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HEARINGS CLERK
EPA--REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

LOCALCONSTRUCT ADVISORS,
LLC, a Delaware limited liability company
and THE SHERMAN HOLLOW
PROJECT, LLC, a Delaware limited liability
company,

&

KNIFE RIVER CORP. – NORTHWEST,

Respondents.

DOCKET NO. CWA-10-2017-0079

CONSENT AGREEMENT

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (“EPA”) by Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g).

1.2. The Administrator has delegated the authority to issue the Final Order contained in Part V of this CAFO to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Regional Judicial Officer in EPA Region 10.

1.3. Pursuant to Section 309(g)(1) and (g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (g)(2)(B), and in accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues,

and LocalConstruct Advisors, LLC, The Sherman Hollow Project, LLC, and Knife River Corporation – Northwest (collectively, “Respondents”) agree to the issuance of, the Final Order attached to this Consent Agreement.

II. PRELIMINARY STATEMENT

2.1 In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), issuance of this Consent Agreement commences this proceeding, which concludes when the Final Order becomes effective.

2.2 The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”).

2.3 Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the Alleged Violations (as defined in Paragraph 3.39 below) of the CWA together with the specific provisions of the CWA and the implementing regulations that Respondents are alleged to have violated.

III. ALLEGATIONS

3.1 Respondent LocalConstruct Advisors, LLC (“LocalConstruct”) is a Delaware limited liability company registered to do business in Idaho and is a “person” as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5). Respondent The Sherman Hollow Project, LLC (“Sherman Hollow”) is a Delaware limited liability company registered to do business in Idaho and is a “person” as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.2 Respondent Knife River Corporation – Northwest (“Knife River”) is an Oregon corporation registered to do business in Idaho and is a “person” as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5). Knife River’s Idaho division is headquartered in Boise, Idaho, and specializes in site preparation, excavation, and construction activities.

3.3 The Sherman Hollow Subdivision is a nineteen home development located on West Sherman Street in Boise, Idaho 83702 (“Development”). The total footprint of the Development is approximately ten acres. The first stage of construction for the Development entailed the installation of underground utilities, access roads, sidewalks, curbs, and gutters in preparation for new residential lots. This phase of construction, which involved the disturbance of approximately three acres of the Development site, is referred to herein as the “Project.”

3.4 Stormwater runoff from the Development is designed to flow to a series of nearby siphon drains which lead into subsurface vaults that provide temporary water storage. Overflow from the siphon drains flows into the Ada County Highway District (“ACHD”) municipal stormwater sewer system, which flows into the Boise River through an outfall located at Americana Boulevard.

Statutory and Regulatory Background

3.5 The CWA prohibits the “discharge of any pollutants by any person” except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (NPDES) permit. CWA § 301(a), 33 U.S.C. § 1311(a); CWA § 402, 33 U.S.C. § 1342.

3.6 The CWA defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source” and defines “navigable waters” to include “waters of the United States.” CWA § 502(7), (12), 33 U.S.C. § 1362(7), (12).

3.7 The CWA defines a “pollutant” to include, inter alia, rock, sand, cellar dirt, biological materials, dredged spoil, and solid waste discharged into water. CWA § 502(6), 33 U.S.C. § 1362(6).

3.8 The CWA defines “point source” to include, inter alia, “any pipe, ditch, channel, tunnel, conduit, well, [or] discrete fissure . . . from which pollutants are or may be discharged.” CWA § 502(14), 33 U.S.C. § 1362(14).

3.9 Waters of the United States include waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; all interstate waters; and all impoundments or tributaries to those waters. 40 C.F.R. § 122.2.

3.10 The Boise River is a “water of the United States” as defined in 40 C.F.R. § 122.2, and is a “navigable water” pursuant to Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

3.11 Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), requires NPDES permits for discharges associated with industrial activity. Discharges of storm water associated with construction activities, including clearing or grading of at least one acre, require an NPDES permit. 33 U.S.C. § 1342(p)(3)(A); 40 C.F.R. §§ 122.26(b)(14)(x) and 122.26(b)(15).

