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May 12, 2011

VIA CERTIFIED MAIL – RETURN
RECEIPT REQUESTED

Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

VIA CERTIFIED MAIL – RETURN
RECEIPT REQUESTED

Pamela J. Lazos, Esq.
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

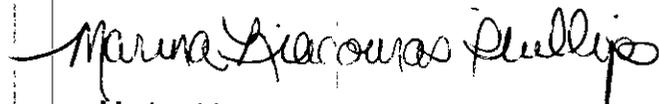
Re: In the Matter of Vico Construction Corporation
Docket No.: CWA-03-2011-0083

Dear Sir/Madam and Ms. Lazos:

Enclosed for filing in the referenced matter is the Answer to Administrative Complaint and Notice of Opportunity For Hearing.

If you have questions, please do not hesitate to contact me.

Very truly yours,



Marina Liacouras Phillips

MLP/cr
Enclosure
DOCSNFK-#1752606-v1

Disclosure Required by Internal Revenue Service Circular 230: This communication is not a tax opinion. To the extent it contains tax advice, it is not intended or written by the practitioner to be used, and it cannot be used by the taxpayer, for the purpose of avoiding tax penalties that may be imposed on the taxpayer by the Internal Revenue Service.

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

RECEIVED
2011 SEP 12 PM 3:25
EPA REGION III, PHILA, PA

IN THE MATTER OF:

Vico Construction Corporation
4001 South Military Highway
Chesapeake, VA 23321

Project known as
Jolliff Landing Commercial Center

Jolliff Road and Portsmouth Blvd.
Chesapeake, VA 23321

Respondent

Proceeding Under Class II
Section 309(g) of the
Clean Water Act

Docket No. CWA-03-2011-0083

**ANSWER TO
ADMINISTRATIVE COMPLAINT
and
NOTICE OF OPPORTUNITY FOR
HEARING**

**ANSWER TO ADMINISTRATIVE COMPLAINT
and
NOTICE OF OPPORTUNITY FOR HEARING**

NOW COMES respondent Vico Construction Company (the "Respondent"), by counsel, and for its answer to the Administrative Penalty Complaint and Notice of Opportunity for Hearing (the "Administrative Penalty Complaint"), states the following in response to the allegations of the Administrator of the United States Environmental Protection Agency:

I. STATUTORY AUTHORITY

1. This Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 309(g) (1) (A) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g) (1) (A). The Administrator has delegated this authority to the Regional Administrator of EPA Region III, who has further delegated this authority to the Director of the Water Protection Division of EPA Region III ("Complainant") pursuant to Delegation No. 2-52-A, September 1, 2005.

ANSWER: The Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Administrative Penalty Complaint and therefore denies all such allegations.

II. FACTUAL ALLEGATIONS AND FINDING OF VIOLATIONS

2. Vico Construction Corporation ("Respondent") is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.

ANSWER: The allegations in paragraph 2 of the Administrative Penalty Complaint are denied.

3. At all times relevant to this Complaint, upon information and belief, the Respondent was the owner and/or operator of a 61 acre parcel, approximately 32 acres of which was disturbed further identified on the map attached hereto as Exhibit "A". The property is known as Jolliff Landing Commercial Center ("Site"), located in the northern side of Portsmouth Blvd. between Jolliff Rd, and the Chesapeake/Suffolk city limits in Chesapeake, Virginia, further identified on the map attached hereto as Exhibit "B".

ANSWER: The Respondent admits that it or its subcontractors operated equipment on the 61 acre Jolliff Landing Commercial Center located on the northern side of Portsmouth Blvd. between Jolliff Rd, and the Chesapeake/Suffolk city limits in Chesapeake, Virginia. All remaining allegations in paragraph 3 of the Administrative Penalty Complaint are denied. The Respondents affirmatively state that the owner of the Site is Wirth Commercial Group.

4. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source to waters of the United States except in compliance with, among other things, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

ANSWER: The allegations in paragraph 4 of the Administrative Penalty Complaint do not require a response because they contain conclusions of law. However, to the extent that a response is required, the allegations are denied.

