

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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FILED  
EPA REGION VIII  
HEARING CLERK

IN THE MATTER OF: )

Knife River Corporation - North Central )  
5654 134<sup>th</sup> Avenue Northwest )  
Williston, North Dakota 58801 )

Respondent. )

Docket No. **CWA-08-2015-0023**

**COMBINED COMPLAINT AND  
CONSENT AGREEMENT**

The U.S. Environmental Protection Agency, Region 8 (EPA), and Knife River Corporation - North Central (Respondent), by their undersigned representatives, hereby consent and agree as follows:

**I. AUTHORITY**

1. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. This Combined Complaint and Consent Agreement (CCCA) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and is executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. EPA has jurisdiction over this matter pursuant to section 309(g)(1)(A) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(1)(A).

**II. PARTIES BOUND**

3. This CCCA, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, agents, successors and assigns. Each signatory to this CCCA certifies that they are authorized to execute and legally bind the party they represent to this CCCA.

**III. STATEMENT OF THE PARTIES**

4. For the purposes of this settlement only, Respondent admits the jurisdictional allegations contained herein and neither admits nor denies EPA's specific factual allegations and legal conclusions.
5. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CCCA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701 – 706.

6. EPA asserts that settlement of this matter is in the public interest, and EPA and Respondent agree that entry of this CCCA and its incorporation into a Final Order without further litigation and without adjudication of any issue of fact or law will avoid prolonged and complicated litigation between the parties.
7. This CCCA, upon incorporation into a Final Order and full satisfaction by the parties, shall be a complete and full resolution of the Respondent's liability for federal civil penalties for the violations alleged below.

#### **IV. GENERAL ALLEGATIONS**

8. In order to restore and maintain the integrity of the Nation's waters, section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into waters of the United States unless authorized by certain other provisions of the CWA, including section 402 of the CWA, 33 U.S.C. § 1342.
9. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, under which EPA, and states with authorization from EPA, may permit discharges of pollutants into navigable waters, subject to specific terms and conditions.
10. Section 402(p)(3)(A) of the CWA, 33 U.S.C. § 1342(p)(3)(A), requires a NPDES permit for storm water discharges associated with an industrial activity to navigable waters.
11. The regulations further defining requirements for NPDES permits for storm water discharges associated with industrial activity are found at 40 C.F.R. part 122.
12. Storm water discharges associated with industrial activity subject to permitting requirements include discharges associated with construction activity that disturbs at least five acres of total land area. 40 C.F.R. § 122.26(b)(14)(x).
13. Dischargers of storm water associated with industrial activity must either apply for an individual permit or seek coverage under an existing and lawful general permit. 40 C.F.R. § 122.26(c).
14. The North Dakota Department of Health (NDDH) is the state agency authorized to administer the federal NPDES program in North Dakota. The EPA maintains concurrent enforcement authority with delegated states for violations of the CWA or of any permit condition or limitation implementing the CWA. 33 U.S.C. § 1342(i).
15. The NDDH issued a general permit for the discharge of storm water under the NPDES, Permit No. NDR10-0000 (NDDH General Permit). The NDDH General Permit became effective October 12, 2009; expired September 30, 2014; remained effective under an administrative extension past the expiration date with all conditions remaining in effect until a new permit was issued; and was then

re-issued with an effective date of April 1, 2015. *See* North Dakota Department of Health Storm Water Construction, at <http://www.ndhealth.gov/WQ/Storm/Construction/ConstructionHome.htm>. The NDDH General Permit can authorize storm water discharges associated with construction or land disturbance activity (e.g., clearing, grubbing, excavating, grading, and other activity that results in the destruction of the root zone), if done in compliance with its terms and conditions. Dischargers may apply for authorization to discharge under the NDDH General Permit by submitting a notice of intent (NOI) for coverage to NDDH.

16. The NDDH General Permit requires, among other things, that dischargers develop and implement an adequate storm water pollution prevention plan (SWPP plan), conduct regular storm water site inspections, and implement best management practices (BMPs). BMPs include structural controls (such as storm drain inlet protection) and management practices (such as minimizing any off-site pollutant discharges).

## **V. SPECIFIC ALLEGATIONS**

17. Respondent is a corporation organized under the laws of the State of Minnesota and authorized to do business in the State of North Dakota. Respondent's principal office is located in Sauk Rapids, Minnesota.
18. Respondent is a "person" within the meaning of section 502(5) of the CWA and is therefore, subject to the requirements of the CWA and its implementing regulations. 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
19. Respondent was, at all times relevant to this CCCA, engaged in construction activities at a site known as the US HWY 85 Watford City Bypass SOIA-7-085(072)138 in Watford City, North Dakota (the Site).
20. The Site encompasses approximately 220 acres of total land area, approximately 180 acres of which have been disturbed.
21. Storm water runoff, snow melt runoff, surface runoff, and/or drainage water have left the Site and have flowed into Cherry Creek and Spring Creek. Spring Creek flows to Cherry Creek which in turn flows into the Little Missouri River. The runoff and drainage from the Site are "storm water" as defined by EPA regulations. 40 C.F.R. § 122.26(b)(13).
22. Cherry Creek, Spring Creek and the Little Missouri River are "waters of the United States, within the meaning of 40 C.F.R. § 122.2 and therefore, are "navigable waters" within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7).

