

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007-1866**

IN THE MATTER OF:

Mountainview Realty Group, Inc.
48 Bakertown Road, Suite 500
Monroe, New York 10950

Respondent

Docket No. CWA-02-2013-3311

Proceeding to Assess Class I
Civil Penalty Under Section
309(g) of the Clean Water Act

NPDES Permit No. NYR10V297

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

DOCKET No. CWA-02-2013-3311

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2013 SEP 25 A 8:24
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. STATEMENT OF 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 ("Administrator" or "EPA") by Section 309(g)(2)(A) of the Clean Water Act ("Act" or "CWA"), 33 U.S.C. § 1319(g)(2)(A). 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)(A) 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, a copy of which is attached, Complainant hereby requests that the Regional Administrator assess a civil penalty against Mountainview Realty Group, Inc. ("Respondent"), as a result of Complainant's determination that Respondent is in violation of Sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, for failing to comply with the terms of the New York State Department of Environmental Conservation's ("NYSDEC") State Pollutant Discharge

Elimination System (“SPDES”) General Permit for Stormwater Discharges from Construction Activity on a construction site Respondent owns and operates.

II. APPLICABLE LEGAL REQUIREMENTS

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into navigable waters, except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), this prohibition also applies to discharges of stormwater associated with industrial activity.
2. “Discharge of a pollutant” is defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12), to include any addition of any pollutant to navigable waters from any point source.
3. “Pollutant” is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water.
4. “Person” is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include, among other things, an individual, corporation, partnership, association or municipality.
5. “Point source” is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to include 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.
6. “Navigable waters” is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), as the waters of the United States, including the territorial seas, and “waters of the United States” is defined by 40 C.F.R. § 122.2, to include: all waters which are currently used, were used in the past, 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; all interstate waters, including interstate "wetlands;" all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce, including tributaries thereto.
7. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), authorizes the Administrator to issue a National Pollutant Discharge Elimination System (“NPDES”) permit for the discharge of any pollutant, or combination of pollutants, notwithstanding the prohibition in Section 301(a) of the CWA, upon the condition that any such discharges will meet the requirements of the CWA and its implementing regulations.
8. The Administrator has promulgated regulations, at 40 C.F.R. § 122.26, that require permits for stormwater discharges associated with, among other things, industrial activity, including discharges associated with construction activities that include clearing, grading and excavation, and that result in the disturbance of one (1) or more acres of total land area.

