



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

AUG 25 2010

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5939 3574

Mr. Joseph DeNivo, Project Manager
Raritan Town Square, LLC
820 Morris Turnpike
Short Hills, NJ 07078

RE: Notice of Proposed Assessment of a Civil Penalty Class II
Raritan Town Square, LLC
Docket No. CWA-02-2010-3405

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2010 AUG 27 PM 3:03
REGIONAL HEARING
CLERK

Dear Mr. DeNivo:

Enclosed is a Complaint which the U.S. Environmental Protection Agency ("EPA") is issuing to you as a result of our determination that Raritan Town Square located at 150 Route 31N, Raritan Township, New Jersey has violated Sections 301, 308 and 402 of the Clean Water Act ("Act"), 33 U.S.C. §1311, §1318 and §1342. This Complaint is filed pursuant to Section 309(g) of the Act, 33 U.S.C. §1319(g). The Complaint proposes that a penalty of \$55,000 be assessed against Raritan Town Square, LLC for these violations.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or they are found to be true after you have had an opportunity for a hearing on them, you have the right to contest the penalty proposed in the Complaint. I have enclosed a copy of Consolidated Rules of Practice ("CROP"), found at 40 Code of Federal Regulations Part 22, which the EPA follows in cases of this kind. Please note the requirements for an Answer at Section 22.15 of the CROP. **If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file an Answer within thirty (30) days of your receipt of the enclosed Complaint to the EPA Regional Hearing Clerk at the following address:**

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

If you do not file an Answer within thirty (30) days of receipt of this Complaint, you may be judged to have defaulted (See, Section 22.17 of the CROP). If a default order is entered, the entire proposed penalty may be assessed without further proceedings.

Whether or not you request a formal hearing, you may informally confer with EPA concerning the alleged violations and the amount of the proposed penalty. EPA encourages all parties

informal conference with the Agency. The Agency also encourages the use of Supplemental Environmental Projects, where appropriate, as part of the settlement. Enclosed is a copy of the Final EPA Supplemental Environmental Projects Policy (May 1, 1998) for your consideration. You may represent yourself or be represented by an attorney at any stage of the proceedings, including any informal discussions, whether in person or by telephone. Please note that a request for an informal conference does not substitute for a written Answer or affect what you may choose to say in an Answer, nor does it extend the thirty (30) days by which you must file an Answer requesting a hearing. Any hearing held in this matter will be conducted in accordance with the CROP.

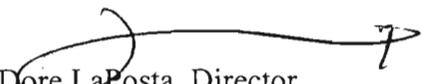
If you have any questions or wish to discuss a settlement of this matter with the EPA by an informal conference, please immediately contact:

Chief, Compliance Section
Water Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway - 20th Floor
New York, New York 10007-1866
(212) 637-4229

For your information, I am enclosing an Information Sheet which may be helpful, if you are a small business as defined at 13 C.F.R. §121.201, in obtaining compliance assistance or if you wish to comment on this action to the Small Business and Agriculture Regulatory Enforcement Ombudsman and Regional Fairness Board.

Should you have any questions concerning this matter, please feel free to contact Kimberly McEathron, Physical Scientist at (212) 637-4228.

Sincerely,


Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Enclosures

1. Complaint
2. Consolidated Rules of Practice
3. Supplemental Environmental Projects
4. Information for Small Business

cc: James Hamilton, NJDEP w/enclosures
Tom Antosiewicz, Mayor, Township of Raritan w/enclosures

bcc: Karen Maples, Regional Hearing Clerk (w/original complaint)
Patrick Harvey, DECA-CAPS (w/enclosures)
Henry Mazzucca, DECA-WCB (w/ enclosures)
Kimberly McEathron, DECA-WCB (w/enclosures)

Address: Tom Antosiewicz, Mayor, Township of Raritan, One Municipal Drive, Flemington, NJ
08822-1799

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Orders\Raritan Town Square_2010_3313\Raritan Town Square Class II APO 7.23.10rev.doc

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Raritan Town Square, LLC
820 Morris Turnpike
Short Hills, NJ 07078

NJPDES Permit No. NJG0088323
NPDES Tracking No. NJU000493

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-02-2010-3405

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2010 AUG 27 PM 3:03
REGIONAL HEARING
CLERK

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

AUTHORITY

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 CFR Part 22 (2001), a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against Raritan Town Square, LLC (“Respondent”), as a result of Complainant’s determination that the Respondent violated Sections 301, 308, and 402 of the Act, 33 U.S.C. §1311, §1318, and §1342, respectively, for failure to comply with the terms of the New Jersey Pollutant Discharge Elimination System (“NJPDES”) Construction Activity Stormwater General Permit.