5. Owners and/or operators who discharge stormwater associated with construction activities to waters of the United States must comply with a NPDES permit.

ANSWER: The allegations in paragraph 5 of the Administrative Penalty Complaint do not require a response because they contain conclusions of law. However, to the extent that a response is required, the allegations are denied.

6. The Commonwealth of Virginia has been authorized by EPA to administer the NPDES program in Virginia. Pursuant to the authority of the CWA, the NPDES program, and the Virginia State Water Control Law, Virginia issues the Virginia Pollutant Discharge Elimination System ("VPDES") Permit No VAR10 (General Permit for Discharges of Storm Water from Construction Activities) to applicants on behalf of the EPA.

ANSWER: The allegations in paragraph 6 of the Administrative Penalty Complaint do not require a response because they contain conclusions of law. However, to the extent that a response is required, the allegations are denied.

7. Upon information and belief, at all times relevant to this Complaint, the Respondent was engaged in construction activity at, the Site Stormwater discharges from this operation drains from the site, a point source, into Bailey Creek which is a tributary of the Western Branch of the Elizabeth River. The Western Branch of the Elizabeth River is listed as impaired by Virginia's Department of Environmental Quality's 2006 List of Impaired (Category 5) Waters. The Elizabeth River, an estuary to the Chesapeake Bay, is a "water of the United States" as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

ANSWER: The Respondent admits that it and certain of its contractors were engaged in activity at the Site between October 2008 and the present. The Respondent admits that the Western Branch of the Elizabeth River is listed as impaired by Virginia's Department of Environmental Quality's 2006 List of Impaired (Category 5) Waters. The remaining allegations in paragraph 7 are denied.

8. VPDES Permit No. VAR10 authorizes discharges of storm water associated with construction activities to waters of the United States (including discharges to, or through municipal separate storm sewer systems), but only in accordance with the conditions of the permit, the Stormwater Pollution Prevention Plan ("SWPPP"), and an approved final Erosion and Sediment Pollution Control ("E&S") Plan.

ANSWER: The allegations in paragraph 8 of the Administrative Penalty Complaint do not require a response because they contain conclusions of law. However, to the extent that a response is required, the allegations are denied.

9. Pursuant to Sections 402(a) and 402(p) of the Act, 33 U.S.C. §§ 1342(a) and (p), and VPDES Permit No. VAR10, Vico Construction Corporation received approval, effective September 24, 2008, for the discharge of storm water under VPDES Permit No. VAR10-10-101027 from construction activities at the Site.

ANSWER: The allegations in paragraph 9 of the Administrative Penalty Complaint are denied. The Respondent affirmatively states that it received approval, effective July 1, 2009, for the discharge of storm water under VPDES Permit No. VAR10-10-101027 from construction activities at the Site.

10. Pursuant to VPDES Permit No VAR10-10-101027 and the E&S Plan for the Site, the Respondent must, among other things, provide inspection logs, install and maintain a construction entrance, install and maintain sediment traps and basins, stabilize stockpiles, and install and maintain silt fences.

ANSWER: The Respondent admits that VPDES Permit No VAR10-10-101027 and the E&S Plan for the Site set forth conditions under which discharges of storm water are authorized. The remaining allegations in paragraph 10 are denied.

11. On June 14, 2010, representatives of EPA, Region III conducted an inspection at the Site.

ANSWER: The Respondent is without knowledge or information to form a belief as to the truth of the allegations in paragraph 11 and therefore deny all such allegations.

Failure to install proper inlet protection

12. The E&S Plan, Pages CE 101, and 104, requires that ponds #1-3 have inlet protection in the form of a temporary riser pipe. Plan page CE-501 contains details to the design of the inlet protection.