9. "Storm water" is defined by 40 C.F.R. § 122.26(b)(13) as storm water runoff, snow melt runoff, and surface runoff and drainage.
10. "Owner or operator" is defined by 40 C.F.R. § 122.2 as the owner or operator of any "facility or activity" subject to regulation under the NPDES program.
11. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), allows any State, upon application to and approval by EPA, to directly administer the NPDES permitting program. EPA has authorized the New York State Department of Environmental Conservation ("NYSDEC") to directly administer the NPDES program in New York. Accordingly, any person who will discharge pollutants from a point source to waters of the United States within New York State must first obtain a New York State Pollutant Discharge Elimination System ("SPDES") permit, and must comply with all of its terms.
12. NYSDEC issued a SPDES General Permit for Stormwater Discharges from Construction Activity, GP-0-10-001 ("Permit" or "CGP"), which became effective on January 29, 2010 and expires on January 28, 2015.
13. Under the CGP, the term "Construction Activity(ies)" means any clearing, grading, excavation, filling, demolition or stockpiling activities that result in soil disturbance. Clearing activities can include, but are not limited to, logging equipment operation, the cutting and skidding of trees, stump removal and/or brush root removal. Construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.
14. Under the CGP, the term "Final Stabilization" means that all soil disturbance activities have ceased and a uniform, perennial vegetative cover with a density of eighty (80) percent over the entire pervious surface has been established, or other equivalent stabilization measures, such as permanent landscape mulches, rock rip-rap or washed/crushed stone have been applied on all disturbed areas that are not covered by permanent structures, concrete or pavement.
15. Under the CGP, the term "Owner or Operator" means the person, persons or legal entity which owns or leases the property on which the construction activity is occurring and/or an entity that has operational control over the construction plans and specifications, including the ability to make modifications to the plans and specifications.
16. A corporate officer can be held personally liable for violations of the Clean Water Act if he or she had "authority with respect to the conditions that formed the basis of the alleged violations" (*United States v. Iverson*, 162 F.3d 1015, 1024 (9th Cir. 1998) (quoting *United States v. Park*, 421 U.S. 658 (1975))).
17. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes the Administrator, upon a finding that any person has violated, among other things, Section 301(a) of the Act, or has violated any permit condition or limitation implementing such section in a permit issued under Section 402 of the Act, to assess a civil penalty, and Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), as adjusted by 40 C.F.R. § 19.4, authorizes the assessment of a penalty of up to \$11,000 per violation, and not exceeding \$37,500.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is a corporation and is therefore a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
2. According to the Notice of Intent (“NOI”) filed with the NYSDEC for the Site, on or about April 4, 2012, Respondent, owns or operates the Mountainview Condominiums (“Site” or “Facility”), which is located off of Mountain Road at or near Chevron Roads in Kiryas Joel, Orange County, NY. Therefore, Respondent, is an owner or operator within the meaning of 40 C.F.R. § 122.2.
3. Based upon NYSDEC’s April 4, 2012 receipt date for the NOI and signed MS4 Stormwater Pollution Prevention Plan (“SWPPP”) Acceptance form, Respondent obtained permit coverage for construction activities on the Site under the CGP, within 5 business days, on or about April 11, 2012.
4. Based upon the NOI, construction activities at the Site include the clearing, grading and excavating of approximately 12.5 acres of land at the 30.4 acre Site.
5. Based upon the NOI, Stormwater discharges from the Site flow into an Unnamed Class C tributary of the Ramapo River. The Ramapo River is a tributary of the Pompton River which is a tributary of the Passaic River and ultimately New York Harbor/Hudson River and the Atlantic Ocean and is therefore a water of the United States within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and 40 C.F.R. 122.2.
6. On March 20 and 21, 2013, EPA conducted a Reconnaissance Inspection (“RI” or “EPA Inspection”) at the Site and EPA identified the following violations of the Site’s NYSDEC SPDES CGP (NYR10V297). Part II.C.1 of the Permit requires the owner or operator to ensure that the provisions of the SWPPP are implemented from the commencement of construction activity until all areas of disturbance have achieved final stabilization and a Notice of Termination has been submitted to the NYSDEC in accordance with Part V of the Permit. Part VII.L of the Permit states that the owner or operator shall at all times properly operate and maintain all facilities and systems of treatment and control which are installed or used by the owner or operator to achieve compliance with the conditions of this permit and with the requirements of the SWPPP. Part IV.A.1 of the Permit requires that the owner or operator must ensure that all erosion and sediment control practices identified in the SWPPP are maintained in effective operating condition at all times. As documented in the report from the EPA Inspection, the following SWPPP elements had not been implemented and/or maintained in effective operating conditions at the time of the EPA inspection, in violation of Parts II.C.1, VII.L and IV.A.1 of the Permit:
 - a. During the EPA inspection, the silt fencing was not properly installed, because the bottom of the silt fence was not buried into the substrate (soil). Proper installation, operation and maintenance of silt fencing requires that the silt fence be buried into the substrate. Qualified Site Inspection reports from February 15, 2013, February 21, 2013, and March 7, 2013 stated that all silt fence that is blown out or knocked down needs to be restored.

- b. The SWPPP for the Site specifies that 14 check dams to the north of the site access road be installed. During the EPA inspection, only 2 check dams were in place within the swale. The need to restore the check dams was also noted in the Qualified Site Inspection Reports from February 15, 2013, February 21, 2013, and March 7, 2013.
 - c. During the EPA inspection, portions of the Site's construction entrance, leading to Mountain Road was not stabilized and was missing the rock cover specified by the SWPPP. The need to restore the Site's construction entrance was identified in the Qualified Site Inspection Reports from February 15, 2013, February 21, 2013, and March 7, 2013.
7. Part IV.C.2 of the CGP requires that Qualified Site Inspections be conducted every seven days (unless there is notification to the NYSDEC for a winter or temporary site shutdown and stabilization of the site). Parts IV.C.6 and II.C.2 of the CGP require that the reports from the Qualified Site Inspection be maintained on-site with the SWPPP. During the inspection, EPA reviewed the Qualified Site Inspection reports on-site, for approximately a one year period, and identified that Respondent did not have qualified site inspection reports every 7 days for the following periods: 9/6/12 - 10/5/12 (3 reports missing); 10/11/12 - 11/15/12 (4 reports missing); 11/15/12 - 11/29/12 (1 report missing); 1/25/13 - 2/7/13 (1 report missing); 2/21/13 - 3/7/13 (1 report missing). Failure to maintain Qualified Site Inspection Reports on-site is a violation of Part IV.C.6 of the CGP.
8. On June 28, 2013 EPA sent Respondent an Expedited Settlement Offer ("ESO") along with the report from the March 20-21, 2013 EPA Inspection. Respondent was given 30 days to sign and return the ESO and did not do so. Since there was no response to the ESO within thirty (30) days from the date of the ESO, EPA withdraws the earlier settlement offer and is proceeding with this Administrative Penalty Order.
9. In mid-August 2013, EPA telephoned Respondent to inquire about the status of Respondent's response to the ESO, because the date for returning the signed ESO had past. Following this call on or about August 27, 2013, Respondent did provide several of the missing Qualified Site Inspection Reports, except for the reports for Qualified Site Inspections that were required to take place on or about September 20, 2012 and November 22, 2012. On August 27, 2013, Mr. Lantner of EPA notified Respondent, via email, that these 2 reports were missing and Respondent indicated that he would continue to look for them. To date, these Qualified Site Inspection Reports have not been submitted to EPA. Failure to conduct the Qualified Site Inspections and/or Maintain the reports from the Qualified Site Inspections is a violation of Part IV.C.2 and/or IV.C.6 of the CGP.
10. Based on the foregoing Findings of Fact and Conclusions of Law, Respondent is liable for violations of Section 301 of the Clean Water Act, 33 U.S.C. § 1311, for violating its Permit issued under Section 402 of the Act, 33 U.S.C. § 1342.

