



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

AUG 22 2008

Ref: 8ENF-W-NP

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

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The Corporation Company
Registered Agent for Hunt Building Company
1675 Broadway Ste 1200
Denver, CO 80202

Mr. Gary Bain, Project Superintendent
Hunt Building Company
4700B E. Ponderosa Dr.
USAFA, CO 80840

Re: First Amended Order for
Compliance under section 309(a) of
the Clean Water Act (CWA)

Dear Registered Agent:

Enclosed is a United States Environmental Protection Agency Region 8 (EPA) First Amended Order for Compliance (First Amended Order) issued to Hunt Building Company, Ltd. An Order for Compliance (Original Order) was issued originally to Hunt Building Company on July 7, 2008. This First Amended Order acknowledges certain provisions in the Original Order that were completed, revises the requirements for Pine Valley, and adds new requirements for Douglass Valley. This First Amended Order replaces, in its entirety, the prior Original Order.

Please review the First Amended Order carefully. Failure to comply with the requirements of the First Amended Order shall constitute a violation of the First Amended Order.

If you have any questions regarding this letter, the enclosed First Amended Order, or any other matters pertinent to compliance with the CWA, the most knowledgeable people on my staff regarding these matters are Lee Hanley, Technical Enforcement, at (303) 312-6555, and Lorraine Ross, Enforcement Attorney, at (303) 312-6888.

Sincerely,

Michael T. Birnes
for

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures

cc: Tina Artemis, Regional Hearing Clerk
Curtis Burns, CDPHE
Mr. Robert K. Kelly, Hunt Development Group
Matt Lewis, 10 CES/CEV
Mr. Steven Stark, AFCEE/HPM
Ms. Sue Stell, AFCEE/TDC



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2008 AUG 22 PM 1:16J

In the Matter of:)
)
) **FIRST AMENDED**
 Hunt Building Company, Ltd.) **ORDER FOR COMPLIANCE**
 a Texas corporation)
)
)
 Respondent.) Docket No. CWA-08-2008-0018

LEGAL AUTHORITY

On July 7, 2008, the United States Environmental Protection Agency (EPA), Region 8, issued an Order for Compliance (Original Order) to Hunt Building Company, Ltd. This First Amended Order for Compliance (First Amended Order) replaces, in its entirety, the prior Original Order.

This First Amended Order is issued pursuant to section 309(a)(3) of the Federal Water Pollution Control Act (Act), 33 U.S.C. § 1319(a)(3), which authorizes the Administrator of the United States Environmental Protection Agency (EPA) to issue an order requiring compliance by a person found to be in violation of sections 301, 302, 306, 307, 308, 318, 402, and/or 405 of the Act, or of any permit condition or limitation implementing those sections. This authority has been properly delegated to the undersigned official.

FINDINGS OF FACT AND LAW

1. To restore and maintain the integrity of the nation's water, section 301(a) of the Act prohibits the discharge of pollutants into navigable waters of the United States, unless it is in compliance with a permit issued pursuant to the Act. 33 U.S.C. § 1311(a).

2. Section 402 of the Act establishes a National Pollutant Discharge Elimination System (NPDES) program, administered by EPA or an authorized state, to permit discharges into navigable waters, subject to specific terms and conditions. 33 U.S.C. § 1342.

3. The Act requires that a discharge of storm water associated with an industrial activity to navigable waters must comply with the requirements of an NPDES permit. 33 U.S.C. § 1342(p).

4. The Act authorized, and EPA issued, regulations that further define requirements for NPDES permits for storm water discharges. 33 U.S.C. § 1318, § 1342(p). The regulations are found at 40 C.F.R. part 122.

5. EPA regulations define discharges associated with industrial activity to include construction activity. 40 C.F.R. § 122.26(b)(14)(x).

6. EPA regulations require each person who discharges storm water associated with industrial activity to either apply for an individual permit or seek coverage under an existing and lawful general permit. 40 C.F.R. § 122.26(c).

7. Respondent applied for a general Federal NPDES permit for storm water discharges, COR10000F, attached as exhibit A (Permit). The permit number, COR10CK3F, was issued for this permit application, attached as exhibit B (permit coverage confirmation).

8. The permit requires, among other things, that a person discharging pollutants develop and implement an adequate storm water pollution prevention plan (SWPPP), conduct regular specified storm water 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).

9. Respondent is a corporation, incorporated in the State of Texas, and doing business in the State of Colorado.

10. Respondent is a “person” within the meaning of section 502(5) of the Act and therefore, subject to the requirements of the statute and/or regulations. 33 U.S.C. § 1362(5).

11. Respondent is engaged in construction activities at a facility located at Douglass Valley and Pine Valley, Air Force Academy (AFA), CO (facility).

