



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

SEP 11 2007

Ref: 8ENF-W-NP

**CERTIFIED MAIL 7003 1350 0001 5667 6733**  
**RETURN RECEIPT REQUESTED**

The Corporation Company  
Registered Agent for Hunt Building Company, Ltd.  
1675 Broadway St., Suite 1200  
Denver, CO 80202

Notice of Proposed Assessment of Civil Penalty  
Permit No. COR10BK8F

Dear Registered Agent:

Enclosed is a document entitled Penalty Complaint and Notice of Opportunity for Hearing ("Complaint"). The United States Environmental Protection Agency ("EPA") is issuing this Complaint against Hunt Building Company, Ltd. ("Respondent") for the Buckley Housing Project pursuant to section 309 of the Clean Water Act ("Act"), 33 U.S.C. § 1319. In the Complaint, EPA alleges that Respondent violated sections 301(a) and 402(p) of the Act, 33 U.S.C. §§ 1311(a) and 1342(p) and the storm water requirements specified in EPA permit No. COR10BK8F. The Complaint proposes that a penalty of \$73,000 be assessed against Respondent for these violations.

You have the right to a hearing to contest the factual allegations in the Complaint or the appropriateness of the proposed penalty. We have enclosed a copy of 40 C.F.R. part 22, which identifies the procedures EPA follows in administrative civil penalty assessments.

**If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file an answer within thirty (30) days of your receipt of the enclosed Complaint to the EPA Region 8 Hearing Clerk at the following address:**

Regional Hearing Clerk (8RC)  
U.S. EPA, Region VIII  
1595 Wynkoop St.  
Denver, Colorado 80202-1129

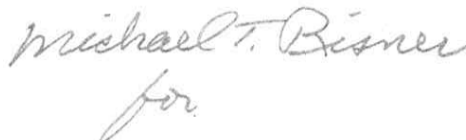
If you do not file an answer within 30 days [see 40 C.F.R. § 22.15(d)], you may be found in default. A default judgment may impose the full penalty proposed in the Complaint of \$73,000.

EPA encourages settlement of these proceedings at any time prior to a formal hearing if the settlement is consistent with the provisions and objectives of the Act and applicable regulations (See 40 C.F.R. § 22.18). If a mutually satisfactory settlement can be reached, it will be formalized in a consent agreement signed by you and the delegated authority for EPA. Upon final approval of the consent agreement by the Regional Judicial Officer, Respondent will be bound by the terms of the consent agreement and will waive its right to a hearing on, and judicial appeal of, the agreed upon civil penalty. You have the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA.

A Small Business Regulatory Enforcement and Fairness Act (SBREFA) information sheet, containing information on compliance assistance resources and tools available to small businesses, is enclosed with this letter. SBREFA does not eliminate your responsibility to comply with the Act and respond to this Complaint.

If you have any questions regarding this letter, the enclosed Complaint, or any other matters pertinent to compliance with the Act, the most knowledgeable people on my staff regarding these matters are Amy Clark, Environmental Scientist, at (303) 312-7014 or Lorraine Ross, Enforcement Attorney, at (303) 312-6888. If you are represented by an attorney, or to request a settlement conference, please call Lorraine Ross. Please note that arranging for a settlement meeting does not relieve you of the need to file a timely answer to EPA's Complaint.

Sincerely,



for  
Eddie A. Sierra  
Deputy Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures:

1. Penalty Complaint and Notice of Opportunity for Hearing
2. Consolidated Rules of Practice (40 C.F.R. Part 22)
3. Small Business Regulatory Enforcement and Fairness Act Information

cc: Tina Artemis, Regional Hearing Clerk  
Jade L. Wade, Environmental Flight Chief, Buckley AFB  
Steve Stark, HQ AFCEE/HDP  
Jeff Cole, Project Manager, Hunt Building Company, Ltd.  
Tom Gore, Acting Erosion Control Coordinator, City of Aurora  
James Martin, Executive Director, Colorado Department of Public Health and  
Environment