ANSWER: The allegations in paragraph 12 of the Administrative Penalty Complaint are denied. The Respondent affirmatively states that the E&S Plan, Pages CE 101, and 104, requires that ponds #1-3 have inlet protection, but denies that the inlet protection must be in the form of riser pipes. Riser pipes were not utilized for inlet protection due to a design change approved by the Virginia Department of Conservation & Recreation (DCR) inspector. The ponds were excavated to a depth greater than designed, a common practice in Hampton Roads, to provide greater capacity for settling out of sediment in storm water. This caused the water level of the pond to be lower than the level required for gravity flow of water from the riser pipe to the existing storm water structures that had been constructed in accordance with Ch. 3.14 of the Virginia Erosion and Sediment Control Handbook-Principal Spillway Design, Plate 3.14-7, providing a much larger reservoir than originally contemplated. Rip rap was placed in front of the inlet pipes. If the elevation ever reached the level of the outlet pipe, pumps with sediment bags on the discharge would have been used to maintain the elevation in the pond.

13. At the time of the inspection, EPA representatives observed that the three ponds did not have the proper inlet protection installed. The existing inlet protection did not meet requirements of the E&S Plan.

ANSWER: As Respondent was not present at the EPA inspection, it is without knowledge or information to form a belief as to the truth of the allegations in paragraph 13 of the Administrative Penalty Complaint and therefore denies all such allegations.

14. The Respondent failed to comply with the Permit, SWPPP, and E&S Plan by not installing the proper inlet protection devices in ponds #1-3.

ANSWER: The allegations in paragraph 14 of the Administrative Penalty Complaint are denied. See answer to paragraph 12.

15. The E&S Plan, Page CE 502. Management Strategies and Sequence of Erosion Control Measures. 7.a., requires storm sewer inlets that are used for drainage during construction

be protected with gravel inlet protection so that sediment-laden water cannot enter the conveyance system without first being filtered or otherwise treated to remove sediment.

ANSWER: The allegations in paragraph 15 of the Administrative Penalty Complaint are admitted.

16. At the time of the inspection, EPA representatives observed inlet protection that did not meet the specifications of the E&S plan. The inlet protection was not properly maintained.

ANSWER: As Respondent was not present at the EPA inspection, it is without knowledge or information to form a belief as to the truth of the allegations in paragraph 16 of the Administrative Penalty Complaint and therefore denies all such allegations.

17. The Respondent failed to comply with the Permit and E&S Plan by not installing and maintaining the proper inlet protection.

ANSWER: The allegations in paragraph 17 of the Administrative Penalty Complaint are denied. The Respondent affirmatively states that proper inlet protection was provided using innovative solutions such as Dandy inlet filters (gutter buddies) and silt fence authorized by the provisions of the Virginia Erosion and Sediment Control Handbook, Ch. 3.07, Plate 3.07-1 and approved by the DCR inspector.

Failure to install proper outlet protection

18. The E&S Plan, Pages CE 101 and 104, requires that ponds #1-3 have outlet protection for the two outlets in each pond. Plan page CE-502 contains details to the design of the outlet protection.

ANSWER: The allegations in paragraph 18 of the Administrative Penalty Complaint are admitted.

19. At the time of the inspection, EPA representatives observed that the three ponds did not have the proper outlet protection installed. The existing outlet protection did not meet requirements of the SWPPP and E&S Plan.

ANSWER: As Respondent was not present at the EPA inspection, it is without knowledge or information to form a belief as to the truth of the allegations in paragraph 19 of the Administrative Penalty Complaint and therefore denies all such allegations.

20. The Respondent failed to comply with the Permit and E&S Plan by not installing the proper outlet protection in ponds #1-3.

ANSWER: The allegations in paragraph 20 of the Administrative Penalty Complaint are denied. Respondent affirmatively states that rip rap was installed at the outlets to ponds #1-3. It is below the water level in the ponds and is not visible. 3

Failure to install proper soil stabilization measures

21. The E&S Plan, Page CE-502.Management Strategies and Sequence of Erosion Control Measures.6.a, requires that permanent soil stabilization be applied to denuded areas within seven (7) days after final grade is reached on any portion of the site. Temporary soil stabilization shall be applied within 7 days to denuded areas that may not be at final grade but will remain dormant (undisturbed) for longer than 30 days.