3.12 On February 16, 2012, EPA issued a general permit for discharges from construction activities (“CGP”). Operators of construction projects subject to NPDES permitting requirements can obtain coverage under the CGP by submitting a notice of intent (“NOI”) certifying that the operator meets the permit’s eligibility requirements and that they will comply with the terms and conditions of the CGP. Prior to submission of a NOI, an operator of a construction project must develop a site-specific Stormwater Pollution Prevent Plan that describes, among other things, the nature of construction activities, the sequencing and estimated

dates of construction work, and the best management practices (“BMPs”) to control the discharge of pollutants, including erosion and sediment controls.

3.13 Section 1 of the CGP establishes permit eligibility conditions and imposes permitting requirements on project “operators.” Section 1.1.a of the CGP defines the term “operator” as (1) a party with operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or (2) a party with day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the permit). Section 1.3 describes the types of discharges authorized under the CGP. Section 1.4 of the CGP requires permittees to submit their NOI prior to commencement of construction activities.

3.14 Section 2 of the CGP imposes effluent limitations applicable to discharges from a construction site and establishes specific requirements intended to limit pollutant exposure to stormwater and to control stormwater runoff, erosion and sedimentation. Section 2.1.1.2 of the CGP requires that stormwater controls, including stabilization measures, be designed to account for the expected amount, frequency, intensity and duration of precipitation, and to account for the nature of stormwater runoff including factors such as slopes and site drainage features. Section 2.1.1.3.a of the CGP requires that stormwater controls be completed by the time project-related earth disturbance has begun. Section 2.1.1.4 of the CGP requires that all erosion and sediment controls be maintained in effective operating condition, periodically inspected, and any identified problems be repaired or necessary modifications implemented immediately after discovery. Section 2.1.2.2 of the CGP requires that sediment controls must be installed along

perimeter areas of a project site that will receive stormwater from earth disturbing activities. Section 2.1.2.3 of the CGP requires permittees to minimize track-out of sediment onto off-site streets and other paved areas from vehicles exiting project sites. Section 2.1.2.3.d. requires permittees to perform cleanup of such track-out by sweeping, shoveling, or vacuuming when it occurs.

3.15 Section 5 of the CGP provides that corrective actions include actions necessary to repair, modify or replace stormwater controls or to remedy a permit violation. If stormwater controls are damaged, Section 5.2.1 requires that repair of controls typically be completed within seven days of discovery. If stormwater controls are ineffective to properly control runoff, erosion or sedimentation, or to prevent exceedances of water quality standards, Section 5.2.1 also requires the installation and operation of new or modified stormwater controls.

3.16 Section 7 of the CGP governs the general and content-specific requirements of a site-specific Stormwater Pollution Prevent Plan. Section 7.2.6 of the CGP requires that permittees include a legible site map showing, among other things, project boundaries and the location of construction activities (7.2.6.1) as well as the locations of on-site stormwater control measures (7.2.6.8).

Factual Allegations

3.17 Respondent LocalConstruct was the administrator of the Project responsible for its fiscal management and control, including decisions regarding the quantity, quality, and acceptability of the work. Respondent The Sherman Hollow Project, LLC owns the real property on which the Project is located. Respondent Knife River was the contractor selected to

construct the Project and was responsible for the daily operations necessary to conduct the construction work at the Project.

3.18 The Project is a construction activity that disturbed approximately three acres of land and is therefore subject to NPDES permitting requirements. Respondent LocalConstruct, as owner of the Development, hired a subcontractor, Syman, LLC (“Syman”), to prepare a Stormwater Pollution Prevent Plan for the Project (“SWPPP”). The SWPPP was completed in April 2015 and amended in August 2015.

