

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION VII
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

FEB 24 PM 12:48

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
Brainstorm Development Group LLC)
1110 Washington Ave.)
Allentown, PA 18103)
)
Respondent)
)
Proceedings under Section 309(a) of the)
Clean Water Act, 33 U.S.C. § 1319(a))

Docket No. CWA-07-2009-0089
CONSENT AGREEMENT AND
FINAL ORDER

I. PRELIMINARY STATEMENT

This proceeding was initiated on or about July 22, 2009, when the United States Environmental Protection Agency, Region VII (“Complainant” or “EPA”) issued a Complaint and Notice of Opportunity for Hearing to Brainstorm Development Group LLC (“Respondent”). Pursuant to Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g), the Complainant sought civil penalties for alleged violations of Section 301 of the CWA, 33 U.S.C. § 1311, and a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, and regulations promulgated thereunder. The Complaint alleged violations of the CWA at Respondent’s Lauren’s Bay Villas subdivision in Topeka, Kansas. Respondent has not filed an Answer to the Complaint.

The Complainant and Respondent entered into negotiations concerning the Respondent’s ability to pay the penalty proposed in the Complaint. This Consent Agreement and Final Order is the result of such negotiations and resolves all issues relating to the civil administrative claims arising from the allegations in the Complaint.

II. CONSENT AGREEMENT

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.

2. For purposes of this proceeding, Respondent admits the jurisdiction of EPA in this matter and agrees not to contest EPA’s jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement and the Final Order set forth below.

3. Respondent neither admits nor denies the factual allegations set forth in the Complaint.
4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth in the Complaint, and its right to appeal the proposed Final Order portion of this Consent Agreement and Final Order.
5. Respondent and Complainant agree to conciliate the matters set forth in the Complaint without the necessity of a formal hearing and to bear their respective costs and attorney's fees.
6. This Consent Agreement and Final Order resolves all civil administrative claims for the alleged CWA violations identified in the Complaint. Complainant reserves the right to take enforcement action against Respondent for any violations of CWA, or any violation of any other applicable law, not alleged in the Complaint and to enforce the terms and conditions of this Consent Agreement and Final Order.
7. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.
8. Respondent certifies by the signing of this Consent Agreement and Final Order that it is in compliance with the requirements of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311, and 1342.
9. The effect of settlement described in Paragraph 6 above is conditioned upon the accuracy of Respondent's representations to EPA, as memorialized in Paragraph 8 above, and the accuracy of the financial documentation Respondent provided Complainant to demonstrate its inability to pay a penalty.
10. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.
11. This Consent Agreement and Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.
12. EPA has considered the appropriateness of the penalty pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and has determined that the appropriate penalty for the violations set forth in the Complaint is \$36,895. However, Respondent has demonstrated that it is unable to pay any penalty in this matter. Pursuant to the requirement in Section 309(g) that EPA consider a Respondent's ability to pay the penalty and through this Consent Agreement and Final Order, Complainant conditionally agrees to resolve the claims alleged in the Complaint for ZERO DOLLARS.



For the Respondent:

8/31/11
Date

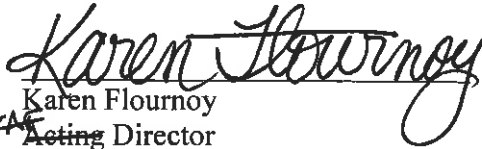


Eugene Jani, President
Brainstorm Development Group LLC


For the Complainant:

The United States Environmental Protection Agency:

2-23-12
Date


Karen Flournoy
KAF Acting Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101

2/27/12
Date



Jonathan W. Meyer
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101

FINAL ORDER

The foregoing Consent Agreement is hereby approved and ratified pursuant to 40 C.F.R.
§ 22.18(b)(3).

IT IS SO ORDERED.

Feb. 24, 2012
Date



Robert Patrick
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 7

ESP

IN THE MATTER OF Brainstorm Development Group LLC, Respondent
Docket No. CWA-07-2009-0089

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Jonathan W. Meyer
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Eugene Jani, President
Brainstorm Development Group LLC
1110 Washington Avenue
Allentown, Pennsylvania 18103

Dated: 2/24/12


Kathy Robinson
Hearing Clerk, Region 7