



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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

SEP 29 2009

Ref: 8ENF-L

**CERTIFIED MAIL7003-2260-0001-7778-1924**  
**RETURN RECEIPT REQUESTED**

Todd O'Peck, Registered Agent  
Peck Homes, Inc.  
1144 N 940 E  
Lehi, UT 84043

Re: Opportunity to Confer and Order for  
Compliance.  
Docket No. **CWA-08-2009-0032**

Dear Mr. O'Peck:

Enclosed is a U.S. Environmental Protection Agency (EPA) Notice of Opportunity to Confer and Order for Compliance (Notice and Order) issued under the authority vested in the Administrator of EPA by §§ 308 and 309(a)(3) of the Clean Water Act (the Act), 33 U.S.C. §§ 1318 and 1319(a)(3). This authority has been properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance, and Environmental Justice, EPA Region 8. The Notice and Order provides Peck Homes, Inc. an opportunity to confer with EPA regarding information requested by EPA and further requires Peck Homes, Inc. to submit the requested information to EPA within the time frame set forth in the Notice and Order. In addition, the Order also requires Peck Homes, Inc. to submit a Notice of Intent (NOI) to the Utah Department of Environmental Quality (UTDEQ) for authorization under the Utah Pollutant Discharge Elimination System (UPDES) general permit (UTR300000) to discharge storm water from the Green Hills Development construction site. The time frame set forth provides ample opportunity for Peck Homes, Inc. to confer with EPA prior to having to submit the requested information to EPA.

On June 25, 2009, EPA sent a Request for Information (Request) to determine Peck Homes, Inc.'s compliance with the construction storm water regulations identified in § 402 of the Act. Section 308 of the Act, 33 U.S.C. § 1318, gives EPA the authority to request information of this nature. Peck Homes, Inc. received the Request on June 27, 2009, and the response was due on or before July 30, 2009. To date, EPA has not received a response to the Request from Peck Homes, Inc., in violation of § 308 of the Act.



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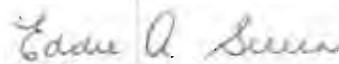
Section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), authorizes the Administrator of EPA to issue an order requiring compliance with a § 308 request for information. However, under section 309(a)(4) of the Act, 33 U.S.C. § 1319(a)(4), such an order may not take effect until the person to whom the order has been issued has had an opportunity to confer with EPA regarding the alleged violation of § 308.

Section 309(a) of the Act, 33 U.S.C. § 1319(a), also authorizes the Administrator of the EPA to issue an order requiring compliance by a person found to be in violation of sections 301, 302, 306, 307, 308, 318, or 402 of the Act, or in violation of any permit condition or limitation implementing such sections of the Act. The Act requires the Administrator of EPA to take appropriate enforcement action to secure prompt compliance with the Act and any order issued thereunder. Section 309 of the Act authorizes a variety of possible enforcement actions, including filing of a civil or criminal action, administrative penalty action, and/or disbarment from federal contracts and/or loans for any non-compliance with the Act or an order issued pursuant to the Act.

The enclosed Notice and Order provides notice of an opportunity for you to confer with EPA via conference call concerning Peck Homes, Inc.'s alleged violations of the Act. If you wish to take advantage of this opportunity, you are encouraged to contact Aaron Urdiales at 303-312-6844. The Compliance Order portion of the Notice and Order will not become effective until thirty days following Peck Homes, Inc. receipt of the Notice and Order, providing you with sufficient time to confer with EPA before the requirements of the Compliance Order are due.

Please review the Notice and Order carefully. If you have any questions, the most knowledgeable people on my staff are Aaron Urdiales, Environmental Scientist, at 303-312-6844, and Marc Weiner, Attorney, at 303-312-6913.

Sincerely,



Eddie A. Sierra  
Acting Assistant Regional Administrator  
Office of Enforcement, Compliance and  
Environmental Justice

Enclosures: Notice and Order  
Statement of Certification  
Copy of Permit  
Copy of June 25, 2009 Information Request

cc: Tina Artemis, EPA, Regional Hearing Clerk  
Mike Herkimer, UTDEQ

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2009 SEP 29 PM 12:52

**IN THE MATTER OF:**

Peck Homes, Inc.  
1144 N 940 E  
Lehi, Utah 84043

Respondent.

) **NOTICE OF OPPORTUNITY**  
) **TO CONFER AND**  
) **ORDER FOR COMPLIANCE**

) DOCKET NO. **CWA-08-2009-0032**

**INTRODUCTION**

- I. This notice of opportunity to confer and administrative order for compliance (Notice and Order) is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by §§ 308 and 309(a)(3) of the Federal Water Pollution Control Act (also referred to as the Clean Water Act) (the Act), 33 U.S.C. §§ 1318 and 1319(a)(3). This authority has been properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8. This Notice and Order is based on the findings of violation of § 308 of the Act, 33 U.S.C. § 1318, resulting from Peck Homes, Inc. failure to respond to a request for information made by EPA on June 25, 2009, and for discharging without permit authorization which constitutes a violation of of §§ 301(a) and 402(p) of the Act, 33 U.S.C. §§ 1311(a) and 1342(p), for each day in which a discharge has occurred.