IV. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

Based on the foregoing findings, 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 **\$7,500**. 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 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. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after Respondent's receipt of this Notice, unless Respondent files an Answer to this Complaint within that time 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, 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 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 state 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 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 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 the CROP, at 40 C.F.R. §§ 22.21-22.26 and Subpart I of the CROP, at 40 C.F.R. §§ 22.50-22.52.

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 Answer to the Complaint [i.e. not in accordance with the 30-day period set forth in 40 C.F.R. § 22.15(a)], Respondent may be found in default upon motion by Complainant. 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

Regardless of whether Respondent request 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 they believe 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 the amount 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. Note that no penalty reduction will be made simply because an informal settlement conference is held.

Complainant has the authority to modify the amount of the proposed penalty, where appropriate, in response to any relevant information previously not known to Complainant that demonstrates that any of the findings herein are without merit, or that the proposed penalty is not warranted. 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:

Phyllis Feinmark, Chief.
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) 637-3232

The parties may engage in settlement discussions regardless of whether Respondent has requested a Hearing. 40 C.F.R. § 22.18(b)(1). Respondent's request for 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.

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.

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 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). In accepting the Consent Agreement, Respondent waives any right to contest the allegations in the Complaint and waive any right to appeal the Final Order. 40 C.F.R. § 22.18(b)(2).

VII. RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Entering into a settlement through the signing of the attached Consent Agreement and sending it to:

Justine Modigliani, Chief Compliance Section
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency, Region 2
290 Broadway, 20th Floor
New York, NY 10007

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. 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, and EPA may initiate a new enforcement action based on evidence of new or continued violations.

VIII. FILING OF DOCUMENTS

Any Answer and/or Hearing Request and all subsequent documents filed in this action should be sent to:

Mountainview Realty Group, Inc.
Docket No. CWA-o2-2013-3311

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

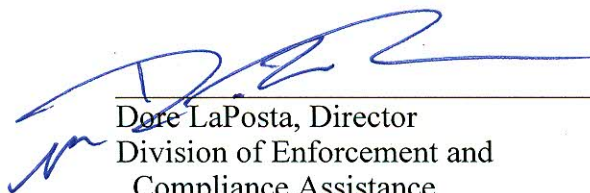
A copy of the Answer, any Hearing Request and all subsequent documents filed in this action shall be sent to:

Phyllis Feinmark, Chief
Office of Regional Counsel, Water and General Law Branch
U.S. Environmental Protection Agency
290 Broadway - 16th Floor
New York, New York 10007-1866
(212) 637-3232
feinmark.phyllis@epa.gov

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 23rd DAY OF September, 2013.



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

New York, New York
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007-1866

IN THE MATTER OF:

Mountainview Realty Group, Inc.
48 Bakertown Road, Suite 500
Monroe, New York 10950

Respondent

Docket No. CWA-02-2013-3311

Proceeding to Assess Class I
Civil Penalty Under Section
309(g) of the Clean Water Act

NPDES Permit No. NYR10V297

FINAL ORDER

Docket No. CWA-02-2013-3311

CONSENT AGREEMENT

A. STATUTORY AUTHORITY

1. This Consent Agreement and Final Order ("CA/FO") is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 309(g)(2)(A) of the Clean Water Act ("Act"), as amended, 33 U.S.C. §1319(g)(2)(A). 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 of EPA, Region 2. 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 Code of Federal Regulations Part 22, the Director, Division of Enforcement and Compliance Assistance hereby issues this CA/FO.