23. Respondent engaged in construction activities at the Site at all times relevant to this action and Respondent, therefore, is or was engaged in an “industrial activity” as defined at 40 C.F.R. § 122.26(b)(14).
24. Storm water contains “pollutants” as defined by section 502(6) of the CWA, 33 U.S.C. § 1362(6).
25. Each storm water discharge from the Site is a discharge from a “point source” as that term is defined in section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.
26. Each storm water discharge from the Site is “discharge of a pollutant” as defined by section 502(12) of the CWA, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2.

## **VI. DESCRIPTION OF ALLEGED VIOLATIONS**

27. An authorized EPA employee entered the Site with the consent of Respondent on July 15, 2014, to inspect it for compliance with the CWA, NDDH General Permit, and EPA regulations (Inspection).
28. Part II.C, Part I.A.3 and Part II.C.1.f.7 of the 2009 – 2015 NDDH General Permit requires the development of a SWPP plan for the concrete/asphalt batch plants and specifies information that must be included in the SWPP plan. Part II.C.7.c of the 2009 – 2015 NDDH General Permit states that “[t]he permittee shall amend the SWPP plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to waters of the state. The plan shall also be amended if the plan is found to be ineffective in controlling pollutants present in stormwater.”
29. As of the date of the Inspection, Respondent failed to develop a SWPP plan and site map for a concrete/asphalt batch plant at the Site.
30. Part II.C.3 of the 2009 – 2015 NDDH General Permit sets forth general requirements for minimum components of storm water BMPs, including the requirement that such controls must be properly selected, installed, and maintained in accordance with the manufacturer’s specifications and good engineering practices. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the permittee must replace or modify the control for site situations.
31. Part II.C.5 of the 2009 – 2015 NDDH General Permit requires that all erosion and sediment control measures and other protective measures identified in the plan be maintained in effective operating condition. The plan must indicate, as appropriate, the maintenance or clean out interval for sediment controls. If site inspections identify BMPs that are not operating effectively, maintenance shall be arranged and accomplished as soon as practicable.
32. At the time of the Inspection, Respondent had improperly installed and maintained some of the storm water BMPs present near Cherry Creek and Spring Creek at the Site as required by the 2009 –

2015 NDDH General Permit, which led to sediment accumulation in Cherry Creek and Spring Creek.

33. Respondent failed to comply with the conditions of the 2009 – 2015 NDDH General Permit in violation of 33 U.S.C. § 1342 of the CWA.
34. Respondent's discharge without permit authorization constitutes a violation of sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§1311(a) and 1342(p), for each day in which a discharge occurred.

## **VII. CIVIL PENALTY**

35. Pursuant to section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and after consideration of the facts of this case as they relate to the factors set forth in section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has determined that a civil penalty of twenty-three thousand eight hundred and fifty dollars (\$23,850.00) is appropriate to settle this matter.
36. Respondent consents and agrees to pay a civil penalty in the amount of twenty-three thousand eight hundred and fifty dollars (\$23,850.00) in the manner described below:
  - a. Payment shall be in a single payment of \$23,850, due no later than thirty (30) calendar days from the date of the Final Order. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
  - b. The payment shall be made by remitting a check or making a wire transfer or on-line payment. The check or other payment shall designate the name and docket number of this case, be in the amount stated in the preceding paragraph, and be payable to "Treasurer, United States of America." The payment shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. Environmental Protection Agency  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

If remitted by any overnight commercial carrier:

U.S. Environmental Protection Agency  
Government Lockbox No. 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, Missouri 63101

Contact: Craig Steffen, 513-487-2091, [steffen.craig@epa.gov](mailto:steffen.craig@epa.gov)

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

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, New York 10045  
Beneficiary: US Environmental Protection Agency

If remitted through the Automated Clearing House (ACH) for receiving U.S. currency:

U.S. Treasury REX / Cashlink ACH Receiver  
ABA: 051036706  
Account Number: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 -- checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, Maryland 20737  
Contacts: REX (Remittance Express): 866-234-5681

If remitted online with a debit card or credit card: No user name, password, or account number is necessary for this option. Online payment can be accessed via [WWW.PAY.GOV](http://WWW.PAY.GOV), entering SFO 1.1 in the form search box on the left side of the screen, opening the form, and following the directions on the screen.

Copies of the check or record of payment shall be sent to:

Emilio Llamozas  
U.S. Environmental Protection Agency (8ENF-W-NP)  
1595 Wynkoop Street  
Denver, Colorado 80202-1129

and

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

A transmittal letter identifying the case title and docket number must accompany the remittance and copies of the check.