ANSWER: The allegations of paragraph 21 of the Administrative Penalty Complaint are admitted.

22. At the time of the inspection, EPA representatives observed erosion of the slopes into pond #2 due to failing erosion control blanket BMPs. Denuded areas without soil stabilization were observed on Site.

ANSWER: As Respondent was not present at the EPA inspection, it is without knowledge or information to form a belief as to the truth of the allegations in paragraph 22 of the Administrative Penalty Complaint and therefore denies all such allegations.

23. The Respondent failed to comply with the Permit and E&S Plan by not applying soil stabilization to unstablized areas on Site.

ANSWER: The allegations in paragraph 23 of the Administrative Penalty Complaint are denied. The Respondent affirmatively states that the Site has been continuously worked and that no unstabilized area was dormant for more than 30 days.

24. The E&S Plan, Page CE-502.Management Strategies and Sequence of Erosion Control Measures.6.b., requires that Soil-stockpiles be stabilized or protected with sediment trapping measures during construction of the project. The applicant is responsible for the temporary protection and permanent soil stabilization of all soil stockpiles on site as well as soil intentionally transported from the project site.

ANSWER: The allegations in paragraph 24 of the Administrative Penalty Complaint are admitted.

25. At the time of the inspection, EPA Representatives observed stockpiles that did not receive temporary soil stabilization. There was evidence of erosion of sediment off of the stockpiles.

ANSWER: As Respondent was not present at the EPA inspection, it is without knowledge or information to form a belief as to the truth of the allegations in paragraph 25 of the Administrative Penalty Complaint and therefore denies all such allegations.

26. The Respondent failed to comply with the Permit and E&S Plan by not applying temporary soil stabilization to stockpiles on site.

ANSWER: The allegations in paragraph 26 of the Administrative Penalty Complaint are denied.

Failure to install, maintain and replace sediment barriers and sediment trapping devices

27. The Permit, Section II.D.2.b. (3), requires that off-site accumulations of sediment must be removed as soon as practicable to minimize off-site impacts when sediment escapes the construction site.

ANSWER: The allegations in paragraph 27 of the Administrative Penalty Complaint are admitted.

28. The SWPPP, Section VII.B, requires that sediment barriers be inspected and, if necessary, they must be enlarged or cleaned in order to provide additional capacity. All material excavated from behind sediment barriers will be stockpiled on the up slope side of the barrier. Additional sediment barriers must be constructed as needed. Sediment must be removed from sediment traps and sediment basins when the design capacity has been reduced by 50%.

ANSWER: The allegations in paragraph 28 of the Administrative Penalty Complaint are admitted.

29. The E&S Plan, Pages CE-101-104, indicates where sediment barriers in the form of silt fences are to be installed on site.

ANSWER: The allegations in paragraph 29 of the Administrative Penalty Complaint are admitted.

30. At the time of the inspection, EPA representatives observed falling, undermined, punctured, downed, improperly wrapped, sediment stained, and improperly installed silt fences on site. Incomplete silt fence perimeters were observed around stockpile areas. Sediment was observed to be escaping off site.

ANSWER: As Respondent was not present at the EPA inspection, it is without knowledge or information to form a belief as to the truth of the allegations in paragraph 30 of the Administrative Penalty Complaint and therefore denies all such allegations.

31. The Respondent failed to comply with the Permit, SWPPP, and E&S Plan by not installing, maintaining, and replacing sediment barriers in the form of silt fences on Site. The Respondent failed in removing accumulated sediment that escaped off site through incomplete silt fence perimeters and impaired silt fences.

ANSWER: The allegations in paragraph 31 of the Administrative Penalty Complaint are denied. The Respondent affirmatively states that sediment did not leave the Site.

32. The SWPPP, Section V.B.2, requires that effluent from de-watering activities must be filtered or passed through an approved sediment trapping device, or both, before being discharged from the site.

ANSWER: The allegations in paragraph 32 of the Administrative Penalty Complaint are admitted.