1 UNITED STATES  
2 ENVIRONMENTAL PROTECTION AGENCY  
3 REGION 8

2007 SEP 11 PM 1:48

4  
5 Docket No. CWA-08-2007-0020 )  
6 In the Matter of: )  
7 )  
8 Hunt Building Company, Ltd., )  
9 a Texas corporation, )  
10 )  
11 Respondent. )

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**PENALTY COMPLAINT AND NOTICE OF  
OPPORTUNITY FOR HEARING**

**INTRODUCTION**

1. This civil administrative enforcement action is authorized by Congress in section 309(g) of the Federal Water Pollution Control Act, commonly known as the Clean Water Act (the "CWA" or "Act"), 33 U.S.C. §1319(g). The rules for this proceeding are 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 ("Rules of Practice)," 40 C.F.R. (Code of Federal Regulations) part 22, relevant portions of which are attached.
2. The undersigned EPA official has been properly delegated the authority to issue this complaint.
3. Because the Respondent Hunt Building Company, Ltd. ("Respondent") has violated the Act and its implementing regulations, EPA proposes to assess a civil penalty, as more fully described below.

**NOTICE OF OPPORTUNITY FOR A HEARING**

4. Respondent has the right to a public hearing before an administrative law judge to disagree with any allegation EPA has made in this complaint and/or the appropriateness of the penalty EPA has proposed.
5. To assert its right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk of EPA Region 8 (1595 Wynkoop Street, Mail Code 8RC, Denver, Colorado 80202) within 30 days of receiving this complaint. The answer must clearly admit, deny or explain the factual allegations of the complaint, the grounds for any defense, the facts Respondent disputes, and its request for a public hearing. Please see section 22.15 of the Rules of Practice for more information on what must be in the answer. **FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE**

1 WITH THE ALLEGATIONS AND/OR PROPOSED PENALTY. IT MAY ALSO  
2 RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE FULL  
3 PENALTY PROPOSED IN THE COMPLAINT OR THE MAXIMUM PENALTY  
4 AUTHORIZED BY THE ACT.  
5

### 6 QUICK RESOLUTION

7

- 8 6. Respondent may resolve this proceeding at any time by paying the penalty amount  
9 proposed in this complaint. Such payment need not contain any response to, or admission  
10 of, the allegations in this complaint. Such payment waives Respondent's right to contest  
11 the allegations and to appeal any final order resulting from this complaint. See section  
12 22.18 of the Rules of Practice for more explanation of the quick resolution process.  
13

### 14 SETTLEMENT NEGOTIATIONS

15

- 16 7. EPA encourages informal settlement conferences. If Respondent wishes to pursue the  
17 possibility of settling this matter, or has any other questions, Respondent should contact  
18 Lorraine Ross, Enforcement Attorney, by telephone at 1-800-227-8917; extension 6888  
19 or 303-312-6888, or by mail at the address below. **Please note that contacting this**  
20 **attorney or requesting a settlement conference does NOT delay the running of the**  
21 **30-day period for filing an answer and requesting a hearing.**  
22

### 23 GENERAL ALLEGATIONS

24

25 The following general allegations apply to all times relevant to this action and to each  
26 count of this complaint:  
27

- 28 8. In order to restore and maintain the integrity of the nation's water, section 301(a) of the  
29 Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into  
30 navigable waters, unless authorized by certain other provisions of the Act, including  
31 section 402, 33 U.S.C. §1342.  
32
- 33 9. Section 402 of the Act, 33 U.S.C. § 1342, establishes a National Pollutant Discharge  
34 Elimination System (NPDES) program, under which EPA and, upon receiving  
35 authorization from EPA, states may permit discharges into navigable waters, subject to  
36 specific terms and conditions.  
37
- 38 10. Section 402(p) of the Act, 33 U.S.C. § 1342(p), requires that any discharge of storm  
39 water associated with an industrial activity must comply with the requirements of an  
40 NPDES permit.  
41
- 42 11. As directed by section 402(p) of the Act, 33 U.S.C. § 1342(p), EPA has issued  
43 regulations that further define requirements for NPDES permits for storm water  
44 discharges. The regulations include those codified at 40 C.F.R. part 122.26.