## **FINDINGS OF VIOLATION**

2. Peck Homes, Inc. (Respondent) is incorporated and is authorized to do business in the State of Utah. Respondent is therefore a “person” as defined in 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
3. Respondent is the owner and developer of an approximately 40-50 acre, 48 lot residential subdivision referred to as Green Hills Development located at the intersection of Hillside Drive and Bull River Road in Lehi, Utah within Utah County (the Site). The Site discharges storm water to the City of Lehi’s municipal separate storm sewer system (MS4).
4. The Site is a “point source” within the meaning of § 502(14) of the Act, 33 U.S.C. § 1362(14).
5. The runoff and drainage from the Site are “storm water” as defined in 40 C.F.R. § 122.26(b)(13).
6. Sediment is a “pollutant” within the meaning of § 502(6) of the Act, 33 U.S.C. § 1362(6).
7. The City of Lehi’s MS4 discharges to the Jordan River. The Jordan River is considered waters of the United States within the meaning of 40 C.F.R. § 122.2 and, therefore, a navigable water within the meaning of § 502(7) of the Act, 33 U.S.C. § 1362(7).
8. The storm water discharge from the Site is a “discharge of a pollutant” as defined by § 502(12) of the Act, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2.

9. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits, among other things, the discharge of pollutants by any person into waters of the United States except as in compliance with § 402 of the Act, 33 U.S.C. § 1342.
10. Section 402 of the Act, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, administered by EPA and, under certain circumstances, the State, to permit discharges into navigable waters, subject to specific terms and conditions.
11. Any discharge from construction activity that disturbs at least five acres (or that disturbs a piece of land that is less than five acres but is part of a larger common plan of development ultimately disturbing over five acres) constitutes a storm water discharge associated with industrial activity. 40 C.F.R. § 122.26(b)(14)(x).
12. Each person discharging storm water associated with industrial activity must seek and obtain authorization to do so under either an individual NPDES permit or a promulgated NPDES general permit. 40 C.F.R. § 122.26(c); §§ 301(a), 308, and 402(p) of the Act, 33 U.S.C. §§ 1311(a), 1318, and 1342(p).
13. The Utah Department of Environmental Quality (UTDEQ) was approved by EPA to administer the NPDES program on July 7, 1987. A permit issued by the UTDEQ under its EPA-approved NPDES program is known as an UPDES permit.
14. Effective July 1, 2008, UTDEQ issued a general permit (UPDES Permit No. UTR300000, referenced as the Permit) authorizing discharges of storm water associated with construction activities, if done in compliance with its terms and conditions. A

facility may apply for authorization to discharge under the Permit by submitting a notice of intent (NOI) for coverage to the UTDEQ.

15. Prior to beginning construction at the Site, Respondent was required to have obtained UPDES permit authorization for discharges of storm water from the Site according to Part 1.2.2 of the Permit.
16. On April 1, 2009, EPA inspectors conducted a storm water inspection at the Site. At the time of the inspection, Respondent had not sought or obtained authorization from UTDEQ to discharge storm water from the Site under either the Permit or any individual UPDES storm water discharge permit.
17. During the April 1, 2009, inspection, EPA inspectors observed the following: no best management practices (BMPs) onsite to minimize the discharge of sediment from the site; no track out pads; significant sediment in the streets; and unprotected storm drain inlets.
18. To date, Respondent has not submitted a NOI to UTDEQ seeking authorization to discharge from the Site under the Permit.
19. Had Respondent obtained authorization to discharge storm water under the Permit prior to construction, it would have been required by the Permit to develop a Storm Water Pollution Prevention Plan (SWPPP) prior to beginning construction at the Site. The SWPPP was to have described BMPs to control pollutants in storm water runoff. The SWPPP was also to have provided for Respondent to conduct inspections at the Site for monitoring the condition of storm water discharge outlets and effectiveness of BMPs.

20. On June 25, 2009, EPA sent to Respondent a request for information (June 25, 2009 Request) pursuant to § 308 of the Act, 33 U.S.C. § 1318, to determine compliance with § 301 and § 402 of the Act, 33 U.S.C. § 1342, and regulations promulgated thereunder and found at 40 C.F.R. part 402. Respondent's response to the June 25, 2009 Request was due within 30 days of its receipt by Respondent. The June 25, 2009 Request was sent via certified mail (article number 7003-2260-0001-7778-1856), return receipt requested. The return receipt card was signed by Amber Peck on behalf of Respondent on June 27, 2009.
21. To date, EPA has not received a response from Respondent to the June 25, 2009 Request.
22. Section 308(a)(2)(A) of the Act, 33 U.S.C. § 1318(a)(2)(A), authorizes the Administrator of the EPA to require the owner or operator of any point source to provide information as necessary to determine whether any person is in violation of any effluent limit or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance, or to carry out § 405 of the Act, 33 U.S.C. § 1345.
23. Respondent's failure to respond to the June 25, 2009 information request constitutes a violation of § 308 of the Act, 33 U.S.C. § 1318.
24. Respondent's failure to apply for authorization to discharge under either the Permit or under any individual storm water discharge permit constitutes a violation of 40 C.F.R. §§ 122.21(c) and 122.26(c), and §§ 308 and 402(p) of the Act, 33 U.S.C. §§ 1318 and 1342(p) for each day since starting construction to the present.