33. At the time of the inspection, EPA Representatives observed dewatering operations north of Pond #3. A pump hose was draining directly into a ditch without any filtration. Later on in the inspection, EPA Representatives observed an improperly installed dewatering bag connected to the same pump hose.

ANSWER: As Respondent was not present at the EPA inspection, it is without knowledge or information to form a belief as to the truth of the allegations in paragraph 33 of the Administrative Penalty Complaint and therefore denies all such allegations.

34. The Respondent failed to comply with the Permit and SWPPP by not filtering water from de-watering activities through a sediment trapping device. The Respondent failed to comply with the Permit and SWPPP by not properly installing the sediment trapping device.

ANSWER: The allegations in paragraph 34 of the Administrative Penalty Complaint are denied.

Failure to properly quantify area of disturbance

35. According to the Virginia Stormwater Management Program (VSMP) General Permit Registration Statement the disturbed acres on the site is 21 acres, further identified on the document attached hereto as Exhibit "C".

ANSWER: The allegations in paragraph 35 of the Administrative Penalty Complaint are denied. The Respondent affirmatively states that the VSMP General Permit Registration Statement dated September 30, 2008 identifies the "estimated area to be disturbed" as 21 acres.

36. At the time of the inspection, EPA Representatives observed disturbed areas that were not illustrated on E&S Plan pages CE-101 through 104. These areas did not have erosion and sedimentation control measures. EPA Representatives estimate the actual Disturbed area to be approximately 32 acres.

ANSWER: As Respondent was not present at the EPA inspection, nor does Respondent know the procedures utilized by EPA Representatives to estimate the actual Disturbed area, it is without knowledge or information to form a belief as to the truth of the

allegations in paragraph 36 of the Administrative Penalty Complaint and therefore denies all such allegations.

37. The Respondent failed to comply with the Permit and E&S plan by disturbing more than the permitted area and for having construction activity outside the limit of disturbance.

ANSWER: The allegations in paragraph 37 of the Administrative Penalty Complaint are denied. The Respondent affirmatively states that there is a separate site known as the Jolliff Landing Town Houses that abuts the Site but is not part of the Site.

38. By discharging pollutants in violation of the E&S Plan, SWPPP, and VPDES Permit No. VAR10-10-101027, Respondent is violating Section 301(a) of the Act, 33 U.S.C. § 1311(a).

ANSWER: The allegations in paragraph 38 of the Administrative Penalty Complaint are denied.

III. PROPOSED CIVIL PENALTY

39. Pursuant to the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective January 12, 2009), any person who has violated any NPDES permit condition or limitation after January 12, 2009 is liable for an administrative penalty not to exceed \$16,000 per day for each such violation occurring after January 12, 2009 up to a total penalty amount of \$177,500.

ANSWER: The allegations in paragraph 39 of the Administrative Penalty Complaint do not require a response because they contain conclusions of law. However, to the extent that a response is required, the allegations are denied.

40. Based upon the foregoing allegations, and pursuant to the authority of Section 309(g)(2)(B) of the CWA, and in accordance with the enclosed "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; Final Rule", 40 C.F.R. Part 22), Complainant hereby proposes to issue a Final Order Assessing Administrative Penalties to the Respondent in the amount of one hundred and twelve thousand dollars (\$112,000) for the violations alleged herein. This does not constitute a "demand" as that term is defined in the Equal Access to Justice Act, 28 U.S.C. § 2412.

ANSWER: The allegations in paragraph 40 of the Administrative Penalty Complaint are denied. The Respondent further states that the proposed administrative penalty is in fact a demand that triggers the applicability of the Equal Access to Justice Act, 28 U.S.C. § 2412 et seq.

41. The proposed penalty was determined after taking into account the nature, circumstances, extent and gravity of the violation, Respondent's prior compliance history, ability to pay the penalty, the degree of culpability for the cited violations, and any economic benefit or savings to Respondent because of the violations. 33 U.S.C. § 1319(g) (3). In addition, to the extent that facts or circumstances unknown to Complainant at the time of issuance of this Complaint become known after issuance of this Complaint, such facts or circumstances may also be considered as a basis for adjusting the proposed administrative penalty.