- 1  
2 12. EPA's regulations define discharges associated with industrial activity to include  
3 construction activity, with exceptions not relevant here for some sites that disturb less  
4 than five acres. 40 C.F.R. § 122.26(b)(14)(x).  
5  
6 13. EPA's regulations require each person who discharges storm water associated with  
7 construction activity to obtain coverage under either an individual permit or a  
8 promulgated general permit. 40 C.F.R. § 122.26(c).  
9  
10 14. Respondent is a Texas corporation and is doing business in the State of Colorado.  
11  
12 15. EPA retains NPDES program implementation on all federal lands in Colorado. The  
13 Buckley Air Force Base is on federal land.  
14  
15 16. Effective July 1, 2003, EPA issued a general NPDES permit authorizing discharges of  
16 storm water associated with construction activities, if done in compliance with the  
17 conditions of the permit. Permit no. COR1000F ("Permit").  
18  
19 17. Respondent is a "person" as that term is defined in section 502(5) of the Act, 33 U.S.C. §  
20 1362(5), and 40 C.F.R. § 122.2.  
21  
22 18. As a "person," Respondent is subject to the requirements of the Act and 40 C.F.R. part  
23 122.  
24  
25 19. Respondent owns and/or has been engaged in construction activities at a facility known as  
26 the Buckley Housing Project, which is located at 44 North Airport Blvd., Buckley Air  
27 Force Base, Colorado, 80011.  
28  
29 20. At its facility, Respondent's construction activities have disturbed over five acres.  
30  
31 21. The runoff and drainage from Respondent's facility is "storm water" as defined in 40  
32 C.F.R. § 122.26(b)(13).  
33  
34 22. Storm water contains "pollutants" as defined by section 502(6) of the Act, 33 U.S.C. §  
35 1362(6).  
36  
37 23. Storm water, snow melt, surface drainage and runoff water has been leaving  
38 Respondent's facility and flows into the City of Aurora's municipal separate storm sewer  
39 system ("MS4"), Buckley MS4, or directly to East Toll Gate Creek.  
40  
41 24. The City of Aurora's MS4 located at the Buckley Housing Project construction site  
42 ultimately discharges by gravity flow to Granby Ditch. Granby Ditch flows to an un-  
43 named man-made reservoir near the intersection of 6<sup>th</sup> Avenue and Buckley Road/Airport  
44 Boulevard. The reservoir ultimately discharges to East Toll Gate Creek. The Buckley

1 MS4 located at the Buckley Housing Project construction site discharges to East Toll  
2 Gate Creek. East Toll Gate Creek flows to Toll Gate Creek, Toll Gate Creek flows to  
3 Sand Creek, and Sand Creek flows to the South Platte River.  
4

