



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NY 10007-1866

August 26, 2022

VIA ELECTRONIC MAIL

Ms. Barbara Penaluna
Dick's Concrete Co., Inc.
1053 County Rt. 37
New Hampton, New York 10958

Re: Information Request Pursuant to Section 308 of the Clean Water Act,
33 U.S.C. § 1318(a)

Dear Ms. Penaluna:

The U.S. Environmental Protection Agency ("EPA"), Region 2, has received information regarding activity resulting in the alleged unauthorized discharge of fill material into waters of the United States on properties at 1326 County Rt 12, New Hampton, NY 10958 (Tax ID 17-1-105) and 1053 County Rt 37, New Hampton, NY 10958 (Tax ID 17-1-36.1), (hereinafter "the Site"). The Site is identified in Attachment A.

EPA is requesting information, pursuant to the authority granted to it under Section 308 of the Clean Water Act, 33 U.S.C. § 1318 ("CWA") and the regulations promulgated thereunder, from Dick's Concrete Co., Inc. and Pena Farm, LLC (hereinafter "you") as owners/operators of the Site. The Site drains to an unnamed tributary which flows into the Wallkill River, a traditional navigable water of the United States.

Section 308(a) of the CWA, 33 U.S.C. § 1318(a), provides that whenever required to carry out the objectives of the CWA, including determining whether or not a person is in violation of the CWA, the Administrator of EPA shall require that person to provide such information as may reasonably be required to make such a determination. Dick's Concrete Co., Inc. and Pena Farm, LLC are "persons" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5). Therefore, pursuant to Section 308(a) of the CWA, 33 U.S.C. § 1318(a), it is hereby requested that you provide the information requested in the enclosed Appendices.

For each and every request, if you have reason to believe that there may be a person(s) who may be able to provide a more detailed or complete response to such request or may be able to provide additional responsive documents, then as a part of your response to such request, identify each such person and the additional information or documents which such person may be able to provide. Furthermore, for each and every response, if information or documents responsive to such request are not in your possession, custody, or control, then as part of your response to such request, identify each person from whom such information or documents may be obtained.

Because this is a formal request for information issued to you pursuant to Section 308(a) of the Act, 33 U.S.C. § 1318(a) (hereinafter "Information Request"), you are legally required to respond within a

reasonable time frame. We request that you fully respond to the Information Request within **thirty (30) days** of receipt of this letter. Please forward a copy of the requested information as set forth in Appendix A. Failure to respond to this Information Request may subject you to enforcement action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, in which injunctive relief and penalties may be sought.

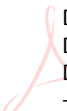
This request is of an ongoing nature. Should any additional information or documentation become available after submitting your responsive documents, then you are under an obligation to provide such additional information or documentation to EPA.

The requested information should be sent by electronic mail to Ms. Stephanie Andreescu, of my staff, at andreescu.stephanie@epa.gov. Should you have any questions regarding this request, please contact Ms. Andreescu by e-mail or by phone at (212) 637-3818 or your legal counsel may contact Ms. Zoe Oldham, Attorney-Adviser, at oldham.zoe@epa.gov or (212) 637-3228. Thank you for your attention to this matter.

Sincerely,

**McKenna,
Douglas**

Doughlas McKenna, Chief
Water Compliance Branch
Enforcement and Compliance Assurance Division



Digitally signed by McKenna,
Douglas
Date: 2022.08.26 14:42:10
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Enclosure

Cc: Brian Orzel – NY District, U.S. Army Corps of Engineers (by e-mail)

APPENDIX A

Unless otherwise specified, the following general instructions and definitions apply when providing the information requested in Appendix B.