3.19 Patrick Boel, a Project Manager at LocalConstruct, is identified in the SWPPP as a member of the Project’s Stormwater Team. LocalConstruct is listed in the SWPPP as “the owner.” Section 1.2 of the SWPPP delineates the owner’s responsibilities as follows: “The owner will be in charge of project planning, managing the project and responsible for general oversight of the project and will retain operational control over construction plans and specifications, including review of the SWPPP and any amendments, inspection reports, corrective actions, and changes to [stormwater] conveyance or control designs.”

3.20 LocalConstruct submitted its NOI, certifying its intent obtain coverage under the CGP, on September 3, 2015, and coverage began on September 17, 2015. LocalConstruct was permitted under CGP permit number IDR12A183.

3.21 Mike Cole, a Project Manager at Knife River, is identified in the SWPPP as a member of the Project’s Stormwater Team. Knife River is listed in the SWPPP as “the contractor.” Section 1.2 of the SWPPP delineates the contractor’s responsibilities as follows: “The contractor will implement and oversee the SWPPP . . . [and] will implement and maintain the best management practices (BMPs) in this SWPPP, and conduct site SWPPP inspections,

training, stormwater monitoring/testing, and address stormwater over the entire site including all areas disturbed by construction activities, areas used for material storage, and discharge points.”

3.22 Knife River did not submit an NOI and did not obtain permit coverage under the CGP.

3.23 The SWPPP lists the estimated Project start date as September 1, 2015. Earth-disturbing activities began on November 2, 2015.

3.24 The Project’s first stage involved extensive site preparation prior to groundbreaking. According to Section 2.4 of the SWPPP, pre-groundbreaking site preparation included temporary BMP installation including (1) establishing construction limits, (2) perimeter controls, (3) inlet protection, and (4) the installation of a staging area and stabilized entrance to the Project site.

3.25 Section 4.2 of the SWPPP details BMPs to be installed along perimeter areas of the Project that were projected to receive stormwater from areas disturbed by construction activities. The SWPPP lists “fiber rolls” as an erosion and sediment control to be put in place at the Project. The SWPPP describes fiber rolls as BMP consisting of straw or flax bound into biodegradable tubular plastic encasing material which, when placed at the toe and the face of slopes, intercept slope runoff, reduce flow velocity, and release the runoff as sheet flow with sediment removed. The SWPPP lists “responsible staff” for fiber roll installation as Mike Cole of Knife River and Patrick Boel of LocalConstruct. The SWPPP reflects that fiber roll BMPs were to be installed prior to groundbreaking, and the SWPPP requires continued upkeep until the completion of the Project’s final stabilization phase.

3.26 Section 4.3 of the SWPPP details BMPs to be used to eliminate or control tracking of sediment from the Project site by establishing stabilized construction entrances, establishing stabilized staging areas, controlling construction traffic, and limiting construction traffic to established roadways to the extent possible. The SWPPP lists “responsible staff” for sediment track-out controls as Mike Cole of Knife River and Patrick Boel of LocalConstruct. The SWPPP requires sediment track-out BMPs to persist throughout the life of the project.

3.27 Section 4.9 of the SWPPP details “inlet protection” BMPs designed to protect storm drains from collecting discharges from initial site clearing, grading, and land disturbance. “Inlet protection” is achieved by placing filtering measures around stormwater inlets or drains to trap and prevent sediment from entering a storm drain system. The SWPPP lists “responsible staff” for inlet protection installation as Mike Cole of Knife River and Patrick Boel of LocalConstruct. The SWPPP reflects that inlet protection BMPs were to be installed prior to groundbreaking, and the SWPPP requires continued upkeep until the completion of the Project’s final stabilization phase.

3.28 Following the first week of active disturbance, the SWPPP required “pollution prevention and other good housekeeping BMPs [to] be implemented and followed” throughout the excavation, utility installation, and site grading phase of construction. Section 2.4 of the SWPPP lists the BMP’s associated with the first week of active disturbance as perimeter controls, stockpile management, track-out controls, and debris management.

3.29 Following groundbreaking on November 2, 2015, Syman conducted several weekly site inspections to determine SWPPP compliance and document stormwater issues.