B. STIPULATIONS AND FINDINGS

Upon Consent of the Parties by their attorneys or other authorized officials, the parties stipulate:

1. EPA issued an Administrative Complaint, Docket No. CWA-02-2013-3311, pursuant to Section 309(g)(2)(A) of the Act, alleging that Respondent was in violation of Section 301(a) of the Act, 33 U.S.C. §1311, and section 402 of the Act, U.S.C §1342, and proposing a penalty of \$7,500. In the

Administrative Complaint, EPA alleged that the Respondent failed to conduct inspections, maintain records, and install and maintain Best Management Practices ("BMPs") as required by the New York State Department of Environmental Conservation's General Permit for Storm Water Discharges from Construction Activity GP-0-10-001 ("CGP" or "Permit").

2. Respondent admits the jurisdictional allegations in the Administrative Complaint as set forth above and admits the specific violations alleged in the Administrative Complaint.

3. Respondent knowingly and explicitly waives its right to a hearing under Section 309(g)(2)(A) of the Act, and to appeal this order under Section 309(g)(8) of the Act, 33 U.S.C. §1319(g)(8).

C. SETTLEMENT TERMS

1. A Class I Civil Penalty of \$3,000 is hereby assessed against Respondent. Respondent shall pay such penalty as follows:

Payment Terms

2. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount of **\$3,000** payable to the "Treasurer of the United States of America". The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document.

Such check shall be mailed to:

**US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000**

**In the Matter of: Mountainview Realty Group, Inc.
Docket No. CWA-02-2013-3311**

3. Respondent shall also send a copy of this payment to the Chief, Compliance Section, Water Compliance Branch, U.S. Environmental Protection Agency, 290 Broadway, 20th Floor, New York, New York 10007-1866.

4. Payment must be received at the above address on or before 45 calendar days after the effective date hereof, set out below (the date by which payment must be received shall hereafter be referred to as the "due date").

- a. Failure to pay the penalty in full according to the above provisions may result in the referral of this matter to the U.S. Department of Justice for collection.
- b. Further, if payment is not received on or before the due date, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. §3717,

on the overdue amount from the due payment handling charge of \$15.00 will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid.

- c. In addition, pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. §1319(g)(9), if payment is not received by the due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties which are penalties and quarterly nonpayment penalties unpaid as of the beginning of such quarter. You may also be required to pay attorneys' fees and costs for collection proceedings in connection with nonpayment.

D. GENERAL PROVISIONS

1. Issuance of the CA/FO does not constitute a waiver by EPA of its right to enforce legal requirements underlying this penalty assessment, either administratively or judicially pursuant to Section 309(a), (b) and (c). Pursuant to Section 309(g)(7) of the Act, 33 U.S.C. §1319(g)(7), issuance or compliance with this CA/FO does not exempt Respondent from responsibility to comply with all requirements of the Act and of any legal order or permit issued thereunder.
2. Respondent's execution of this CA/FO and payment of the penalty assessed by this CA/FO shall constitute a complete and final release by EPA of the Respondent of any civil penalties under Section 309 of the Act, 33 U.S.C. §1319, for violations alleged in the Administrative Complaint.
3. Respondent knowingly and explicitly waives its rights under Sections 309(g)(2) and (8) of the Act, 33 U.S.C. §§1319(g)(2) and (8), to a hearing on this penalty assessment, and to judicial review of this penalty assessment.
4. Respondent waives any right it may have pursuant to 40 CFR §22.08 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, or Deputy Regional Administrator, where the purpose of such discussion, memorandum or communication is to persuade such officials to accept and issue this CA/FO.
5. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CA/FO to execute and legally bind that party to it.
6. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this CA/FO.

Effective Date

7. The effective date of this order shall be thirty calendar days from the date it is signed by the Division of Enforcement and Compliance Assistance Director, shown below.

Mountainview Realty Group, Inc.

Signature: _____
Jacob Sofer, Chief Executive Officer

Date:

U.S. Environmental Protection Agency
Region 2

Date: _____

Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance

ISSUED AND ORDER THIS ____ DAY OF ____, 2013

Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance

Re: Mountainview Realty Group, Inc.
48 Bakertown Road, Suite 500
Monroe, New York 10950

Docket No. CWA-02-2013-3311

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Mountainview Realty Group, Inc.
48 Bakertown Road, Suite 500
Monroe, New York 10950

Respondent
Docket No. CWA-02-2013-3311

Proceeding to Assess Class I
Civil Penalty Under Section
309(g) of the Clean Water Act

NPDES Permit No. NYR10V297

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

DOCKET No. CWA-02-2013-3311

CERTIFICATION OF SERVICE

I certify that on SEP 24 2013, 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:

Jacob Sofer, Chief Executive Officer
Mountainview Realty Group, Inc.
48 Bakertown Road, Suite 500
Monroe, New York 10950

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: 9/24/13

Marie St. Germain
Secretary