General Instructions

1. Provide a separate narrative response to each question and subpart of a question set forth in the Information Request.
2. Each response shall identify the number of the question, and if relevant, any subpart to which a response is being provided.
3. Label each document submitted in response to this Information Request with the request number and subpart (if applicable) to which it corresponds. If anything is deleted or redacted from a document produced in response to this Information Request, state the reason for and the subject matter of the deleted or redacted information.
4. If a document you submit is responsive to more than one request, please provide one copy of the document and identify all the requests, by number and subpart, to which it responds.
5. For each response, organize the requested information or documents chronologically.
6. When documents or information necessary for a response are neither in your possession nor available to you, indicate in your response why such documents or information are not available or in your possession and identify any source that either possesses or is likely to possess such information.
7. If any documents or information responsive to a request are not known or are not available to you at the time you submitted your response, but later become known or available to you, you should submit the new information as a supplement to your response. If at any time after submission of your response you learn that any portion is or becomes false, incomplete, or misrepresents the facts, you should notify EPA of this fact as soon as possible and provide a corrected response. If any part of the response to this Information Request is found to be false, the signatory to the response and the company may be subject to criminal prosecution.
8. If you claim that an entire document responsive to this Information Request is withheld on the basis of a privilege, identify the document and provide the basis for asserting any privilege. For any portion of a document that you claim is withheld on the basis of a privilege, provide the portion of the document for which you are not asserting any privilege; identify the portion of the document for which you are asserting any privilege; and provide the basis for such an assertion.
9. You should provide responsive documents or information even though you consider it confidential information or trade secrets. You may assert a business confidentiality claim for part or all of the information requested, as set forth in 40 C.F.R. Part 2, Subpart B.

Information covered by such a claim will be disclosed by the EPA only to the extent and only by the procedures set forth in 40 C.F.R. Part 2, Subpart B. If no confidentiality claim accompanies the information when the EPA receives it, the information may be made available to the public by the EPA without further notice to you.

If you would like the EPA to treat any information, document, or response as “confidential,” you must advise the EPA by placing on or attaching a cover sheet to any document or prefacing any response with such language as “trade secret,” “proprietary,” or “confidential business information.” You must clearly identify allegedly confidential portions of otherwise non-confidential documents, and you may want to submit these separately to facilitate identification and handling by the EPA. Pursuant to 40 C.F.R. Part 2, Subpart B, the EPA may at any time send you a letter asking you to substantiate your confidentiality claim.

10. You or a responsible agent must submit all requested information under an authorized signature with the following certification:

I certify under the penalty of law that I have examined and am familiar with the information submitted in responding to this information request for production of documents. Based on my review of all relevant documents and inquiring of those individuals immediately responsible for providing all relevant information and documents, I believe that the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

General Definitions

All terms used in this Information Request shall have their ordinary meaning unless such terms are defined in the CWA, 33 U.S.C. §§ 1251-1387, or the CWA’s implementing regulations. The following specific definitions shall apply to the Information Request:

1. “Or” shall mean and/or.
2. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun used, and vice versa; and in a similar fashion, the use of the masculine form of a pronoun shall be construed to also include within its meaning the feminine form of the pronoun, and vice versa; and in a similar fashion, the use of any tense of a verb shall be construed to also include within its meaning all other tenses of the verb so used.
3. “Document” is used in its broadest sense and shall mean and refer to all written or graphic matter of every kind and description however produced or reproduced, whether draft or final, original or reproduction.

4. “Work” means activities, including but not limited to, earthmoving, dumping, excavation, mechanized and/or manual vegetation-clearing activities, construction debris disposal, solid waste disposal, logging and tree removal, roadway construction including earthwork, embankment cuts and fills, paving, piping, trenching, culvert placement, drag-lining, windrowing or stockpiling, grubbing, soil excavation or removal, installation of dams or other water control features, and placing fill or dredged material.

APPENDIX B

Unless otherwise specified, the period covered by these requests shall be from August 2017 to the present.