ANSWER: The allegations in paragraph 41 of the Administrative Penalty Complaint are denied.

42. The Regional Administrator may issue the Final Order Assessing Administrative Penalties after the thirty (30) day comment period unless Respondent either respond to the allegations in the Complaint and request a hearing according to Section V below or pays the civil penalty in accordance with Section VI below.

ANSWER: The allegations in paragraph 43 of the Administrative Penalty Complaint do not require a response because they contain conclusions of law. However, to the extent that a response is required, the allegations are denied.

43. If warranted, EPA may adjust the proposed civil penalty assessed in this Complaint. In so doing, the Agency will consider any number of factors in making this adjustment, including Respondent's ability to pay. However, the burden of raising the issue of an inability to pay and demonstrating this fact rests with the Respondent.

ANSWER: The allegations in paragraph 43 of the Administrative Penalty Complaint do not require a response because they contain conclusions of law. However, to the extent that a response is required, the allegations are denied.

IV. SETTLEMENT CONFERENCE

44. EPA encourages settlement of proceedings at any time after issuance of a Complaint if such settlement is consistent with the provisions and objectives of the CWA. Whether or not a hearing is requested, the Respondent may request a settlement conference with Complainant to discuss the allegations of the Complaint and the amount of the proposed civil penalty. **However, a request for a settlement conference does not relieve the Respondent of the responsibility to file a timely Answer to the Complaint.**

ANSWER: In response to paragraph 44 of the Administrative Penalty Complaint, the Respondent hereby requests a settlement conference to contest the allegations in the Administrative penalty Complaint and to further contest any attempt by the EPA to penalize the Respondent for its conduct.

45. In the event settlement is reached, its terms shall be expressed in a written Consent Agreement prepared by Complainant, signed by the parties, and incorporated into a Final Order signed by the Regional Administrator. The execution of such a Consent Agreement shall constitute a waiver of Respondent's right to contest the allegations of the Complaint or to appeal the Final Order accompanying the Consent Agreement.

ANSWER: The allegations in paragraph 45 of the Administrative Penalty Complaint are recitations of a procedural matter that Respondent has complied with or will comply with and does not require an answer or other response. However, to the extent that a response is required, the allegations are denied.

46. If you wish to arrange a settlement conference or if you have any questions related to this proceeding, please contact the attorney assigned to this case, as indicated in Paragraph 50 below, following your receipt of this Complaint **Such a request for a settlement conference does not relieve the Respondent of its responsibility to file an Answer within thirty (30) days following Respondent's receipt of this Complaint.**

ANSWER: In response to paragraph 46 of the Administrative Penalty Complaint, the Respondent hereby requests a settlement conference to contest the allegations in the Administrative penalty Complaint and to further contest any attempt by the EPA to penalize the Respondent for its conduct.

V. OPPORTUNITY TO REQUEST HEARING

47. At the hearing, Respondent may contest any material fact, contained in the violations listed in Section II, above, and the appropriateness of the penalty amount in Section III.

ANSWER: In response to paragraph 47 of the Administrative Penalty Complaint, Respondent hereby requests a hearing to contest the allegations in the Administrative Penalty Complaint and to further contest any attempt by the EPA to penalize the Respondent for its conduct.

48. Hearing procedures are described in the "*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits*," 40 C.F.R. Part 22, a copy of which is enclosed.

ANSWER: The allegations in paragraph 48 of the Administrative Penalty Complaint are admitted.

49. A Request for Hearing and the Answer to this Complaint must be filed within thirty (30) days of receiving this Complaint with the following:

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

ANSWER: The allegations in paragraph 49 of the Administrative Penalty Complaint are recitations of a procedural matter that Respondent has complied with or will comply with and does not require an answer or other response. However, to the extent that a response is required, the allegations are denied.