3.30 On December 7, 2015, two employees of EPA's Idaho Operations Office conducted a reconnaissance inspection of the Project ("Reconnaissance Inspection").

3.31 During the Reconnaissance Inspection, the Inspector noted that there was no active construction at the Project site. The Inspector nonetheless observed two workers apparently installing a series of straw wattles (which fall under the "fiber roll" category of BMP) near the Project's primary discharge location in an attempt to intercept the runoff from the Project site. Photographs of the Project site taken by the Idaho Operation Office employee on the afternoon prior to the Reconnaissance Inspection confirm that the straw wattles were newly installed.

3.32 During the Reconnaissance Inspection, the Inspector noted that none of the prerequisite inlet protections had been installed in or around the storm drains receiving sediment-laden runoff from the Project site. The Inspector photographed the lack of inlet protections.

3.33 During the Reconnaissance Inspection, the Inspector and the employee followed turbid stormwater discharge from the Project site and observed it flowing into a "siphon drain," which is a drain that leads to a subsurface vault where stormwater is stored temporarily until the drain pumps water out. Additional water flowing into the drain from the opposite direction was relatively clear. During the rain event, the amount of stormwater runoff from the Project site flowing into the east side siphon drain caused stormwater to be forced out of the west side siphon drain. From there, the stormwater flowed two more blocks into a drop inlet, or storm drain. From the drop inlet, the turbid stormwater flowed into the ACHD municipal stormwater sewer system, where it subsequently discharged to the Boise River at the Americana Street outfall.

3.34 On December 8, 2015, the EPA Inspector contacted the LocalConstruct Project Manager, Patrick Boel, and informed him of his intent to conduct a CGP compliance evaluation and inspection that same day (“Inspection”). When the Inspector arrived at the Project site, representatives of Knife River and Syman were also present.

3.35 The Inspector began the Inspection by reviewing the SWPPP and all associated documents. He then conducted a tour of the Project site.

3.36 Upon review of the SWPPP and attached site map, the Inspector noted that a 300’ section of straw wattle had been installed along a hillside on the western perimeter of the Project site. The Inspector noted that this served only to establish construction limits on the Project’s western side, as it was situated above the Project site’s construction areas and would therefore not intercept stormwater from earth-disturbing activities.

3.37 During the Inspection, the Inspector noted that the previously-missing inlet protections had been installed since the Reconnaissance Inspection the prior day. The LocalConstruct Project Manager confirmed that those BMPs had been installed the morning of the Inspection.

3.38 The December 2, 2015 inspection report prepared by Syman documented that additional BMPs had been installed at the south corner of the site. Neither the SWPPP nor the site map reflected the addition of the additional BMPs installed at the south corner of the site.

Alleged Violations

3.39 On November 7, 2016, Respondents received from EPA a Notice of Intent to File Administrative Complaint for Violation of the CWA Opportunity to Confer Prior to Filing (“EPA Notice”). The EPA Notice attached a preliminary list of alleged violations of the CGP.

After further investigation, EPA determined some of the alleged violations in the EPA Notice were not violations of the CGP or the CWA, and EPA modified its allegations against Respondents to include only those contained in Paragraphs 3.40 through 3.57 herein (“Alleged Violations”). The Alleged Violations constitute all violations asserted against Respondents in this action.

Alleged Violation 1

(Violation of CGP Sections 1.3.a, 2.1, and 2.1.1.2.b)

3.40 Paragraphs 3.1 to 3.39 are realleged and incorporated herein by reference.

3.41 Section 1.3.a of the CGP lists the allowable discharges under the permit provided that appropriate stormwater controls are designed, installed, and maintained, as: “Stormwater discharges, including stormwater runoff, snowmelt runoff, and surface runoff and drainage, associated with construction activity under 40 CFR § 122.26(b)(14) or § 122.26(b)(15)(i).”

3.42 Section 2.1 of the CGP requires permittees to design, install, and maintain erosion and sediment controls that minimize the discharge of pollutants from earth-disturbing activities.