12. Respondent engaged in construction activities at the facility at all times relevant to this action.

13. Respondent is therefore engaged in an “industrial activity” as defined by EPA regulations. 40 C.F.R. § 122.26(b)(14).

14. Storm water, surface drainage, and run off water leave Respondent’s facility and go into the AFA municipal separate storm sewer system (MS4).

15. The run off and drainage from Respondent’s facility is “storm water” as defined by EPA regulations. 40 C.F.R. § 122.26(b)(13).

16. Storm water contains “pollutants” as defined by the Act. 33 U.S.C. § 1362(6).

17. The AFA MS4 at Pine Valley discharges to West Monument Creek, and at Douglass Valley discharges to Douglass Valley Stream, tributaries to Monument Creek, which flows to Fountain Creek which is “navigable water” and “waters of the United States,” as defined by the Act and EPA regulations, respectively. 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2.

18. Respondent’s storm water runoff is the “discharge of a pollutant” as defined by EPA regulations. 40 C.F.R. § 122.(b)(14)(x).

19. An authorized EPA employee entered the facility with the consent of Respondent on May 5, 2008, to inspect it for compliance with the statute, permit and regulations.

20. During the inspection, Respondent provided SWPPPs and construction activity records for both Pine Valley and Douglass Valley.

21. At the time of the inspection, Respondent was conducting ground disturbance activities beyond the permit coverage area. The permit coverage is for 30.5 acres in Douglass Valley and Pine Valley. The area of ground disturbance activities is greater than 30.5 acres in Douglass Valley alone.

22. Respondent’s failure to obtain permit coverage for all areas of ground disturbance activities constitutes a violation of the Act. 33 U.S.C. § 1311, § 1342(p).

23. At the time of the inspection, Respondent’s SWPPPs did not contain the following required components: an accurate description of the ground disturbance activities at Pine Valley, a map showing all ground disturbance activities at Douglass Valley and Pine Valley, a description of BMPs which will protect the storm drain inlets from the asbestos demolition activities in Pine Valley, management practices to address non-structural activities (i.e., securing portable toilets and managing construction materials), and signatory requirements in the Pine Valley SWPPP.

24. Respondent’s failure to develop complete SWPPPs as required by the permit constitutes a violation of the Act. 33 U.S.C. § 1311, § 1342.

25. The permit requires Respondent to implement BMPs to minimize the impact of Respondent’s construction activities on waters of the United States. At the time of the inspection, Respondent failed to implement BMPs at the storm drains to prevent asbestos-contaminated material from entering the storm drain and failed to implement/modify the BMPs around sand piles and at portable toilets that were upstream from storm drains.

26. Respondent’s failure to implement BMPs as required by the permit constitutes a violation of the Act. 33 U.S.C. § 1311, § 1342(p).

27. Construction activities which disturbed over one acre commenced in Douglass Valley on December 21, 2007 (excavation for additions to renovated units), and in Pine Valley on January 14, 2008 (demolition of single housing units).

28. Section 301 of the Act and the storm water regulations at 40 C.F.R. § 122.26 require that a stormwater permit be obtained for construction activity including clearing, grading and excavation disturbing at least one acre. Respondent is covered under the Permit and subject to its terms and conditions.

29. On June 25, 2008, EPA confirmed with the Colorado Department of Public Health and Environment (CDPHE) that work had commenced at Pine Valley to remove asbestos-contaminated debris and soil. This activity is covered under an "Emergency Asbestos Spill And Contamination Response Workplan" for the U.S. Air Force Academy Military Housing, Pine Valley Family Housing, Colorado Springs, Colorado approved by CDPHE.

30. In compliance with the Original Order, Hunt conducted sampling in July 2008 at the Pine Valley outfalls and found chrysotile asbestos present at two locations (outfall on E Pine Loop and in the drainage to West Monument Creek).

31. During the reinspection on July 21, 2008, EPA observed at least one storm drain (north of housing unit #6807) in the Pine Valley construction site where BMPs were not implemented to protect the storm drain from construction debris.

32. During a reinspection on July 21, 2008, at the Douglass Valley site, Hunt confirmed the presence of asbestos on surface over buried basements of building units #4207 C to H. Buried basements are also located at building units #4209 B and C and #4206 F to K.

33. On July 21, 2008, Hunt confirmed that asbestos was present at several renovated housing units. The construction debris was not identified as containing asbestos, and therefore was handled as regular construction debris. Exhibit D identifies the housing units containing asbestos (identified as "major spills and minor spills".)

34. The topography in Douglass Valley where active construction, renovation, and/or demolition activity occurred is generally on a slope. The asbestos containing units and buried basements are uphill from most or all of the storm drains.

