

PREET BHARARA
United States Attorney for the
Southern District of New York
By: ANDREW E. KRAUSE
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2769
Facsimile: (212) 637-2786
E-mail: andrew.krause@usdoj.gov

14 CV 1888

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

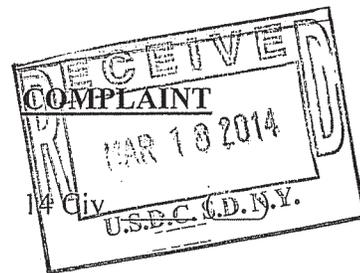
----- x
UNITED STATES OF AMERICA,

Plaintiff,

-against-

TOWN OF RAMAPO, NEW YORK,

Defendant:
----- x



The United States of America, by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, on behalf of the United States Army Corps of Engineers (the "Corps of Engineers"), alleges for its complaint against defendant the Town of Ramapo, New York (the "Town"), as follows:

INTRODUCTION

1. Since 2010, the Town of Ramapo has been in violation of the Clean Water Act (the "CWA"), 33 U.S.C. §§ 1251 *et seq.*, in the course of its construction of the minor league baseball stadium currently known as Provident Bank Park. Beginning with the Town's unlawful discharges of fill material into wetlands at the project site, the Town has demonstrated a persistent disregard for its environmental obligations. For more than two years, the Town has failed to take the environmental protection steps it agreed to take after its first unlawful discharge

was discovered by the Corps of Engineers, including securing certain specified legal protections and completing compensatory mitigation work. The purpose of this lawsuit is to ensure that the Town at last adheres to its environmental responsibilities.

2. The United States of America brings this civil action under Sections 301(a) and 404(s) of the CWA, 33 U.S.C. §§ 1311(a) and 1344(s), to obtain civil penalties and injunctive relief compelling the Town to comply with all of the conditions and limitations of Department of the Army Permit Authorization No. 2010-00296 (the "Permit"), which was issued by the Corps of Engineers to the Town pursuant to Section 404 of the CWA, 33 U.S.C. § 1344 ("Section 404"), and to prohibit the Town permanently from discharging pollutants into waters of the United States unless in compliance with the CWA.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and Section 404(s) of the CWA, 33 U.S.C. § 1344(s).

4. Venue is proper in this District pursuant to Section 404(s) of the CWA, 33 U.S.C. § 1344(s), and 28 U.S.C. §§ 1391(b) and (c) and 1395, because the Town is located in this District and the events giving rise to the claims herein arose in this District.

5. The United States has provided notice of the commencement of this action to the State of New York pursuant to Section 404(s) of the CWA, 33 U.S.C. § 1344(s).

PARTIES

6. Plaintiff is the United States of America acting on behalf of the Corps of Engineers.

7. Defendant, the Town of Ramapo, is a political subdivision of the State of New York located in Rockland County, and is a "person" within the meaning of the CWA's

prohibition on the discharge of pollutants. *See* 33 U.S.C. §§ 1311(a), 1362(5) (defining “person” to include a “municipality” or “political subdivision of a State”).

8. At all times relevant to this Complaint, the Town, or an entity affiliated with the Town, owned and controlled a tract of real property located at Firemans Memorial Drive, within the Village of Pomona, Town of Ramapo, County of Rockland, State of New York (the “Site”). The Site includes approximately 1.11 acres of wetlands into which the Town illegally discharged fill material in 2010, approximately 0.13 acres of wetlands into which the Town illegally discharged fill material after January 2011, and the approximately 1.88 acres of land that the Town agreed to establish as wetlands pursuant to the Permit in 2011.

THE CLEAN WATER ACT AND THE PROTECTION OF WETLANDS

9. The objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. 1251(a).

10. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant by any person” “[e]xcept as in compliance with,” among other things, a permit issued pursuant to Section 404. The “discharge of a pollutant” includes “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

11. Navigable waters are “the waters of the United States, including the territorial seas,” 33 U.S.C. § 1362(7), and “waters of the United States” include (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; (ii) all interstate waters, including interstate wetlands; (iii) tributaries of such waters; and (iv) wetlands adjacent to such waters or their tributaries. *See* 33 C.F.R. §§ 328.3(a)(1), (2), (5) and (7).

12. Wetlands are “those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.” 33 C.F.R. § 328.3(b).

13. Section 404 authorizes the Secretary of the Department of the Army, acting through the Chief of Engineers, to issue permits for the discharge of dredged or fill material into navigable waters at specified disposal sites, after notice and opportunity for public comment.

14. Section 404(s) authorizes the commencement of a civil action for appropriate relief, including a permanent or temporary injunction and including civil penalties, against any person in violation of any condition or limitation set forth in a permit issued by the Corps of Engineers under Section 404.

THE TOWN’S VIOLATIONS OF THE CLEAN WATER ACT

15. As described below, the Town has violated, and is continuing to violate, Sections 301(a) and 404 of the CWA, 33 U.S.C. §§ 1311(a) and 1344(s).

16. In 2010, as part of its construction of the minor league baseball stadium currently known as Provident Bank Park, the Town illegally discharged fill material without a permit into approximately 1.11 acres of wetlands at the Site.