3. Section 301(a) of the CWA, 33 U.S.C. §1311(a), provides, in part, that "Except as in compliance with this Section and Sections 402 and 404 of the CWA, 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 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(p) of the Act, 33 U.S.C. §1342(p), requires a permit with respect to a discharge of storm water associated with industrial activity, including construction activity.
6. The Administrator of EPA has promulgated regulations at 40 CFR §122.26(a)(1)(ii) and §122.26(b)(14), which require operators to obtain a National or applicable State Pollutant Discharge Elimination System permit for storm water discharges associated with industrial activity, including construction activity.
7. The regulations at 40 CFR §122.26(b)(14)(x) and 40 CFR §122.26(b)(15)(i) regulate storm water discharges associated with construction sites which include clearing, grading and excavation activities that result in the disturbance of one (1) or more acres of total land area.
8. Construction sites that are less than one acre, but are part of a common plan that is greater or equal to one acre, are required to apply for coverage under the Construction General Permit. See 40 CFR §122.26(a)(1)(ii) and §122.26(b)(14)(x) and §122.26(b)(15)(i).
9. "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 is 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 CFR §122.2).
10. The term "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).
11. The term "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).
12. The term "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).

13. The term "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).
14. The term "NPDES" means the National Pollutant Discharge Elimination System.
15. The terms "construction general permit" or "CGP" mean the NJPDES Construction Activity Storm Water General Permit No. NJG0088323. This CGP was issued March 1, 2002, renewed on February 28, 2007 and modified on August 17, 2009.
16. Construction Activity - Based upon Title 7 of the New Jersey Administrative Code ("NJAC"), Small Construction activities include clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres.
17. The Part A.1 of the CGP cites NJAC 7:14A-1.2 and defines an Operating entity and Owner/Operator, respectively as follows:
 - a. "Operating entity" or "operator" means any person who alone or along with other persons has primary management and operational decision-making authority over any part of a facility.
 - b. "Owner or operator" means the owner or operator of any facility or activity subject to this chapter.
18. The NPDES permit application regulations for storm water discharges at 40 CFR §122.26(b)(14)(x), 40 CFR §122.26(b)(15)(i) and relevant sections of the NJAC are applicable to this site since clearing, grading and/or excavation activities are equal to or greater than one (1) acre of total land area.
19. Operators regulated under 40 CFR §122.26(b)(14)(x) or 40 CFR §122.26(b)(15)(i) may seek CGP coverage in New Jersey by filing a Request for Authorization ("RFA") in accordance with Part D of the CGP.

FINDINGS

1. Raritan Town Square, LLC ("Respondent") is a person within the meaning of Section 502(5) of the CWA, 33 U.S.C. §1362(5).
2. At all relevant times, Respondent was the owner/operator of the 68.862 acre Raritan Town Square construction site ("Site" or "Facility") at 150 Route 31N, Raritan, New Jersey.
3. Respondent has conducted construction activity at the Site including clearing, grading and excavation activities on greater than one acre of the site.

4. Coverage under the CGP was granted by the New Jersey Department of Environmental Protection and the Hunterdon County Soil Conservation District and became effective on September 19, 2005 and was recertified September 19, 2005, January 16, 2007 and November 14, 2007. CGP coverage will expire on May 14, 2011.
5. Stormwater from the Site either flows through the on site storm sewer system into stormwater retention ponds which discharge to a tributary to the South Branch of the Raritan River or into a roadside catch basin, which discharges to the storm sewer system and into a tributary to the South Branch of the Raritan River.
6. Raritan Town Square, LLC officials stated that construction at the Site began on January 10, 2007, and is scheduled to be completed in September 2010.
7. Representatives of EPA conducted a Compliance Evaluation Inspection (“CEI”) at the facility on July 23, 2009 and identified that an Erosion and Sediment Control Plan per Parts E.1.a. and b. of the CGP had been developed, but that the facility failed to develop and implement the Waste Control Component of the SPPP as required by Part E.1.c. of the CGP and thereby violated Parts E.1.c and J of the CGP.
8. The July 23, 2009 CEI identified that there were two uncovered dumpsters, an unprotected waste pile, construction debris and concrete washout that were not managed in accordance with the CGP in violation of Parts E.1.c and J.3 of the CGP.
9. As identified during the CEI, Respondent failed to conduct and document routine (minimum weekly) inspections in violation of Part E.3 of the CGP. The facility had no documentation of routine inspections specific to SPPP implementation for the period January 10, 2007 through August 10, 2009.
10. As identified during the CEI, Respondent failed to prepare and submit annual reports and certification in violation of Part E.4 of the CGP. The annual reports and certification must be maintained by the permittee and are due yearly from the permit issuance date (i.e. annually from 09/19/05 so they are due on 09/19/06, 09/19/07 and 09/19/08). The facility representative indicated that these documents did not exist.
11. As identified during the CEI, Respondent failed to retain adequate records (including site inspection and annual report and certification records) in accordance with Part F.2.c.ii of the CGP which cites NJAC 7:14A-6.6 requiring that records be maintained for a period of 5 years. Additionally, Part F.2.a.vi of the CGP which cites N.J.A.C. 7:14A-2.11(e) requires that records be maintained and that inspectors have access to and copy, at reasonable times, any records that must be kept under the conditions of a NJPDES permit.
12. As identified in the CEI Report, Respondent failed to fully implement and/or maintain Erosion and Sediment Control (“ESC”) Portion of the SPPP in violation of Part E.1.a and b of the CGP as follows:

- a. Best Management Practices (“BMPs”) were not installed and/or adequately maintained around one of the two material storage piles. Portions of the silt fence were torn or not properly buried into the substrate as required;
 - b. Stormwater BMPs such as the filter fabric inside a catch basin was in disrepair and was not adequately maintained;
 - c. Details of the BMPs including a stabilized construction access must be included in the SPPP; however, the SPPP did not contain detailed drawings of the stabilized construction access.
13. On August 13, 2009, pursuant to Sections 308 and 309 of the CWA, EPA issued an Administrative Order and Request for Information (“AO/RFI”) (CWA-02-2009-3072) to Respondent under the authorities in Sections 308 and 309(a) of the CWA. The AO/RFI required the Respondent to develop a complete SPPP, conduct routine inspections, implement and maintain BMPs and submit compliance costs and a site list.
 14. Respondent submitted compliance costs, site list, inspection reports, and a complete SPPP via email November 20, 2009 and via hardcopy on November 23, 2009. According to the November 20, 2009 Raritan Town Square, LLC letter, documentation of complete routine site inspections (minimum weekly) began August 10, 2009. The Raritan Town Square SPPP was dated October 28, 2009.
 15. Based on the Findings in Paragraphs 1 – 14 above, Respondent violated Sections 301 and 402 of the Act, 33 U.S.C. §1311 and §1342, on one thousand one hundred and thirty five (1135) days, by failing to conduct site inspections, failing to install and/or maintain stormwater best management practices, failing to submit annual reports and certification and failing to develop a complete SPPP.

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 \$55,000. 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. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) calendar days after Respondent’s receipt of this Notice, unless within that time Respondent files an Answer to the Complaint and requests a Hearing on this Notice pursuant to the following section.

PROCEDURES GOVERNING THIS ADMINISTRATIVE ACTION

The rules of procedure governing this civil administrative litigation have been set forth in the CROP, 40 CFR 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 CFR § 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, NY 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 CFR §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 CFR §22.15(b). Where Respondent lacks knowledge of a particular factual allegation and so states in the Answer, the allegation is deemed denied. 40 CFR §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 CFR §22.15(b).

Respondent's failure affirmatively to raise in the Answer facts that constitute or that might constitute the grounds of 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 CFR §22.15(c). If, however, Respondent does not request a Hearing, the Presiding Officer (as defined in 40 CFR §22.3) may hold a Hearing if the Answer raises issues appropriate for adjudication. 40 CFR §22.15(c).

Any Hearing in this proceeding will be held at a location determined in accordance with 40 CFR §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 CFR 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 CFR §22.15(d). If Respondent fails to file a timely Answer to the Complaint [i.e. not in accordance with the 30-day period set forth in 40 CFR §22.15(a)], Respondent may be found in default upon motion. 40 CFR §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 CFR §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 CFR §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 CFR §22.27(c). 40 CFR §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.

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 CFR §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 CFR §22.18.

Any request for an informal conference or any questions that Respondent may have regarding this Complaint should be directed to:

Chief, Compliance Section
U.S. Environmental Protection Agency, Region 2
290 Broadway, 20th Floor
New York, NY 10007-1866
Telephone (212) 637-4229

The parties may engage in settlement discussions regardless of whether Respondent has requested a Hearing. 40 CFR §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 CFR §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 CFR §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 CFR §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 CFR §22.18(b)(2). In order to conclude the proceeding, a Final Order ratifying the parties' agreement to settle will be executed. 40 CFR §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.

RESOLUTION OF THIS PROCEEDING WITHOUT A HEARING OR CONFERENCE

Instead of filing an Answer, Respondent may choose to pay the total amount of the proposed penalty \$55,000 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 CFR §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 CFR §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 CFR §22.18(a)(3). In accordance with 40 CFR §22.45(c)(3), no Final Order shall be issued 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 CFR §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.

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, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

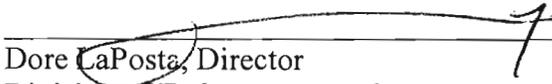
A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Nadine Orrell, Esq.
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866
Telephone: (212) 637-3244

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 25th DAY OF NOV, 2010.



Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance
U. S. Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007