- 1) State the name, address, telephone number, and title of each person providing responses, or contributing information to the responses of this Information Request. Identify your business form. If a corporation, please give the corporation's date and state of incorporation, the name and address of its agent for service of process, its address, and the nature of its business.
- 2) Provide all documents that reflect your past and present ownership interest in the Site or any portions thereof, including but not limited to, plats of surveys, titles, deeds, easements, and property or real estate tax bills. If you never held an ownership interest in the Site, provide a copy of the written agreements in place that permitted you to conduct all Work at the Site.
- 3) Provide the name, address, telephone number, email address, and any other contact information, for all additional owners, lessors or lessees of the Site, other than yourself. If the Site is comprised of more than one parcel of property, please provide this information for all parcels of property.
- 4) State whether you, individually, or as part of a business, partnership, or corporation, ever applied for or received a permit, including nationwide, regional, general, individual or after-the-fact permits, under Section 404 of the CWA, 33 U.S.C. § 1344, or had other prior knowledge of the CWA Section 404 Regulatory Program including previous enforcement actions or requests for Approved Jurisdictional Determinations. Provide a copy of all relevant documents, including but not limited to, permits, permit application materials, and correspondence, specifically mentioning the U.S. Army Corps of Engineers or the CWA Section 404 Program.
- 5) Provide the following information regarding Work at the Site:
 - a) A detailed description of the Work;
 - b) The specific purpose(s) of, or reason(s) for, the Work;
 - c) The timeline of the Work that occurred including the dates Work commenced and concluded. Copies of official work logs or field notes should be provided;
 - d) The date dredged or fill material was first discharged into wetlands and/or streams;
 - e) The amount of material discharged into wetlands or streams;
 - f) The specific source of the material discharged;
 - g) The acreage of wetlands or linear feet of stream impacted by the material; and,
 - h) The dates any material was removed from wetlands or streams.
- 6) State whether you, individually, or as part of a business, partnership, or corporation, applied for, or received, a permit issued by the State of New York or its political

subdivisions or agencies, including the New York State Department of Environmental Conservation (NYSDEC), or its local governments, including Orange County and the Town of Wawayanda for Work you performed at the Site in response to Question 5, above. Provide copies of all relevant documents including, but not limited to, permits, permit application materials, and correspondence related to the processing of any permit.

- 7) Provide a description of the type(s) of specific equipment and method(s) used to accomplish the Work referenced in Question 5, above.
- 8) Provide all documents that authorized you to discharge fill material at the Site, including, but not limited to, correspondence, contracts, agreements, purchase orders, work orders, requests for quotes, quotes, memoranda, invoices before or after the discharge was completed, letter agreements, receipts, proposals, statements, and any similar documents.
- 9) Provide copies of all documents and information which describe the Site's physical attributes and the Site's immediate surroundings, including, but not limited to:
 - a) Wetland delineations conducted using the 1987 Corps of Engineers Wetland Delineation Manual, Northcentral and Northeast Regional Supplement, or any relevant versions/updates. This includes delineations under atypical conditions described in Chapter 5 of the regional supplements.
 - b) Topographical (elevation) surveys, including any drawing(s) of vertical or horizontal elevations;
 - c) Soil borings or sample data;
 - d) Vegetation identifications, descriptions, or surveys;
 - e) Site hydrological surveys (e.g., data on ground water and surface water flows);
 - f) Any engineering or Site plans or maps, including any used for construction; and
 - g) As-built site plans once grading/excavation work was completed depicting as-built site elevations/contours.
- 10) Provide copies of all aerial and ground photos of the Site, which may include digital photos, and/or marked-up aerial photos, in your possession. Include a narrative for each photo submitted, providing the date the photo was taken and description of the area depicted in the photo (e.g., directional and orientation references).
- 11) Provide copies of any document(s) that describe the length, area, or volume of dredged or fill material placement that you added to, or rearranged in wetlands, streams, ditches, ponds, and lakes on the Site. If you have no documents recording the length, area, or volume of dredged and fill material placement, please provide a narrative response with an estimate of these figures.
- 12) Provide the name, title, employer, business address, and business telephone number of each person or company, including yourself, who was involved in any of the Work described in your answers above including the name, address, telephone number, email address and any other contact information, for all contractors and subcontractors who performed any of the construction activities at the Site, including but not limited to any

of the Work listed above or any other discharges of dredged or fill material at the site. In addition, please provide copies of all contracts, agreements, purchase orders, work orders, memoranda, invoices before or after the discharge was completed, letter agreements, receipts, proposals, statements, and any other communications for any such Work performed.

- 13) Provide copies of all documentation (including, but not limited to, field notes, maps, photographs, video, aquatic resource assessments, and wetland delineations) of the efforts you made to determine whether the Site or any portion of it contained wetlands or other waters of the United States (e.g., streams, ditches, ponds, or lakes). Identify by name, title, employer, and business address, all persons involved in this determination.
- 14) Any other facts or information that you deem pertinent to this investigation.