



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

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OCT 14 2014

Ref: 8ENF-W-NP

**CERTIFIED MAIL NO. 7008 3230 0003 0726 0337**  
**RETURN RECEIPT REQUESTED**

G. Ron Pierce, Registered Agent  
Geo. R. Pierce, Inc.  
P.O. Box 80707  
Billings, MT 59108-0707

Re: Blackwood Subdivision; Administrative Order for Compliance under Section 309(a)  
of the Clean Water Act- Docket No. **CWA-08-2015-0001**

Dear Mr. Pierce:

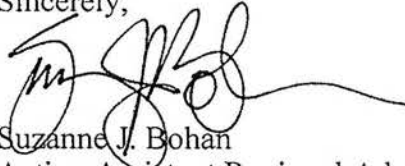
This letter concerns the compliance status of construction operations owned by Geo. R. Pierce, Inc., at the Blackwood Subdivision in Williston, North Dakota. The U.S. Environmental Protection Agency (EPA) Region 8 inspected the site on August 5, 2013. The EPA has reviewed the results of the inspection, your responses to a Letter of Potential Violation sent on November 14, 2013, and to a second letter sent on June 2, 2014, and additional information obtained from the North Dakota Department of Health (NDDH). Based on an evaluation of this information, the EPA has determined that the site is covered by the NDDH general permit for storm water discharges and that there is ongoing non-compliance with the requirements of that permit at the site. Specifically, Geo R. Pierce, Inc., as the permittee, failed to develop and maintain an adequate storm water pollution prevention plan and failed to conduct and record site inspections of the land disturbance activities.

Enclosed is an Administrative Order for Compliance (Order) issued by the EPA under the authority of section 309(a) of the Act, 33 U.S.C. § 1319(a), for violations of the NDDH general permit. Please read the Order carefully. It contains specific requirements and deadlines, and compliance with the Order by Geo. R. Pierce, Inc, is mandatory. Your attention is directed to **Paragraphs 34 – 38** of the Order, which detail specific compliance actions to correct violations and document such corrections. The Order identifies violations of the NDDH general permit at the site and requires Geo. R. Pierce to take actions to ensure that the violations are corrected and that the operation remains in compliance until completion of regulated activities. The Order also requires that specified documentation of such compliance be provided to the EPA and NDDH within specified timeframes. The Order is effective immediately.

The Act authorizes the EPA to take appropriate enforcement actions necessary to secure prompt compliance. Section 309 of the Act, 33 U.S.C. § 1319, authorizes the EPA to seek civil judicial penalties against persons violating an order issued under section 309(a) of the Act. The Act authorizes a variety of possible enforcement actions for violations, including civil actions and administrative penalty actions. Please be advised that issuance of the Order does not preclude any civil lawsuit or administrative penalty assessment for the violations cited in the Order or for any other violations.

For any questions regarding this letter or the Order, please contact Mr. Michael Boeglin at 303-312-6250 or by email at [boeglin.michael@epa.gov](mailto:boeglin.michael@epa.gov). If Geo. R. Pierce, Inc., is represented by an attorney who has questions, please ask the attorney to contact Ms. Virginia Sorrell at 303-312-6669, or by email at [sorrell.virginia@epa.gov](mailto:sorrell.virginia@epa.gov). Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Suzanne J. Bohan', with a long horizontal flourish extending to the right.

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

Enclosure

cc: Mr. Marty Haroldson, Manager  
North Dakota Department of Health

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IN THE MATTER OF:	)	Docket No. <b>CWA-08-2015-0001</b>
	)	
Geo. R. Pierce, Inc.	)	<b>ADMINISTRATIVE ORDER</b>
P.O. Box 80707	)	<b>FOR COMPLIANCE</b>
Billings, MT 59108-0707,	)	
	)	Proceeding under Section 309(a) of
Respondent.	)	the Clean Water Act, 33 U.S.C. §
	)	1319(a)

**STATUTORY AUTHORITY**

This Administrative Order for Compliance (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 any person found to be in violation of, *inter alia*, section 301(a) of the Act or of any permit condition or limitation implementing such section. This authority has been properly delegated to the undersigned official.