35. Certain provisions of the Original Order have been completed, as follows:

a. Paragraph 30 of the Original Order required: "*Within 24 hours of receipt of this Order, submit a written notice of intent to comply with the requirements of this Order to EPA and CDPIIE. The written notice may be transmitted by electronic correspondence, followed by telephone confirmation of receipt, to: Lee Hanley at Hanley.Lee@epa.gov, (303-312-6555);*

Darcy O'Connor at Oconnor.Darcy@epa.gov, (303-312-6392); and Curtis Burns at CLBURNS@SMTPGATE.DPHE.STATE.CO.US, (303-692-3153)." On July 11, 2008, Respondent submitted a written notice of intent to comply with the requirements of the Original Order to EPA and CDPHE .

b. Paragraph 33 of the Original Order required: "*Within 24 hours of completing the installation of BMPs required by paragraphs 31 and 32, inspect and sample for asbestos contamination at the storm drain outfalls and along the drainage to the tributary to West Monument Creek. A sampling plan consistent with sampling methodologies developed by the CDPHE Asbestos Unit may be used. If asbestos contamination is present, a proposal for clean up activities must be submitted within 48 hours of confirmation of asbestos contamination. The sampling plan and the clean up proposal must be submitted to Curtis Burns at CDPHE and Lee Hanley at EPA in the manner specified in paragraph 30.*" On July 18 and 26, 2008, Respondent sampled for asbestos contamination at the storm drain outfalls and along the drainage to the tributary to West Monument Creek. Asbestos contamination was found in two locations. Respondent submitted a plan for re-sampling on August 4, 2008.

c. Paragraph 34 of the Original Order required: "*Within 24 hours of completing the installation of BMPs outlined in paragraphs 31 and 32, update the SWPPP for these activities.*" Paragraph 35 of the Original Order required: "*Within 5 days of completing the installation of BMPs required by paragraphs 31 and 32, provide the updated section of the SWPPP outlined in paragraph 34, and photographic documentation of the BMPs installed pursuant to paragraphs 31 and 32 to Lee Hanley, EPA and Curtis Burns, CDPHE.*" In a letter dated July 19, 2008, Respondent submitted to EPA a CD format copy of the updated SWPPP for Pine Valley and Douglass Valley. Photographic documentation of the BMPs was included.

d. Paragraph 36 of the Original Order required: "*Within 20 days of receipt of this Order, address the deficiencies outlined in the Summary of Findings, attached as exhibit C. Respondent must implement all conditions in its revised SWPPP in accordance with its Permit. Respondent must also amend the Permit application to include all areas of ground disturbance activities.*" On July 29, 2008, Respondent submitted documentation indicating how it addressed the deficiencies outlined in the Summary of Findings, attached as exhibit C of the Original Order, and how it attempted to amend the Permit to specify coverage of 350 acres of ground disturbance activities .

e. Paragraph 37 of the Original Order required: "*Within 20 days of receipt of this Order, review the inspection form and modify as needed to capture what BMPs are evaluated during ground disturbance activities at Douglass Valley and Pine Valley, the condition of the BMPs evaluated, what repairs/replacement are needed, and when the repair/replacement of the BMP occurred.*" Respondent addressed the inspection form issue in its July 19, 2008 and July 29, 2008 submittals.

f. Paragraph 38 of the Original Order required: *“Within 20 days of receipt of this Order, conduct a meeting with the AFA 10 CES/CEV to review any impact to the AFA’s MS4 that may have occurred as a result of ground disturbance activities in Douglass Valley and Pine Valley. Respondent shall correct any impact and revise the SWPPP to include any necessary future coordination with the AFA 10 CES/CEV or corrective action implementation process to minimize and/or prevent impact to the MS4.”* On July 29, 2008, Respondent reported that it met and will continue to meet with the AFA 10 CES/CEV.

ORDER

Certain provisions from the Original Order have been partially addressed by the Respondent. Requirements that have not been completely addressed are included in this section. Respondent is ordered to perform the following actions:

Pine Valley:

36. Within five working days of receipt of this First Amended Order, Hunt must confirm with the AFA 10 CES/CEV that all storm drains and outfall locations are accurate and up-to-date. Hunt must certify in writing that it has identified all storm drains within the Pine Valley construction site.

37. Within ten working days of receipt of this First Amended Order, Hunt must demonstrate that it has protected all storm drains. A map showing all the storm drains and the type of BMPs implemented must be provided for this demonstration. Photographic evidence showing the type of BMPs implemented must also be provided. The BMPs must be inspected daily and after each precipitation event to ensure their effectiveness. Hunt must immediately address any deficiencies found with the BMPs. By the fifteenth of every month, Respondent shall submit the previous month’s daily inspections, BMP maintenance and repair documentation, and precipitation reports to EPA.

