



BLACK DIAMOND ENGINEERING

August 21, 2007

Michael A. Bussell, Director
Office of Compliance and Enforcement
U.S. EPA
1200 Sixth Avenue
Seattle, WA 98101

Dear Mr. Bussell,

Docket No. CWA-10-2007-0147

This letter is in response to an Administrative Complaint against my firm, Black Diamond Engineering for violations of the Clean Water Act, 33.U.S.C. – 1251 et seq.

In several letters to EPA staff we have provided numerous responses to the accusations listed in this Complaint and previous Expedited Storm Water Settlement Agreements. Some of the alleged items in the previous complaints have been deleted, based on the information that was provided by my firm.

During the initial inspection by EPA staff on October 24th, 2006, we were informed by the on site inspectors that we had a pretty clean site. They did explain that even though there was no off-site discharge, since we didn't have all the right documentation at the site, we would receive a notice of violation and could receive a slap on the wrist reprimand or small fine.

On November 13, 2006, I was originally offered an expedited Storm Water Settlement Agreement in the amount of \$3,250. As I did not believe that this settlement was a slap on the wrist or a small fine, on December 6th, 2006, we provided additional information to Kimberly Ogle of EPA, along with a check in the amount of \$750 to settle this case in an expedited manner.

On December 18th, 2006, we received a revised Settlement Agreement. Based on the correspondence and documentation that we provided this settlement amount was reduced. I still could not believe that a fine for paperwork violations would result in these stiff fines. Our site was clean and did not result in any sediment discharge off the project site.

I personally was on site almost every day, addressing progress, checking grades, coordinating survey staking, observing soil and groundwater conditions, checking delivery and storage of materials, watching weather forecasts and taking pictures. I was concerned and focused on the quality and accuracy of the work.

We are being cited for failing to properly install and maintain control measures. No sediment left the site. This was not just luck, it was carefully planned to prevent storm water pollution and it was successful. Our biggest problem was trapping the fine sediment that was oozing out with the

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groundwater from the hillside into a sediment pond. This pond was constructed to trap sediment while a French drain and storm water conveyance ditch that was being installed.

This complaint 3.33 states that silt fences at the Site were not properly maintained. I have photos documenting that the silt fences were working to trap sediment on site. The last silt fence is even free of sediment. Even after numerous requests for additional information, no one from EPA, has told me what additional erosion control measures were needed or how they were not properly installed or maintained. Again, there was no discharge.

On June 5th, I was further required to submit additional information by June 13th, for information that has already been give to EPA staff. This was for information that had been previously provided and seemed to be lost or misplaced by your staff. Then, I get a new letter that states we are now in further violation of the Clean Water Act.

It is the principle of the Clean Water Act that your complaint violates. The last paragraph of the NOI includes a paragraph about the Paperwork Reduction Act Notice, wherein this program is to reduce the use of paper, when in fact it requires reams and reams of paperwork for inspection reports, documentation, sending copies to properly implement this paperless program.

The complaint insinuates that I have somehow benefited economically from not doing the inspections, reports and by not properly installing or maintaining control measures. Once again measures were installed and maintained; and no sediment left the site. These measures were properly installed at a considerable amount of time and expense. I have in fact had to fire clients who would not construct and maintain my stormwater and erosion measures as designed to meet the EPA and DEQ standards.

The proposed penalty of \$5,000 is to reflect the determination that the alleged violations have the potential to harm human health and the environment, and is necessary to deter Respondent and others similarly situated for violating the act as well as the terms and conditions of the CGP.

As stated in my previous offers to settle this complaint, I truly believe that education of people like me and the people I work with on similar projects is the Key to a successful Clean Water Implementation Program. I had the pleasure of attending a Basic Course in Stormwater and Erosion Education Program in February of 2007.

At the beginning of the session they asked everyone who attended "why did you come to this two day course". My answer: "to help education everyone attending about the paperwork requirements of the Stormwater Pollution Prevention Program and to make sure that they understand what is required when they are the operator listed on the NOI". Without my attendance at this training program, most would still not know, as I previously did not, what these requirements entailed and that overlooking some minor paperwork could cost you several thousands of dollars and many hours of lost time.



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The sad situation is that many wasted man hours have been compiled in producing Administrative Claims, Expedited settlement offers and the many e-mails back and forth. There has been a total waste of public funds, funds that could have been used more constructively to educate rather than prosecute, especially since no sediment was transported off site, no harm to human health and no harm to our environment.

A \$5,000 fine is excessive for a paper work violation. OSHA fined a local contractor \$3,500 for the death of an employee, for not using temporary shoring during excavation for a pipeline. The cost of a human life is only worth \$3,500. Another project was allowed to discharge tons of sediment down stream; no one inspected their site, therefore, no fine.

I would like to sit down with an objective hearing officer and go through the approved plans, permits, documents, photos, time cards, invoices, e-mails and other previous correspondence so I can amiably defend my plans and actions. It is my opinion that most of the alleged in the EPA complaints can be deleted, based on this information. At this hearing I would also like to see the documentation, pictures, and other information that supports the EPA's position. Maybe we can settle this once and for all. My previous attempts have been met with the attitude "we can't do that, just pay the fine".

I look forward to a speedy and equitable resolution.

Regards,

Joel W. Petty, P.E.
Black Diamond Engineering

JWP/gp