



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2010 JUN -3 PM 12: 54

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2009-0023

IN THE MATTER OF:)	
)	
VALLEY REALTY, INC.)	FINAL ORDER
)	
RESPONDENT)	

Pursuant to 40 C.F.R. §22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondent of this Consent Agreement and Final Order.

SO ORDERED THIS 3rd DAY OF June, 2010.

Elyana R. Sutin
Regional Judicial Officer

2010 JUN -2 PM 2:35

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF)
)
)
Valley Realty, Inc.,)
)
)
Respondent)
)
Proceeding under § 309(g))
of the Clean Water Act,)
33 U.S.C. § 1319(g))
_____)

) Docket No. CWA-08-2009-0023

) **CONSENT AGREEMENT**

Complainant United States Environmental Protection Agency, Region 8 (EPA) and
Valley Realty, Inc. (Respondent) hereby consent and agree as follows:

1. On July 31, 2009, EPA issued an Administrative Penalty Complaint (complaint) alleging that the Respondent violated §§ 301(a), 308, and 402(p) of the Clean Water Act (the Act), 33 U.S.C. §§ 1311(a), 1318, and 1342(p), and 40 C.F.R. §§ 122.21(c) and 122.26(c). The complaint proposed that the Respondent pay an administrative civil penalty for those violations, pursuant to § 309(g) of the Act, 33 U.S.C. §1319(g).

2. The Respondent admits the jurisdictional allegations of the complaint and neither admits nor denies the specific factual allegations of the complaint. The Respondent does not admit to any violations of the Act or EPA regulations or to any wrongdoing.

3. The Respondent waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in the complaint or in this consent agreement.

4. This consent agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent and Respondent's successors and assigns. Any change in the ownership or operation of the site at issue, including, but not limited to, any transfer of assets or real or personal property, shall not alter the Respondent's responsibilities under this agreement. This consent agreement contains all terms of the settlement agreed to by the parties.

5. The Respondent consents and agrees to pay a civil penalty in the amount of twenty-four thousand and five hundred dollars (\$24,500.00) in the manner described below:

- a. Payment shall be made in a single installment due no later than thirty calendar days from the date of the final order, issued by the Regional Judicial Officer, that adopts this consent agreement. If the due date for the payment falls on a weekend or legal federal holiday, then the due date is the next business day. The date payment is made is considered to be the date processed by U.S. Bank, described below. Payment must be received by 11:00 AM Eastern Standard Time to be considered received that day.
- b. Payment shall be made by remitting a cashier's or certified check, or making a wire transfer or on-line payment, including the name and docket number of this case, for the amount stated in part "a," above, payable to "Treasurer, United States of America," as follows:

If sent by regular U.S. mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Valley Realty, Inc.
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Consent Agreement

If sent by any overnight commercial carrier:

U.S. Bank
Government Lockbox 979077
U.S. E.P.A. Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

If sent by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA: 021030004 / Account Number: 68010727

Payment may also be made on-line by accessing "www.pay.gov," searching for "sfo 1.1," and completing the required fields.

A copy of the check (or notification of wire transfer or on-line payment) shall be sent simultaneously to:

Elizabeth Fagen
Enforcement Officer
Water Enforcement Program (8ENF-W-NP)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

and

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

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (i.e., on the 1st late day, 30 days of interest will have accrued).

- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the due date of any payment, and for each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
- e. The Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

6. Nothing in this consent agreement shall relieve the Respondent of the duty to comply with the Act and its implementing regulations.

7. Any failure by the Respondent to comply with any of the terms of this consent agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this consent agreement and for such other relief as may be appropriate.

8. Nothing in this consent agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of the Respondent's failure to perform pursuant to the terms of this consent agreement.

9. The parties agree to submit this consent agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.


10. Each party shall bear its own costs and attorney fees in this matter.

Valley Realty, Inc.
Docket No. CWA-08-2009-0023
Consent Agreement

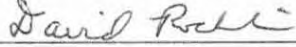
11. This consent agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the complaint.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant

Date: 6/1/10

By: 
Darcy O'Connor, Acting Director
Water Enforcement Program
Office of Enforcement,
Compliance and Environmental Justice
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Date: June 2, 2010

By: 
Michael T. Risner, Director
David Rochlin, Supervisory Enforcement Attorney
Legal Enforcement Program
Office of Enforcement,
Compliance and Environmental Justice
U.S. EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

VALLEY REALTY, INC.
Respondent

Date: 5-20-10

By: 
Jim Knutson
Vice President

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **VALLEY REALTY, INC.; DOCKET NO.: CWA-08-2009-0023**. The **CONSENT AGREEMENT** was filed with the Regional Hearing Clerk on June 2, 2010, the **FINAL ORDER** was filed with the Regional Hearing Clerk on June 3, 2010.

Further, the undersigned certifies that a true and correct copy of the documents were delivered Margaret "Peggy" Livingston, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested and e-mail on June 3, 2010:

Tami L. Norgard, Esq.
Vogel Law Firm
218 NP Avenue
P. O. Box 1389
Fargo, ND 58107-1389
tnorgard@vogellaw.com

and e-mailed to:

Honorable Barbara A. Gunning
Administrative Law Judge (1900L)
U. S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Elizabeth Whitsel
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

June 3, 2010



Tina Artemis
Paralegal/Regional Hearing Clerk