37. If the 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 (e.g., on the 1<sup>st</sup> late day, 30 days of interest will have accrued).
38. A handling charge of fifteen dollars (\$15) shall be assessed the 31<sup>st</sup> day from the date of the Final Order, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 30 days of the due date. Payments are first applied to outstanding handling charges, second to penalty assessments, third to accrued interest, and then to the outstanding principal amount.
39. The Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

#### **VIII. PUBLIC NOTICE**

40. As required by section 309(g)(4)(A) of the CWA, 33 U.S.C. §1319(g)(4)(A), prior to requesting that the Regional Judicial Officer (RJO) issue a Final Order incorporating this Agreement and assessed penalty, EPA will provide the public notice of and reasonable opportunity to comment on the penalty agreed to herein.

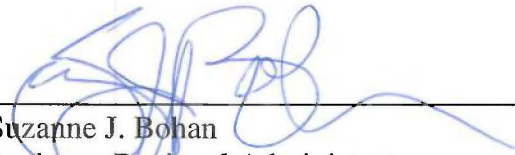
## IX. GENERAL PROVISIONS

41. This Agreement resolves Respondent's liability under the CWA arising out of the Inspection, and, except for proceedings to enforce this Agreement, EPA will not initiate further proceedings against Respondent under the CWA for matters arising out of the Inspection.
42. Nothing in this Agreement shall relieve the Respondent of the duty to comply with the CWA and any regulation, order, or permit issued pursuant to the CWA.
43. Any failure by Respondent to comply with this Agreement shall constitute a breach of this Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Agreement and such other relief as may be appropriate.
44. Nothing in this Agreement shall be construed as a waiver by 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 any failure by Respondent to comply with this Agreement.
45. The parties agree to submit this Agreement to the Regional Judicial Officer, with a request that it be incorporated into a Final Order following provision of public notice pursuant to section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4) and 40 C.F.R. § 22.45.
46. Each party shall bear its own costs and attorney's fees in connection with this matter.



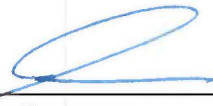
UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,  
Complainant

Date: 8/5/2015

By:   
Suzanne J. Bohan  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

KNIFE RIVER CORPORATION - NORTH CENTRAL,  
Respondent

Date: 7-31-15

By:   
Andy Cramer  
President – North Dakota Operations

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8**  
**1595 Wynkoop Street, Denver, CO 80202-1129**

**PUBLIC NOTICE AND OPPORTUNITY TO COMMENT ON CLEAN WATER ACT  
SETTLEMENT**

**Action:** The EPA is providing notice of the opportunity to comment on a proposed Combined Complaint and Consent Agreement (CCCA). The agreement relates to alleged storm water violations of the Clean Water Act (CWA) at the US HWY 85 Watford City Bypass, located in Watford City, North Dakota, which was constructed by Knife River Corporation – North Central (Knife River). The corporate address of Knife River is 5654 134<sup>th</sup> Avenue Northwest, Williston, North Dakota, 58801.

**Summary:** The EPA is authorized by section 309(g)(2) of the CWA, 33 U.S.C. § 1319(g)(2), and by 40 C.F.R. §§ 22.13(b) and 22.38, to issue an order assessing a civil administrative penalty for violations of certain CWA requirements, after providing (1) an opportunity for the person to be assessed the penalty (the Respondent) to request a hearing to contest the penalty, and (2) notification to the public of its rights to submit written comments and to participate in any hearing. The deadline for the public to submit comments is thirty (30) calendar days after issuance of this notice.

The EPA and Knife River have agreed to enter into a CCCA to resolve Knife River's alleged violations of section 301(a) of the CWA, described below. Knife River has agreed to pay a civil penalty of \$23,850.00 to resolve its civil penalty liability for these claims. Pursuant to section 309(g)(4) of the CWA, the EPA hereby notifies the public of the EPA's proposed penalty assessment.

EPA Docket Number:    **CWA-08-2015-0023**

Alleged violations: (1) Inadequate installation of best management practices (BMPs) along Cherry Creek and Spring Creek which led to sediment accumulation in Cherry Creek and Spring Creek; and (2) failure to include a concrete/asphalt batch plant for the site in the storm water pollution prevention plan and site map.

**PUBLIC COMMENTS**

Written comments on the CCCA are encouraged and will be accepted at the address listed below for a period of thirty (30) days after the publication of this notice. Written comments submitted by the public as well as information submitted by the Respondent will be available for public review, subject to the provisions of law restricting the disclosure of confidential information. Any person submitting written comments has a right to participate in a hearing, if one is held. The CCCA is available for review between 9:00 a.m. and 4:00 p.m. at the address listed below and on the internet at: <http://yosemite.epa.gov/oa/rhc/epaadmin.nsf>.

Please submit written comments to:

Tina Artemis (8RC)  
Regional Hearing Clerk  
U.S. EPA, Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1129.  
Telephone: (303) 312-6765

**FOR FURTHER INFORMATION:** Persons wishing to receive a copy of the CCCA or other documents in this proceeding (such as the regulations in 40 C.F.R. part 22, which establish procedures for the hearing), or to comment upon the proposed penalty assessment or upon any other aspect of the matter, should contact the Regional Hearing Clerk identified above. No action will be taken by the EPA to finalize a settlement in this matter until 30 days after this public notice.