3.43 Section 2.1.1.2.b of the CGP requires permittees to direct stormwater discharges to vegetated areas of a project site to increase sediment removal and maximize stormwater infiltration.

3.44 The turbid stormwater runoff associated with construction activity from the Project site observed by the Inspector and the EPA Idaho Operations Office employee during the Reconnaissance Inspection is a controlled discharge under the CGP.

3.45 Respondents violated Sections 1.3.a, 2.1, and 2.1.1.2.b of the CGP on December 7, 2015, by discharging turbid stormwater runoff associated with construction activity from the

Project site without first installing appropriate stormwater controls. Violations of Section 1.3.a, 2.1, and 2.1.1.2.b are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Alleged Violation 2

(Violation of Section 1.1 and 1.4 of the CGP)

3.46 Paragraphs 3.1 to 3.39 are realleged and incorporated herein by reference.

3.47 Part 1.4 of the CGP states, “To be covered under this permit, you must submit to EPA a complete and accurate NOI prior to commencing construction activities. The NOI certifies to EPA that you are eligible for coverage according to Part 1.1 and 1.2, and provides information on your construction operation and discharge.” Part 1.4 of the CGP also notes that “All ‘operators’ associated with your construction project, who meet the Part 1.1 eligibility requirements, and who elect to seek coverage under this permit, are required to submit an NOI.”

3.48 Respondents violated Section 1.4 of the CGP by failing to submit a NOI and failing to obtain permit coverage for all operators. Violations of Section 1.4 of the CGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Alleged Violation 3

(Violation of Section 2.1.1.3.a of the CGP)

3.49 Paragraphs 3.1 to 3.39 are realleged and incorporated herein by reference.

3.50 Section 2.1.1.3.a of the CGP requires permittees to “[c]omplete installation of stormwater controls by the time each phase of earth-disturbance has begun, unless infeasible. By the time earth-disturbing activities in any given portion of your site have begun, unless infeasible, you must install and make operational any downgradient sediment controls (e.g., buffers or equivalent sediment controls, perimeter controls, exit point controls, storm drain inlet

protection) that control discharges from the initial site clearing, grading, excavating, and other land-disturbing activities.”

3.51 Respondents violated Section 2.1.1.3 of the CGP by failing to install inlet protections prior to commencing earth-disturbing activities. Violations of Section 2.1.1.3 of the CGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Alleged Violation 4

(Violation of Sections 2.1.1.3 and 2.1.2.2.a of the CGP)

3.52 Paragraphs 3.1 to 3.39 and 3.49 to 3.50 are realleged and incorporated herein by reference.

3.53 Section 2.1.2.2.a of the CGP requires permittees to “install sediment controls along those perimeter areas of your site that will receive stormwater from earth-disturbing activities. For linear projects with rights-of-way that restrict or prevent the use of such perimeter controls, you must maximize the use of these controls where practicable and document in your SWPPP why it is impracticable in other areas of the project.”

3.54 Respondents violated Section 2.1.1.3 and 2.1.2.2 of the CGP by failing to install perimeter controls prior to commencing earth-disturbing activities. Violations of Section 2.1.2.2 of the CGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

Alleged Violation 5

(Violation of Section 7.2.6 of the CGP)

3.55 Paragraphs 3.1 to 3.39 are realleged and incorporated herein by reference.

3.56 Section 7.2.6 of the CGP requires permittees to maintain a legible site map within the Project SWPPP showing the boundaries of the property, the locations where construction activities will occur, and the locations of stormwater control measures.

3.57 Respondents violated Section 7.2.6 by failing to maintain an up-to-date site map within the SWPPP. Violations of Section 7.2.6 of the CGP are enforceable under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

IV. TERMS OF SETTLEMENT

4.1. Respondents admit the jurisdictional allegations contained in this Consent Agreement.

4.2. Respondents neither admit nor deny the specific factual allegations contained in this Consent Agreement.

4.3. Pursuant to Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent, and gravity of the Alleged Violations as well as any economic benefit to Respondents of noncompliance, Respondents' ability to pay, and other relevant factors. After considering all of these factors, EPA has determined, and Respondents agree, that an appropriate penalty to settle the Alleged Violations is \$20,500.