50. Copies of the Request for Hearing and the Answer, along with other documents filed in this action, should also be sent to the following:

Pamela Lazos
Senior Assistant Regional Counsel (Mail Code 3RC20)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029
(215) 814-2658

ANSWER: The allegations in paragraph 50 of the Administrative Penalty Complaint are recitations of a procedural matter that Respondent has complied with or will comply with and do not require an answer or other response. However, to the extent that a response is required, the allegations are denied.

51. The Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with respect to which the Respondent has any knowledge, or clearly state the Respondent has no knowledge as to particular factual allegations in the Complaint. The Answer shall also state the following:

- a. the specific factual and legal circumstances or arguments which are alleged to constitute any grounds of defense;
- b. the facts which Respondent disputes;
- c. the basis for opposing any proposed relief; and
- d. whether a hearing is requested.

Failure to admit, deny or explain any of the factual allegations in the Complaint constitutes admission of the undenied allegations.

ANSWER: The allegations in paragraph 51 of the Administrative Penalty Complaint are recitations of a procedural matter that Respondent has complied with or will comply with and do not require an answer or other response. However, to the extent that a response is required, the allegations are denied.

52. Failure to file an Answer may result in entry of a default judgment against Respondent. Upon issuance of a default judgment, the civil penalty proposed herein shall become due and payable. Respondent's failure to pay the entire penalty assessed by the Default Order by its due date will result in a civil action to collect the assessed penalty, plus interest, attorney's fees, costs, and an additional quarterly nonpayment penalty pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9). In addition, the default penalty is subject to the provisions relating to imposition of interest, penalty and handling charges set forth in the Federal Claims Collection Act at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717.

ANSWER: The allegations in paragraph 52 of the Administrative Penalty Complaint do not require a response because they contain conclusions of law. However, to the extent that a response is required, the allegations are denied.

53. Neither assessment nor payment of an administrative civil penalty pursuant to Section 309 of the Act, 33 U.S.C. § 1319, shall affect Respondent's continuing obligation to comply with the Clean Water Act, any other Federal or State laws, 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.

ANSWER: The allegations in paragraph 53 of the Administrative Penalty Complaint do not require a response because they contain conclusions of law. However, to the extent that a response is required, the allegations are denied.

VI. QUICK RESOLUTION

54. In accordance with 40 C.F.R. § 22.18(a), and subject to the limitations of 40 C.F.R. § 22.45, Respondent may resolve this proceeding at any time by paying the specific penalty proposed in this Complaint. If Respondent pays the specific penalty proposed in this Complaint within thirty (30) days of receiving this Complaint, then, pursuant to 40 C.F.R. § 22.18(a)(1), no Answer need be filed.

ANSWER: The allegations in paragraph 54 of the Administrative Penalty Complaint do not require a response because they contain conclusions of law. However, to the extent that a response is required, the allegations are denied.

55. If Respondent wishes to resolve this proceeding by paying the penalty proposed in this Complaint instead of filing an Answer, but needs additional time to pay the penalty, pursuant to 40 C.F.R. § 22.18(a) (2), Respondent may file a written statement with the Regional Hearing Clerk within twenty (20) days after receiving this Complaint stating that Respondent agrees to pay the proposed penalty in accordance with 40 C.F.R. § 22.18(a) (1).

Such written statement need not contain any response to, or admission of, the allegations in the Complaint, Such statement shall be filed with the Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-

2029 and a copy shall be provided to the attorney assigned to this matter, Pamela Lazos (3RC20), Senior Assistant Regional Counsel, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029. Within sixty (60) days of receiving the Complaint, Respondent shall pay the full amount of the proposed penalty. Failure to make such payment within sixty (60) days of receipt of the. Complaint may subject the Respondent to default pursuant to 40 C.F.R. § 22.17.

ANSWER: The allegations in paragraph 55 of the Administrative Penalty Complaint do not require a response because they contain conclusions of law. However, to the extent that a response is required, the allegations are denied.

