

STEPTOE & JOHNSON<sup>LLP</sup>  
ATTORNEYS AT LAW

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2009 SEP -2 PM 3:22  
REGIONAL HEARING  
CLERK  
750 Seventh Avenue  
New York, NY 10019  
Tel 212.506.3900  
Fax 212.506.3950  
steptoe.com

Daniel R. Lavoie  
212.506.3919  
dlavoie@steptoe.com

August 31, 2009

Via U.S. MAIL

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

Re: **Notice of Proposed Assessment of a Civil Penalty**  
**Docket No. CWA-02-2009-3317**  
**Vornado Realty Trust**

Dear Sir or Madame:

Enclosed please find an original and one copy of Respondent, Vornado Realty Trust's, Answer and Request for a Hearing in the captioned matter.

Respectfully submitted,



Daniel R. Lavoie

Enclosures

Cc: Diane T. Gomes, Esq., USEPA

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

**IN THE MATTER OF**

Vornado Realty Trust  
210 East 4 East  
Paramus, New Jersey 07652

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

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

Docket No. CWA-02-2009-3317

**ANSWER TO COMPLAINT  
AND REQUEST FOR HEARING**

Respondent, Vornado Realty Trust (hereinafter "Respondent" or "Vornado"), by and through its attorneys, Steptoe & Johnson LLP, hereby Answers the Complaint as follows:

**I. Statutory Authority**

1. Insofar as paragraph 1 of the Complaint asserts conclusions of law, no response is required; insofar as it purports to assert factual allegations concerning violations of law, they are denied.

2. Insofar as paragraph 2 of the Complaint asserts conclusions of law, no response is required; insofar as it purports to assert factual allegations concerning violations of law, they are denied.

## **II. Findings of Violation**

3. Respondent repeats and incorporates by reference herein its responses to paragraphs 1-2 of the Complaint as if fully set forth herein. Insofar as paragraph 3 of the Complaint asserts conclusions of law, no response is required; insofar as it purports to assert factual allegations concerning violations of law, they are denied except Respondent admits that it is a corporation organized under the laws of the State of New Jersey.

4. Respondent denies the allegations contained in paragraph 4 of the Complaint, except admits and avers that Vornado Gun Hill LLC is the owner and operator of the site located at 1770-1778 East Gun Hill Road, Bronx, New York, 10469 (the "facility"), and that a TGIF restaurant and a Duane Reade drug store are being constructed at the facility. Respondent further admits that the total project acreage is approximately 7.4 acres and the redevelopment project disturbs approximately 1.5 acres. Respondent further admits that the storm water associated with the construction activity at the facility is discharged via the facility's storm drain system into the Hutchinson River, and that the facility has been under construction since at least October 6, 2008. Insofar as the remainder of paragraph 4 of the Complaint asserts conclusions of law, no response is required.

5. Insofar as paragraph 5 of the Complaint asserts conclusions of law, no response is required. Insofar as it purports to assert factual allegations concerning violations of law, they are denied.

6. Insofar as paragraph 6 of the Complaint asserts conclusions of law, no response is required. Insofar as it purports to assert factual allegations concerning violations of law, they are denied.

7. Insofar as paragraph 7 of the Complaint asserts conclusions of law, no response is

required. Insofar as it purports to assert factual allegations concerning violations of law, they are denied.

8. Insofar as paragraph 8 of the Complaint asserts conclusions of law, no response is required. Insofar as it purports to assert factual allegations concerning violations of law, they are denied.

9. Insofar as paragraph 9 of the Complaint asserts conclusions of law, no response is required. Insofar as it purports to assert factual allegations concerning violations of law, they are denied.

10. Insofar as paragraph 10 of the Complaint asserts conclusions of law, no response is required. Insofar as it purports to assert factual allegations concerning violations of law, they are denied.

11. Insofar as paragraph 11 of the Complaint asserts conclusions of law, no response is required. Insofar as it purports to assert factual allegations concerning violations of law, they are denied.

12. Insofar as paragraph 12 of the Complaint asserts conclusions of law, no response is required. Insofar as it purports to assert factual allegations concerning violations of law, they are denied.

13. Insofar as paragraph 13 of the Complaint asserts conclusions of law, no response is required. Insofar as it purports to assert factual allegations concerning violations of law, they are denied.

14. Insofar as paragraph 14 of the Complaint asserts conclusions of law, no response is required. Insofar as it purports to assert factual allegations concerning violations of law, they are denied.

15. Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 15 of the Complaint, and on that basis denies same.

16. Respondent lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 16 of the Complaint, and on that basis denies same.

17. Insofar as paragraph 17 of the Complaint asserts conclusions of law, no response is required; insofar as it purports to assert factual allegations concerning violations of law, they are denied.