4.4. Respondents agree to pay the total civil penalty set forth in Paragraph 4.3 within 30 days of the effective date of the Final Order. 40 C.F.R. § 22.31(c). EPA will provide Respondents with prompt notice of the date the Regional Hearing Clerk files the Final Order, which establishes its effective date.

4.5. Payment under this Consent Agreement and the Final Order may be made by check(s) (mail or overnight delivery), wire transfer, ACH, or online payment. Payment

instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondents must note on the check(s) the title and docket number of this action.

4.6. Respondents must send photocopies of the check(s), or proof of other payment method described in Paragraph 4.5 to the Regional Hearing Clerk and EPA Compliance Officer at the following addresses:

Teresa Young, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, M/S ORC-113
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
Young.Teresa@epa.gov

Raymond Andrews, Compliance Officer
U.S. Environmental Protection Agency
Region 10, M/S OCE-101
1200 Sixth Avenue, Suite 900
Seattle, WA 98101
Andrews.Raymond@epa.gov

4.7. Except as described in Subparagraph 4.8.2, below, each party shall bear its own fees and costs in bringing or defending this action.

4.8. If Respondents fail to pay the penalty assessed by this Consent Agreement in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. Such failure may also subject Respondents to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.8.1. Interest: Interest shall accrue from the effective date of the Final Order, at the rate established by the Secretary of the Treasury, and applied to any portion of the assessed penalty which remains unpaid 30 days after the effective date of the Final Order. CWA § 309(g)(9), 33 U.S.C. § 1319(g)(9); 31 U.S.C. § 3717(a)(1); 40 C.F.R. § 13.11(a)(3).

4.8.2. Attorney's Fees, Collection Costs, Nonpayment Penalty: Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondents fail to pay on a timely basis the penalty set forth in Paragraph 4.3, Respondents shall pay (in addition to any assessed penalty and interest) attorney's fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondents' penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.9. The penalty described in Paragraph 4.3, including any additional costs incurred under Paragraph 4.8, represent an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes. 26 U.S.C. § 162(f).

4.10. The undersigned representatives of Respondents certify that they are authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondents to the terms and conditions of this document.

4.11. Respondents expressly waive any right to contest the allegations and waive any right to appeal the Final Order set forth therein.

4.12. The provisions of this Consent Agreement and Final Order shall bind Respondents and their agents, servants, employees, successors, and assigns.

4.13. The above provisions are STIPULATED AND AGREED upon by Respondents and Complainant.

DATED: FOR RESPONDENTS LOCALCONSTRUCT & SHERMAN HOLLOW:

05/11/17



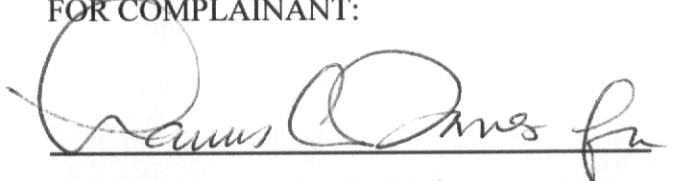
Michael J. Brown, authorized signatory
Local Construct Advisors, LLC and The Sherman Hollow Project, LLC

DATED: FOR RESPONDENT KNIFE RIVER:

Zachary W. O'Kelley, President, Idaho Division
Knife River Corporation – Northwest

DATED: FOR COMPLAINANT:

6-21-2017



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

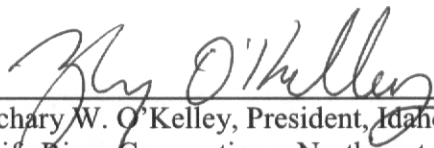
4.13. The above provisions are STIPULATED AND AGREED upon by Respondents and Complainant.

