

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Kelly Development Corporation
90 South Ocean Avenue
Patchogue, NY 11772

SPDES Tracking Numbers
NYR10U297/NYDES NYU001027

Respondent,

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

**PROCEEDING TO ASSESS A CLASS 1
CIVIL PENALTY**

DOCKET No. CWA-02-2015-3310

2014 NOV 26 AM 9:12
REGIONAL HEARING
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U.S. Environmental
Protection Agency-Reg 2

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

Kelly Development Corp. (“Kelly” or “Respondent”), through the undersigned attorneys, presents its Answer to the Administrative Complaint, Findings of Violation, Notice of Proposed Assessment of and Administrative Penalty, and Notice of Opportunity to Request a Hearing (“Complaint”) issued by the Environmental Protection Agency (“EPA”) on October 17, 2014, and respectfully states, alleges and prays as follows:

I. STATEMENT OF AUTHORITY

1. The allegations in the paragraph marked and designated “1.” are statements of law that require no admission, denial or explanation.
2. The allegations in the paragraph marked and designated “2.” are statements of law that require no admission, denial or explanation.

II. APPLICABLE LEGAL REQUIREMENTS

1. The allegations in the paragraph marked and designated “1.” are statements of law that require no admission, denial or explanation.

2. The allegations in the paragraph marked and designated “2.” are statements of law that require no admission, denial or explanation.

3. The allegations in the paragraph marked and designated “3.” are statements of law that require no admission, denial or explanation.

4. The allegations in the paragraph marked and designated “4.” are statements of law that require no admission, denial or explanation.

5. The allegations in the paragraph marked and designated “5.” are statements of law that require no admission, denial or explanation.

6. The allegations in the paragraph marked and designated “6.” are statements of law that require no admission, denial or explanation.

7. The allegations in the paragraph marked and designated “7.” are statements of law that require no admission, denial or explanation.

8. The allegations in the paragraph marked and designated “8.” are statements of law that require no admission, denial or explanation.

9. The allegations in the paragraph marked and designated “9.” are statements of law that require no admission, denial or explanation.

10. The allegations in the paragraph marked and designated “10.” are statements of law that require no admission, denial or explanation.

11. The allegations in the paragraph marked and designated “11.” are statements of law that require no admission, denial or explanation. The court is respectfully referred to relevant document for its terms, conditions and provisions.

12. The allegations in the paragraph marked and designated “12.” are statements of law that require no admission, denial or explanation.

13. The allegations in the paragraph marked and designated “13.” are statements of law that require no admission, denial or explanation.

14. The allegations in the paragraph marked and designated “14.” are statements of law that require no admission, denial or explanation.

15. The allegations in the paragraph marked and designated “15.” are statements of law that require no admission, denial or explanation.

16. The allegations in the paragraph marked and designated “16.” are statements of law that require no admission, denial or explanation.

17. The allegations in the paragraph marked and designated “17. a), 17. b), 17. c), 17. d) and 17. e)” are statements of law that require no admission, denial or explanation.

18. The allegations in the paragraph marked and designated “18.” are statements of law that require no admission, denial or explanation.

19. The allegations in the paragraph marked and designated “19.” are statements of law that require no admission, denial or explanation.

20. The allegations in the paragraph marked and designated “20.” are statements of law that require no admission, denial or explanation.

III. JURISDICTIONAL FINDINGS

1. Respondent admits the allegations in the paragraph marked and designated “1.”

2. Respondent admits the allegations in the paragraph marked and designated “2” and further avers that Respondent received on March 7, 2011, a SWPPP Acceptance form from the MS4.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent admits that storm water at the Site discharges to the Patchogue River, avers that that the allegations regarding navigable water in the paragraph marked and designated “1” is a statement of law that require no admission, denial or explanation, and denies knowledge and information sufficient to form a belief as to the other allegations in the paragraph.

2. Respondent admits the allegations in the paragraph marked and designated “2” but avers that the SWPPP for the Project was prepared November 2010 and accepted and found to be in compliance with the SPDES General Permit on March 7, 2011.

3. Respondent denies knowledge and information sufficient to form a belief as to the allegations in the paragraph marked and designated “3” but avers that the sire does involve approximately 12.15 acres.

4. Respondent denies knowledge and information sufficient to form a belief as to the allegations in the paragraph marked and designated “4” and denies that there was a failure to implement erosion and sediment control practices.