### **III. Notice of Proposed Order Assessing a Civil Penalty**

18. Respondent repeats and incorporates by reference herein its responses to paragraphs 1-17 of the Complaint as if fully set forth herein. Respondent admits that Section III Notice of Proposed Order Assessing a Civil Penalty of the Complaint proposes to issue a Final Order Assessing Administrative Penalties to Respondent assessing a penalty of \$37,500. To the extent that Section III of the Complaint asserts conclusions of law, no response is required; insofar as it purports to assert factual allegations concerning violations of law, they are denied.

### **IV. Defenses**

19. Respondent repeats and incorporates by reference herein its responses to paragraphs 1-18 of the Complaint as if fully set forth herein. On or about April 13, 2009, Respondent's environmental consultant at the facility, Roux Associates, Inc. ("Roux") spoke with Mr. Phillip Greco, Enforcement Specialist from the United States Environmental Protection Agency ("USEPA") Region 2. At that time, Roux and Vornado had a good faith belief that its redevelopment project disturbed an area estimated to be approximately one-half acre. Mr Greco

indicated that he would be sending Respondent a notice letter, and that Vornado should respond that the redevelopment project disturbed less than one acre. An email from Roux to Vornado dated April 13, 2009 confirming the discussion with Mr. Greco is attached as Exhibit A.

20. Thereafter, Vornado received Order CWA-02-2009-3061 from the USEPA dated April 23, 2009 notifying it of certain alleged violations of the Clean Water Act and the State Pollutant Discharge Elimination System (“SPDES”) General Permit for Storm Water Discharges from Construction Activities (the “Order”). A copy of the Order is attached as Exhibit B.

21. Vornado received the Order on April 27, 2009, and immediately signed and sent back to USEPA the “Acknowledgment of Receipt of Administrative Compliance Order” on April 28, 2009. A copy of this Acknowledgement is attached as Exhibit C.

22. Concurrent with Vornado’s receipt of the Order, Mr. Greco called Mr. Ezra Siegel of Vornado on April 27, 2009 indicating that USEPA had measured the redevelopment area and found it to be more than one acre. An email dated April 27, 2009 from Vornado to Roux confirming this discussion is attached as Exhibit D and indicates that this change of position would require permit paperwork to be filed.

23. Immediately following the April 27, 2009 discussion with Mr. Greco and receipt of the Order by Vornado, Vornado instructed Roux to prepare and submit to the New York State Department of Environmental Conservation (“NYSDEC”) a “Notice of Intent” and a “Stormwater Pollution Prevention Plan for Construction Activities.” Both documents were submitted electronically to Mr. Doug McKenna of EPA on May 27, 2009 in compliance with the requirements of the Order. A copy of these documents are attached as Exhibit E and Exhibit F,

24. On June 8, 2009, Vornado received a letter dated June 4, 2009 from the New York State Department of Environmental Conservation, Division of Water, Bureau of Water Permits

("NYSDEC") captioned "Acknowledgment of Notice of Intent for Coverage Under SPDES General Permit for Storm Water Discharges from Construction Activities General Permit No. GP-0-08-001." This letter assigned permit identification number NYR 10R220 for the facility. A copy of this NYSDEC letter from is attached as Exhibit G.

**Request for a Hearing**

25. Respondent repeats and incorporates by reference herein its responses to paragraphs 1-24 of the Complaint as if fully set forth herein. Respondent respectfully requests a hearing upon the issues raised and the proposed penalty assessment.

Respectfully submitted,

Dated: New York, New York  
August 31, 2009

STEPTOE & JOHNSON LLP

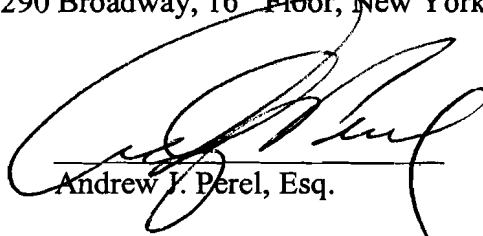
By: 

Andrew J. Perel, Esq.  
750 Seventh Avenue, 19<sup>th</sup> Floor  
New York, New York 10019  
(212) 506-3900

*Attorneys for Vornado Realty Trust*

### **CERTIFICATE OF SERVICE**

I do hereby certify that on this 31<sup>st</sup> day of August 2009, I served via regular mail an original and one copy of the foregoing Answer and Request for Hearing in the above-captioned matter on the Regional Hearing Clerk, USEPA, Region 2, 290 Broadway, 16<sup>th</sup> Floor, New York, New York 10007-1866, with a copy to Diane T. Gomes, Esq., Assistant Regional Counsel, Office of Regional Counsel, USEPA, Region 2, 290 Broadway, 16<sup>th</sup> Floor, New York, New York 10007-1866.



Andrew J. Perel, Esq.

750 Seventh Avenue  
New York, New York 10019  
(212) 506-3900

*Attorneys for Vornado Realty Trust*