38. Hunt is conducting additional sampling in the Pine Valley outfall areas where asbestos was present pursuant to a plan submitted on August 4, 2008, and approved by the CDPHE Asbestos Unit. Within two working day of receiving the sampling results, Hunt must construct stormwater BMPs around the areas where asbestos contamination is confirmed and ensure that access to these areas is restricted until a clean up plan is executed and completed.

39. Within five working days of receiving the sampling results, Hunt must submit a proposal for cleanup activities at the contaminated areas. The clean up proposal must be submitted to Curtis Burns at CDPHE and Lee Hanley at EPA for approval.

40. To prevent further contamination offsite, Hunt must treat the entire Pine Valley construction site as potentially contaminated with asbestos and within five working days of

receipt of this First Amended Order must construct stormwater BMPs around the entire area, i.e., not only around designated building units. These BMPs must be maintained until Hunt completes the sampling and clean up activities in Paragraph 41, below.

41. Within five working days of completion of the CDPHE Asbestos Unit-approved “Emergency Asbestos Spill And Contamination Response Workplan,” Hunt must inspect and sample the storm drain system in and adjacent to the asbestos removal activities to ensure the area is asbestos free. Sampling must be conducted according to a sampling plan approved by the CDPHE Asbestos Unit. If asbestos contamination is present, a proposal for clean up activities must be submitted within five working days of confirmation of asbestos contamination. The storm drain sampling plan and the proposal for clean up must be submitted to Curtis Burns at CDPHE, and Lee Hanley at EPA for approval. The AFA 10 CES/CEV must also be included in any correspondence regarding this activity.

42. Within two weeks of completing the clean up activities, Hunt must submit a final report of the activities described in Paragraph 41, above.

Douglass Valley:

43. Within five working days of receipt of this First Amended Order, Hunt must submit a sampling plan to test for the presence of asbestos to CDPHE and EPA. To identify the area that must be sampled, Hunt must develop a map that identifies the location of storm drains and outfalls. Hunt must confirm with the AFA 10 CES/CEV that all storm drain and outfall locations on the map are accurate and up-to-date. The map must also identify:

- a. the location of any known asbestos contamination,
- b. the location of any buried basements,
- c. the location of each renovated housing unit that contained some form of asbestos, and
- d. locations where trash containers were placed during demolition and renovation activities that occurred from December 2007 through May 2008.

On the map, Hunt must draw a boundary around the areas identified in a - d above to the storm drains. The intent is to identify all areas that may have been contaminated due to storm water flow. The plan must provide for sampling within the area identified to determine the location of asbestos contamination.

44. Hunt must implement the sampling plan within two working days of approval by the CDPHE Asbestos Unit.

45. Within seven working days of receiving the sampling results, Hunt must submit a clean up plan to CDPHE and EPA for all areas showing the presence of asbestos. The clean up plan must conform to the CDPHE asbestos clean up protocol.

46. Within five working days of receipt of this First Amended Order, Hunt must install stormwater BMPs around each buried basement site to ensure that sediment or debris will not leave the site. Within five working days of installation of BMPs, Hunt must provide a photograph of each secured buried basement site.

47. Within seven working days of receipt of this First Amended Order, Hunt must consult with the AFA 10 CES/CEV on measures to be taken to minimize further contamination and to limit contact with contamination in the area identified in Paragraph 42, above and in the storm drain system. Within two working days of the consultation, Hunt must report to EPA and provide a summary of the meeting.

OTHER PROVISIONS

48. All written notices and reports required by this First Amended Order shall be sent to the following address:

Lee Hanley (8ENF-W-NP)
U.S. EPA Region 8
Office of Enforcement, Compliance
and Environmental Justice
Technical Enforcement Program
1595 Wynkoop Street
Denver, Colorado 80202-1129

49. All written notices and reports required by paragraphs 39, 41, 42, and 44 of this First Amended Order shall also be sent to the following address:

Curtis Burns
Indoor Environment Program
Colorado Department of Public Health &
Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246

50. Any failure to comply with the requirements of the Original Order or this First Amended Order shall constitute a violation of an order and may subject Respondent to penalties as provided under the Act. 33 U.S.C. § 1319.

51. This First Amended Order does not constitute a waiver or modification of the terms and conditions of Respondent's Federal NPDES Permit which remains in full force and effect, or of any other legal responsibilities or liability.

52. This First Amended Order does not constitute a waiver of or election by EPA to forego any civil or criminal action to seek penalties, fines or other relief under the Act. The Act authorizes the assessment of civil penalties of up to \$32,500 per day for each violation of the Act, and fines and imprisonment for willful or negligent violations. 33 U.S.C. § 1319.

Date: 8/22/08

By: Michael T. Quinlan
for Andrew M. Gaydosh
Assistant Regional Administrator