- 5 25. The East Toll Gate Creek is considered a relatively permanent waters and is therefore a  
6 “waters of the United States,” as defined by and 40 C.F.R. § 122.2.  
7
- 8 26. The storm water runoff from Respondent’s facility is the “discharge of a pollutant” as  
9 defined by section 502(12) of the Act, 33 U.S.C. § 1362(12) and 40 C.F.R. § 122.2.  
10
- 11 27. Respondent’s construction activity at its facility is a “point source” as that term is defined  
12 in section 502(14) of the Act, 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2.  
13
- 14 28. Construction activities disturbing over five acres began at Respondent’s facility in April  
15 of 2005.  
16
- 17 29. On August 10, 2006 and March 19 and 22, 2007, authorized EPA employees entered  
18 Respondent’s facility and, with the consent of Respondent, inspected the facility for  
19 compliance with the Act and EPA’s regulations.  
20
- 21 30. On March 31, 2006, April 25, 2006, June 30, 2006, January 10, 2007, February 20, 2007,  
22 March 5, 2007, and June 11, 2007, City of Aurora employees entered Respondent’s  
23 facility and inspected the facility.  
24
- 25 31. Section 301 of the Act and the storm water regulations at 40 C.F.R. § 122.26 require that  
26 a stormwater permit be obtained for construction activity including clearing, grading and  
27 excavation disturbing at least five acres. Respondent is covered under the EPA general  
28 construction permit and subject to its terms and conditions.  
29
- 30 32. Pursuant to section 309(g) of the Act, 33 U.S.C. §1319(g), EPA has consulted with James  
31 Martin, Executive Director, Colorado Department of Public Health and Environment,  
32 regarding assessment of this administrative penalty by furnishing a copy of this complaint  
33 and inviting him to comment on behalf of the State of Colorado.  
34

35 **COUNT 1**  
36

- 37 33. Respondent failed to conduct inspections as required by the Permit. Inspections are  
38 required to be conducted every 7 days per the Permit and Respondent’s Storm Water  
39 Pollution Prevention Plan (SWPPP). Respondent failed to inspect 28 times within 7 days  
40 during June 2005 through April 2007.  
41
- 42 34. Respondent’s failure to conduct inspections as required by the Permit is in violation of  
43 the Permit and therefore constitutes violations of the Act. 33 U.S.C. §§ 1319 and  
44 1342(p).

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**COUNT 2**

35. At the time of EPA inspections, Respondent's SWPPP did not contain the following required components: proper identification of the responsible person, total area of soil disturbance, best management practices ("BMPs") being implemented and an updated sequence of activities. The Permit requires Respondent's SWPPP to contain these components.
36. Respondent's failure to develop a complete SWPPP as required by the Permit constitutes violations of the Act. 33 U.S.C. § 1319, § 1342.

**COUNT 3**

37. The Permit requires Respondent to implement BMPs in order to minimize the impact of Respondent's construction activities on waters of the U.S. At the time of EPA and City of Aurora inspections, the following BMPs were not in place or were not being maintained: BMPs for erosion and/or sediment controls on slopes and banks, silt fencing, culvert protection, inlet protection, outlet protection, vehicle track out pad, and good housekeeping.
38. Respondent's failure to implement BMPs as required by the Permit constitutes violations of the Act. 33 U.S.C. § 1319, § 1342(p).

**PROPOSED CIVIL PENALTY**

39. Section 309(g) of the Act, 33 U.S.C. § 1319(g), as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 and 40 C.F.R. parts 19 and 27, authorizes the EPA to assess a civil penalty of up to \$27,500 per day, for each violation of the Act occurring after January 30, 1997 and prior to March 15, 2004, and \$32,500 for each violation occurring on or after March 15, 2004. Section 309(g)(3) of the Act requires EPA to take into account the following factors in assessing a civil penalty: the nature, circumstances, extent and gravity of the violation(s) and, with respect to the violator, ability to pay, any prior history of such violations, degree of culpability, any economic benefit or savings gained from the violation, and such other factors that justice may require.
40. In light of the statutory factors and the specific facts of this case, EPA proposes that a penalty of \$73,000 be assessed against Respondent for the violations alleged above, as explained below:

Nature, Circumstances, Extent, and Gravity of Violations

Respondent began construction at the facility in April of 2005. The EPA inspections conducted on August 10, 2006 and March 19 and 22, 2007 found that the SWPPP did not adequately describe the BMPs that would be implemented at the site. The SWPPP did not



1 contain all the required information as outlined in the permit including proper identification of  
2 the responsible person, total area of soil disturbance, BMPs being implemented and an updated  
3 sequence of activities. The EPA and City of Aurora inspections revealed the following BMPs  
4 were not in place or were not being maintained: BMPs for erosion and/or sediment controls on  
5 slopes and banks, silt fencing, culvert protection, inlet protection, outlet protection, vehicle track  
6 out pad, and good housekeeping. The lack of BMPs resulted in sediment loading into the  
7 detention ponds that discharge to East Toll Gate Creek and the Aurora MS4. Sediment was also  
8 observed on Buckley Road/Airport Boulevard. The EPA inspections also found that storm water  
9 inspections have not been conducted by the facility as required by the permit.