17. The wetlands at the Site are “waters of the United States” and “navigable waters” pursuant to the CWA.

18. After making the unlawful discharge, the Town applied for after-the-fact permission from the Corps of Engineers to allow the filled wetlands to remain in that condition.

19. At some point after January 2011, after applying for after-the-fact permission for the first unlawful discharge, the Town illegally discharged fill material without a permit into

approximately 0.13 additional acres of wetlands at the Site. The Town never received authorization to fill the additional 0.13 acres of wetlands, and did not notify the Corps of Engineers that it had filled the additional wetlands until April 29, 2013.

20. On April 14, 2011, the Corps of Engineers issued the Permit, which provided after-the-fact authorization of the first unpermitted discharge, subject to the requirements that the Town, among other things: (i) establish approximately 1.88 acres of wetlands at the Site as compensatory mitigation for the loss of wetlands from the improper discharge; (ii) provide the Corps of Engineers with annual monitoring reports on the status of the compensatory mitigation activities at the Site beginning October 15, 2011; and (iii) secure a conservation easement on the mitigation site to guarantee its preservation for wetland and wildlife resources, with the easement to be executed and recorded by June 14, 2011. The authorization was provided in accordance with the Corps of Engineers' authority under its Nationwide General Permit No. 32. A true and correct copy of the April 14, 2011 letter which constitutes the Permit is attached hereto as Exhibit A.

21. The Town accepted all of the terms and conditions of the Permit by letter dated June 13, 2011, and the Permit therefore became effective.

22. Over the next fourteen months, however, the Town did not begin – let alone complete – the compensatory mitigation work required by the Permit, did not secure the conservation easement required by the Permit, and did not provide the monitoring reports required by the Permit.

23. On August 30, 2012, the Corps of Engineers sent a letter to the Town stating that the Town had violated the terms and conditions of the Permit. The letter directed the Town to

submit a report to the Corps of Engineers detailing how it would return to compliance with the Permit.

24. The Town did not submit the requested report to the Corps of Engineers. Consequently, on February 26, 2013, the Corps of Engineers sent another letter to the Town reiterating that it was not in compliance with the Permit, and noting that the matter was being referred to the United States Attorney.

25. After further correspondence, the Town provided a new proposal for compensatory mitigation on April 29, 2013. The proposal revealed that not only had the Town failed to comply with the conditions of the Permit, but also that further mitigation would be required because the Town had filled the additional 0.13 acres of wetlands. Moreover, the Town revealed that it would have to modify the mitigation locations specified in the Permit because it had stockpiled large quantities of potentially contaminated soil directly on one of the parcels of land that had been designated for wetland mitigation, and blocked access to another of the original proposed mitigation parcels with this soil deposit.

26. To this day, the Town has failed to comply with the conditions of the Permit. The Town has not completed the required compensatory mitigation, has not secured the required conservation easement, and has not provided the required monitoring reports to the Corps of Engineers. If anything, the Town's April 29, 2013 revised mitigation proposal suggests that wetland conditions at the Site have deteriorated since the Permit became effective.

27. Absent injunctive relief, the Town is likely to continue to violate the CWA, as it has for more than two years.

FIRST CLAIM FOR RELIEF

**Violations of Conditions or Limitations of a Permit
(33 U.S.C. § 1344(s))**

28. The United States repeats and re-alleges the allegations in paragraphs 1 through 27 as though set forth fully herein.

29. Since June 15, 2011, the Town has been in violation of one or more conditions or limitations of the Permit.

30. Injunctive relief is necessary to ensure that the Town complies with all conditions of the Permit.

31. The Town is also liable for civil penalties pursuant to Section 404 for violating the CWA and its implementing regulations.

SECOND CLAIM FOR RELIEF

**Unlawful Discharge of a Pollutant
(33 U.S.C. § 1311(a))**

32. The United States repeats and re-alleges the allegations in paragraphs 1 through 31 as though set forth fully herein.

33. The Town's additional illegal discharge of fill material, as described in Paragraph 19, violated, and is in violation of, Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

34. Injunctive relief is necessary to ensure that the Town refrains from further violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

PRAYER FOR RELIEF

WHEREFORE, the United States of America respectfully requests that this Court:

a) Permanently enjoin the Town from discharging pollutants into waters of the United States, unless its activities are in compliance with the CWA;

b) Compel the Town to perform all of the requirements set forth in Department of the Army Permit No. 2010-00296 by a date certain, including but not limited to the conditions or limitations that require the Town to enhance, maintain, and preserve wetlands on the Site according to a plan approved by the Corps of Engineers;

c) Order the Town to pay a civil penalty of up to \$25,000 per day for each day for each violation of the CWA and its implementing regulations;

d) Award the United States costs and disbursements in this action; and

e) Grant the United States such other relief as the Court deem just and proper.

Dated: March 18, 2014
New York, New York

PREET BHARARA
United States Attorney for the
Southern District of New York

By: 

ANDREW E. KRAUSE
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2769
Facsimile: (212) 637-2786
E-mail: andrew.krause@usdoj.gov

Of Counsel: James G. Palmer, Esq.
U.S. Army Corps of Engineers
New York District
Room 1837, 26 Federal Plaza
New York, NY 10278-0090
Telephone (917) 790-8156
Facsimile: (212) 264-8171
E-mail: james.g.palmer@usace.army.mil