25. Respondent's discharge without permit authorization constitutes a violation of §§ 301(a) and 402(p) of the Act, 33 U.S.C. §§ 1311(a) and 1342(p), for each day in which a discharge has occurred.

### **COMPLIANCE ORDER**

Based upon the foregoing FINDINGS OF VIOLATION, and pursuant to the authority vested in the Administrator of EPA pursuant to §§ 308 and 309 of the Act, 33 U.S.C. §§ 1318 and 1319, as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance, and Environmental Justice, it is hereby ORDERED:

1. Within ten (10) calendar days of the "effective date" of this Order, Respondent shall submit to EPA written notice of intent to comply with the requirements of this Order.
2. Within twenty (20) calendar days of the "effective date" of this Order, the Respondent shall submit a complete and accurate NOI to UTDEQ with a copy sent to EPA for authorization to discharge storm water from construction activities that disturb an area greater than or equal to one acre, and from construction activities that disturb an area smaller than one acre if the disturbance is part of a larger common plan of development or sale that will ultimately disturb an area greater than or equal to one acre.
3. Prior to submission of the NOI, the Respondent shall prepare a Storm Water Pollution Prevention Plan (SWPPP) as required by part 1.2.2.a of the Permit. The SWPPP must meet all SWPPP requirements outlined in part 3 of the Permit. The SWPPP must identify potential sources of pollution which may reasonably be expected to affect the quality of storm water



discharges from the construction site, shall describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharges associated with the construction activity at the construction site and to assure compliance with the terms and conditions of the Permit. A copy of the SWPPP shall be sent to EPA along with the submitted NOI.

4. As a part of the SWPPP, the Respondent shall prepare and maintain an updated site map which shows the construction and stabilization status of all lots, the current location of BMPs, and the dates that changes to the BMPs were made.
5. The Respondent will conduct weekly inspections to meet the requirements of part 3.5.4 of the Permit. The Respondent will conduct, at a minimum, inspections of all BMPs at the site at least once every 7 calendar days; or at least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater.
6. The Respondent is still required to comply with the June 25, 2009 information request. Within Thirty (30) calendar days of the "effective date" of this Order, the Respondent shall provide the information requested. A copy of the June 25, 2009 information request is enclosed with this Order.
7. Respondent's responses to the questions set forth in this Order must be accompanied by a certificate that is signed and dated by a person authorized to represent Respondent. The certification must state that the response is complete and contains all information and documentation available to Respondent that is responsive to the questions listed above. A sample Statement of Certification can be found in Attachment B.

8. Please be advised that under § 309 of the Act, 33 U.S.C. § 1319, violation of this Notice and Order or failure to submit the required information, or making a false statement under § 308 of the Act, may be punishable by a fine of not more than \$37,500 per day of violation, or by imprisonment for not more than one year, or by both.

9. Copies of the information required by this Notice and Order shall be sent to EPA at the following address:

Aaron Urdiales (8ENF-W-NP)  
U.S. EPA Region 8  
1595 Wynkoop St.  
Denver, Colorado 80202-1129

Mike Herkimer  
Division of Water Quality  
Utah Department of Environmental Quality  
P.O. Box 144870  
Salt Lake City, UT 84114-4870

**NOTICE OF OPPORTUNITY TO CONFER**

As required by § 309(a)(4) of the Act, 33 U.S.C. § 1319(a)(4), the Compliance Order portion of this Notice and Order shall not take effect until Respondent has the opportunity to confer with EPA on the alleged violations. The effective date of the Compliance Order portion of this Notice and Order is therefore effective 30 calendar days after Respondent's receipt of this Notice and Order. If you wish to confer with EPA via conference call concerning any information EPA has requested from you, we encourage you to contact Aaron Urdiales, at 303-312-6844, to schedule the call before the answers to the request are due.

Issued this 30<sup>th</sup> day of September, 2009.



Eddie A. Sierra  
Acting Assistant Regional Administrator  
Office of Enforcement, Compliance,  
and Environmental Justice

**Statement of Certification**  
**Peck Homes, Inc.**

I certify under penalty of law that the foregoing responses and attachments to EPA's Request for Information Pursuant to the Clean Water Act (Request) were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. The response and attachments contain all documents and information responsive to the Request that are known to me following a complete and thorough review of all information and sources available to me. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

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Signature

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Date

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Printed Name

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Official Title

IN THE MATTER OF: Peck Homes, Inc.  
DOCKET NO.:

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one copy of the attached ORDER FOR COMPLIANCE was hand delivered to the Regional Hearing Clerk, EPA Region 8, 1595 Wynkoop St., Denver, Colorado, and that a true copy of the same was sent via FedEx to the following:

Peck Homes, Inc.  
1144 N 940 E  
Lehi, UT 84043

9/29/09  
DATE

  
SIGNATURE OF SERVER