#### 10 11 Prior Compliance History

12  
13 This Complaint is the first enforcement action EPA Region 8 has issued to Respondent  
14 requiring compliance with the applicable storm water regulations.

#### 15 16 Degree of Culpability

17  
18 Respondent has a copy of the storm water permit, and should have been aware of all the  
19 requirements therein. During multiple inspections by EPA and City of Aurora, Respondent was  
20 provided information on compliance concerns and permit requirements. However, violations  
21 continued at the site.

#### 22 23 Economic Benefit

24  
25 Respondent received an economic benefit from its failure to comply with the storm water  
26 discharge permit. Specifically, Respondent benefited by not spending the required funds to  
27 install and maintain the necessary BMPs (storm drain inlet protection, sediment and erosion  
28 control, vehicle track out pad), conduct the required inspections, and to develop a complete  
29 SWPPP. EPA may seek additional information regarding this factor.

#### 30 31 Ability to Pay

32  
33 **EPA did not reduce the proposed penalty due to this factor, but will consider any**  
34 **new information the Respondent may present regarding Respondent's ability to pay the**  
35 **penalty proposed in this complaint.**

#### 36 37 Other Matters that Justice may Require

38  
39 EPA is making no adjustments regarding these factors at this time.

40  
41 41. As required by section 309(g)(4) of the Act, 33 U.S.C. §1319(g)(4), prior to assessing a  
42 civil penalty, EPA will provide public notice of the proposed penalty and a reasonable  
43 opportunity for the public to comment on the matter and, if a hearing is held, to be heard  
44 and present evidence.

1  
2 42. If there is a hearing on this matter, it would be before an administrative law judge (ALJ),  
3 who will be responsible for deciding whether EPA's proposed penalty is appropriate.  
4 The ALJ is not bound by the penalty proposed by EPA and may assess a penalty above  
5 the proposed amount, up to the \$32,500 per day per violation authorized by the Act.  
6 To discuss settlement or ask any questions about this case or process, the Respondent  
7 should contact Lorraine Ross, Enforcement Attorney, by telephoning 303-312-6888,  
8 or by writing to the address below.  
9

10 United States Environmental Protection Agency  
11 Region 8, Office of Enforcement, Compliance and  
12 Environmental Justice, Complainant  
13 1595 Wynkoop Street (ENF-L)  
14 Denver, CO 80202  
15

16  
17  
18 Date: 9/6/07

19 By: Michael T. Bisner  
for Eddie A. Sierra  
20 Deputy Assistant Regional Administrator  
21  
22  
23  
24  
25  
26

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by certified mail, return receipt requested, a copy of the foregoing PENALTY COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING, and a copy of the Consolidated Rules of Practices Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, to:

The Corporation Company  
Registered Agent for Hunt Building Company, Ltd.  
1675 Broadway St., Suite 1200  
Denver, CO 80202

Certified Return Receipt No. 7004 1350 0001 5667 6733

I further certify that on the same date below I sent by certified mail, return receipt requested, a copy of this document to:

James B. Martin  
Colorado Department of Public Health and Environment  
4300 Cherry Creek Drive South  
Denver, CO 80246-1530

Certified Return Receipt No. 7005 1820 0005 4856 5266

The original and one copy were hand-delivered to:

Tina Artemis  
Regional Hearing Clerk  
U.S. Environmental Protection Agency (8RC)  
1595 Wynkoop Street  
Denver, CO 80202-1129

Date: 9/11/07 Judith M. Mc Ternan