5. Many of the allegations in the paragraph marked and designated “5.” are statements of law that require no admission, denial or explanation.” The court is respectfully referred to relevant documents for its terms, conditions and provisions. Respondent denies knowledge and information sufficient to form a belief as to the allegations in the paragraph marked and designated “5. a), 5. b), 5. c)” to the extent they allege violations of Parts IIC.1 and IV.A.1. of the CGP and denies the allegation that the Patchogue River was not temporarily

stabilized, avers that Respondent did not have all of the records for inspection performed at the Site and denies sediment tracking from the entranceways at the Site.

6. Many of the allegations in the paragraph marked and designated “6.” are statements of law that require no admission, denial or explanation. The court is respectfully referred to relevant documents for its terms, conditions and provisions. The allegations in the paragraph marked and designated “6. a) and 6. b)” are statements of law that require no admission, denial or explanation. The court is respectfully referred to relevant documents for its terms, conditions and provisions. Respondent denies knowledge and information sufficient to form a belief as to the allegations in the paragraph marked and designated “6. a) and 6. b)” to the extent they allege violations of Parts IIC.1 and IIC.3 of the CGP, refers the court to the SWPPP for the Project and denies the allegation that prior written authorization from MS4 had not been obtained. See the response to the allegations in the paragraph marked and designated “5.”

7. Many of the allegations in the paragraph marked and designated “7.” are statements of law that require no admission, denial or explanation. The court is respectfully referred to relevant documents for its terms, conditions and provisions. Respondent denies knowledge and information sufficient to form a belief as to the allegations in the paragraph marked and designated “7.” to the extent they allege based upon inspection reports available for the Site violations of Parts IIC.1 and IV.C.5. of the CGP and avers that during different times Respondent implemented corrective actions noted in the qualified inspectors’ report.

8. Respondent admits the allegations in the paragraph marked and designated “8.” The court is respectfully referred to relevant documents for its terms, conditions and provisions.

9. Respondent admits the allegations in the paragraph marked and designated “9.”

10. Respondent denies knowledge and information sufficient to form a belief as to the

allegations in the paragraph marked and designated “10.”

V. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

In response to this section Respondent alleges that the proposed Final Order Assessing Administrative Penalties to Respondent should be adjusted based upon the special facts and circumstances Respondent wishes to raise.

VI. PROCEDURES GOVERNING THIS ADMINISTRATIVE ACTION

No response to the allegations or statements of law contained in paragraph VI. is requested, and none is proffered.

Respondent requests a hearing.

VII. INFORMAL SETTLEMENT CONFERENCE

No response to the allegations or statements of law contained in paragraph VI. is requested, and none is proffered.

Respondent requests an informal settlement conference.

VIII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OF CONFERENCE

No response to the allegations or statements of law contained in paragraph VI. is requested, and none is proffered.

IX. FILING OF DOCUMENTS

No response to the allegations or statements of law contained in paragraph VI. is requested, and none is proffered.

X. GENERAL PROVISIONS

No response to the allegations or statements of law contained in paragraph VI. is requested, and none is proffered.


AFFIRMATIVE DEFENSES

1. Respondent has at all times acted in good faith.
2. Respondent requests a hearing.

WHEREFORE, Respondent respectfully requests that the Complaint in this matter be dismissed that that no civil penalty be imposed.

Dated: East Meadow, New York
November 19, 2014

CERTILMAN BALIN ADLER & HYMAN, LLP

By: 
Barry S. Cohen, Esq.
Anthony W. Cummings, Esq.
Attorneys for Respondent
90 Merrick Avenue – 9th Floor
East Meadow, New York 11554
(516) 296-7000

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
)ss.:
COUNTY OF NASSAU)

Bree A. Turturro, being duly sworn, deposes and says:

Deponent is not a party to this action, is over 18 years of age and resides in Farmingdale, New York.

On the 19th day of November, 2014 deponent served an original and one copy of the within **ANSWER TO COMPLAINT, FINDINGS OF VIOLATION, NOTICE OF PROPOSED ASSESSMENT OF AN ADMINISTRATIVE PENALTY, AND REQUEST FOR HEARING** upon:

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

by depositing a true copy of same enclosed in a post-paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.


Bree A. Turturro

Sworn to before me this
19th day of November, 2014


Notary Public

ERIN JANE OBRIEN
NOTARY PUBLIC-STATE OF NEW YORK
No. 020B6290975
Qualified in Nassau County
My Commission Expires October 15, 2017

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
)ss.:
COUNTY OF NASSAU)

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Lauren Fischer, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

by depositing a true copy of same enclosed in a post-paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.


Bree A. Turturro

Sworn to before me this
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