56. Upon receipt of payment in full, in accordance with 40 C.F.R. § 22.18(a) (3), the Regional Judicial Officer or Regional Administrator shall issue a final order. Payment by Respondent shall constitute a waiver of that Respondent's rights to contest the allegations and to appeal the final order. Payment of the penalty shall be made by mailing a cashier's check or certified check for the penalty to "Treasurer, United States of America":

By Regular Mail:

Regional Hearing Clerk
U.S. EPA Region III
Cincinnati Finance Center
P. O. Box 979077
St. Louis, MO 63197-9000

By Overnight Delivery:

U.S. Bank, Government Lock Box 979077
US EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

By Wire Transfer:

Federal Reserve Bank of New York
ABA: 021030004
Account Number; 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

By Automated Clearing House (ACH):

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 — checking
Physical location of US Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Respondent shall send notice of such payment including copy of the check, to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk
Mail Code 3RC00
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

-and-

Pamela J. Lazos
Mail Code 3RC20
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

ANSWER: The allegations in paragraph 56 of the Administrative Penalty Complaint do not require a response because they contain conclusions of law. However, to the extent that a response is required, the allegations are denied.

VII. SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

57. The following Agency offices, and the staffs thereof, are designated as the trial staff to represent the Agency as a party in this case: the Region III Office of Regional Counsel; the Region III Water Protection Division; the Office of the EPA Assistant Administrator for the Office of Water; and the EPA Assistant Administrator for Enforcement and Compliance Assurance. From the date of this Complaint until the final agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, nor the Regional Judicial Officer, may have an *ex parte* communication with the trial staff on the merits of any issue involved in this proceeding. Please be advised that the Consolidated Rules of Practice, 40 C.F.R. Part 22, prohibit any unilateral discussion or *ex parte* communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Presiding Officer, Regional Administrator, or the Regional Judicial Officer after issuance of a Complaint.

ANSWER: The allegations in paragraph 56 of the Administrative Penalty Complaint do not require a response because they contain conclusions of law. However, to the extent that a response is required, the allegations are denied. The Respondent notes that the last two paragraphs of the Administrative Penalty Complaint are both numbered 56.

VIII. AFFIRMATIVE DEFENSES

In addition to the matters raised in their answer, the Respondents make the following Affirmative Defenses:

- 58. The activities of the Respondents at the Site are legal.
- 59. At all times the Respondents acted in good faith and believed that their activities, and the activities of their subcontractors, were in accordance with all applicable laws, rules and regulations.
- 60. The SWPPP was "prepared in accordance with good engineering practices" consistent with the requirements of Paragraph II (A) (1) of the Permit.
- 61. Sediment did not leave the Site.

Any allegation not specifically addressed is denied.

REQUEST FOR SETTLEMENT CONFERENCE AND HEARING

Respondent Vico Construction Corporation requests a settlement conference and hearing in Chesapeake, Virginia, the location of the Site and the location of Respondent, or in Norfolk, Virginia, a city contiguous to Chesapeake, Virginia, on all allegations and issues contained in the Administrative Penalty Complaint. Holding these proceedings in Chesapeake or Norfolk, Virginia will be convenient to the parties and witnesses and will provide the Presiding Officer and others with easy access to view the Site.

Pat E. Viola
Vico Construction Corporation

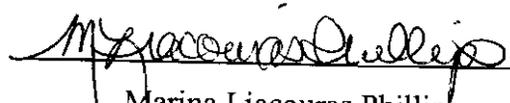
Date: May 12, 2011

By: Marina Diacoman Gullip
Counsel for the Respondent

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150 West Main Street, Suite 2100
Norfolk, Virginia 23510
Phone: 757-624-3279
Fax: 757-624-3169

CERTIFICATE OF SERVICE

I hereby certify that the enclosed Answer to Administrative Complaint and Notice of Opportunity For Hearing, was mailed this 12th day of May, 2011, to Regional Hearing Clerk (3RC00), U.S. EPA, Region III and Pamela J. Lazos, Esq. (3RC20), Assistant Regional Counsel, U.S. EPA, Region III.


Marina Liacouras Phillips

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