DATED: FOR RESPONDENTS LOCALCONSTRUCT & SHERMAN HOLLOW:

Michael J. Brown, authorized signatory
Local Construct Advisors, LLC and The Sherman Hollow Project, LLC

DATED: FOR RESPONDENT KNIFE RIVER:

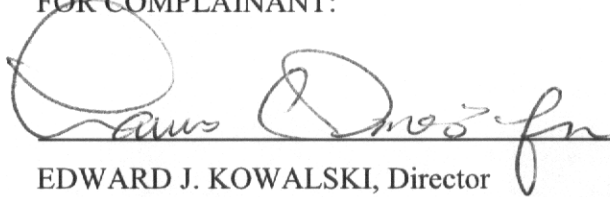
May 12, 2017



Zachary W. O'Kelley, President, Idaho Division
Knife River Corporation – Northwest

DATED: FOR COMPLAINANT:

6-21-2017



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

LOCALCONSTRUCT ADVISORS
LLC, a Delaware limited liability company
and THE SHERMAN HOLLOW
PROJECT, LLC, a Delaware limited liability
company,

&

KNIFE RIVER CORP. – NORTHWEST,

Respondents.

DOCKET NO. CWA-10-2017-0079

FINAL ORDER

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement, Docket No. CWA-10-2017-0079 (“Consent Agreement”), are ratified and incorporated by reference into this Final Order. Respondents are ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), this Final Order resolves the causes of action alleged in the Consent Agreement, but nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law not resolved by this Final Order. This Final Order

does not waive, extinguish, or otherwise affect Respondents' obligation to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

1.4. Respondents waive any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which Respondents may have with respect to any issue of fact or law set forth in this Final Order, including, but not limited to, any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

1.5. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Idaho Department of Environmental Quality has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondents.

1.6. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondents. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement.

1.7. This Final Order shall become effective upon filing.

SO ORDERED this ___ day of _____, 2017.

M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

does not waive, extinguish, or otherwise affect Respondents' obligation to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

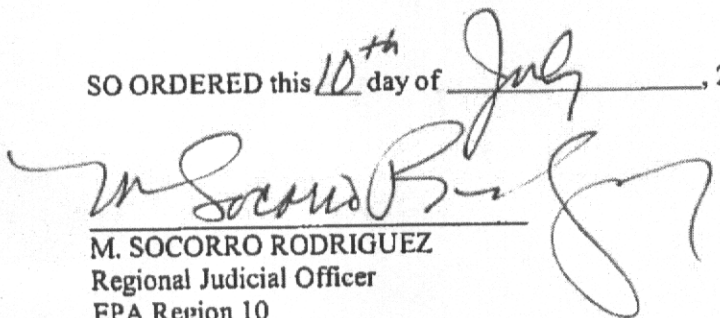
1.4. Respondents waive any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which Respondents may have with respect to any issue of fact or law set forth in this Final Order, including, but not limited to, any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

1.5. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Idaho Department of Environmental Quality has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondents.

1.6. Pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondents. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement.

1.7. This Final Order shall become effective upon filing.

SO ORDERED this 10th day of July, 2017.


M. SOCORRO RODRIGUEZ
Regional Judicial Officer
EPA Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original attached **Consent Agreement** and **Final Order** in **In the Matter of: LocalConstruct Advisors, LLC, et al., Docket No.: CWA-10-2017-0079**, was filed with the Regional Hearing Clerk on Date.

On Date, the undersigned certifies that a true and correct copy of the document was delivered to:

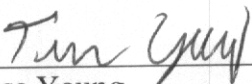
William M. McLaren
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 900
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt on Date, to:

Mike Brown
3112 Los Feliz Blvd.
Los Angeles, CA 90039

Zachary W. O'Kelley
President, Idaho Division
Knife River Corporation - Northwest
5450 W. Gowen Road
Boise, Idaho 83709

DATED this 10 day of July, 2017.



Teresa Young
Regional Hearing Clerk
EPA Region 10