	006	Total Suspended Solids	mg/l	1	45	252
Mar-11	006	Settleable Solids	ml/l	1	0.1	0.2
Mar-11	007	pH	s.u.	1	9	9.7
Mar-11	007	Oil & Grease	mg/l	1	15	18.2
Mar-11	007	Total Suspended Solids	mg/l	1	45	145
Mar-11	007	Total Suspended Solids	mg/l	30	25	56
Apr-11	003-A	Fecal Coliform	MPN/100ml	1	400	1600
Apr-11	003-C	Total Suspended Solids	mg/l	1	30	127
Apr-11	003-C	Total Suspended Solids	mg/l	30	25	35
Apr-11	003-C	Settleable Solids	ml/l	1	0.1	0.2
Apr-11	003-M	Total Suspended Solids	mg/l	1	30	42
May-11	003-A	Settleable Solids	ml/l	1	0.3	1.5
May-11	003-C	Total Suspended Solids	mg/l	1	30	50
May-11	003-C	Total Suspended Solids	mg/l	30	25	38
Jun-11	007	Oil & Grease	mg/l	1	15	20.7
Jun-11	003-M	Total Suspended Solids	mg/l	1	30	58.5
Jul-11	003-A	Settleable Solids	ml/l	1	0.3	0.4

21. 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 requirements of the SPDES Permit for its facility for the compliance periods listed above beginning on or before September 1, 2004 and extending until at least July 31, 2011.

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 **\$177,500**. 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 has been found to have violated the Act in **499** 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:

Diane Gomes, 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) 637-3235

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 (\$177,500) 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

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

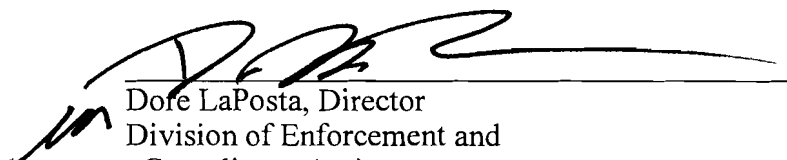
A copy of the Answer, any Hearing Request and all subsequent documents filed in this action should be sent to:

Diane Gomes, 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) 637-3235

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 31st DAY OF October, 2011.


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

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II

2011 OCT 31 P 4 14

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)

REGIONAL HEARING
PROCEEDING TO ASSESS A CLASS II CIVIL
PENALTY

DOCKET NO.
CWA-02-2012-3301

I certify that on 10/31/2011, 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:

Martin Turecky, Plant Manager
Lafarge Building Materials, Inc.
P.O. Box 3
Ravena, New York 12143

Copy by Certified Mail
Return Receipt Requested

Mr. Joseph DiMura, P.E., Director
Bureau of Water Compliance Programs
NYSDEC
625 Broadway
Albany, New York 12233-4500

Dated: 10/31/11



NAME OF SECRETARY, Secretary
New York, New York