**FINDINGS OF FACT AND LAW**

1. In order to restore and maintain the integrity of the Nation's waters, section 301(a) of the Act prohibits the discharge of any pollutant by any person into navigable waters, 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 the National Pollutant Discharge Elimination System (NPDES) program, which is administered by the EPA or a state with an approved permit program. The NPDES program authorizes the permitting authority to issue permits allowing discharges into navigable waters, subject to specific terms and conditions. 33 U.S.C. § 1342.
3. A discharge of storm water associated with an industrial activity to navigable waters must comply with the requirements of a NPDES permit. 33 U.S.C. § 1342(p)(3)(A).
4. 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.
5. 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).

6. 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).

7. Respondent is a corporation, established in the State of Montana, and doing business in the State of North Dakota.

8. Respondent is a “person” within the meaning of section 502(5) of the Act and therefore, subject to the requirements of the Act and its implementing regulations. 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

9. Respondent owns and is engaged in construction activities at a site known as the Blackwood Subdivision in Williston, North Dakota (Site).

10. The Site encompasses approximately 130 acres of total land area, approximately 57 acres of which have been disturbed.

11. Storm water runoff, snow melt runoff, surface runoff, and/or drainage water have left the Site and have flowed into a wetland area connected to the Little Muddy River. The runoff and drainage from the Site are “storm water” as defined by EPA regulations. 40 C.F.R. § 122.26(b)(13).

12. The Little Muddy River and its connected wetlands are “navigable waters” and “Waters of the United States,” as defined by the Act and EPA regulations. 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2, definition of “Waters of the United States”.

13. Respondent engaged in construction activities at the site at all times relevant to this action.

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

15. Storm water contains “pollutants” as defined by section 502(6) of the Act, 33 U.S.C. § 1362(6).

16. 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 Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.

17. Each storm water discharge from the Site is “discharge of a pollutant” as defined by section 502(12) of the Act, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2.

18. 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 Act or of any permit condition or limitation implementing the Act. 33 U.S.C. § 1342(i).

19. The NDDH issued a general permit for the discharge of storm water under the NPDES, Permit No. NDR10-0000 (the NDDH General Permit). The NDDH General Permit became effective October 12, 2009, expired September 30, 2014, and is currently under administrative extension past the expiration date with all conditions remaining in effect until a new permit is issued. *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.

20. Respondent submitted an NOI for coverage under the NDDH General Permit, which NDDH received August 3, 2012. Respondent's authorization to discharge under the NDDH General Permit became effective August 10, 2012.

21. The NDDH General Permit requires, among other things, that Respondent 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).

22. An authorized EPA employee entered the Site with the consent of Respondent on August 5, 2013, to inspect it for compliance with the Act and regulations.

23. At the time of the inspection, Respondent had not developed or updated an adequate SWPP plan, implemented or maintained BMPs to meet the NDDH General Permit requirements, conducted and recorded storm water site inspections, and did not have required documents at the Site.

24. The EPA sent Respondent an inspection report and Letter of Potential Violation (LOPV) on November 14, 2013, outlining the deficiencies found during the inspection. Respondent did not receive this correspondence sent via postal service but did receive an emailed copy of the documents.

25. On January 20, 2014, Respondent replied via email to the electronic LOPV and inspection report with a description of changes in site management practices, including improved BMPs and housekeeping.

26. On June 2, 2014, the EPA sent a second letter to Respondent recapitulating the findings of the inspection report and LOPV. The letter required a response to all unaddressed deficiencies within 20 days of receipt.

27. Respondent provided a response to the EPA in a letter dated June 23, 2014. The response did not adequately address all of the deficiencies cited in EPA correspondence.

28. Based on the EPA's review of the inspection report and Respondent's correspondence documenting corrective actions that have been taken at the Site, Respondent's regulated construction activity remains noncompliant with the NDDH General Permit.

### **VIOLATIONS**

(Failure to develop and maintain an adequate SWPP plan)

29. Part II.C of the NDDH General Permit requires the development of a SWPP plan and specifies items that must be included in the SWPP plan. Among those items are the location of storm water discharges, the identification and location of the wetland area that would receive storm water discharges, a description of the types of construction activities, a proposed timetable for those activities, and a signature of the responsible official at the site.

30. Paragraph II.C.7.c of the 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 [storm water]."

31. The inspection report and correspondence received by the EPA reveal that Respondent has failed to develop an adequate SWPP plan with the information identified in Paragraph 29 and has failed to update the SWPP plan with updated time phases for stabilization activity, the removal of construction entrance sedimentation controls, addition of a rock check dam, the current location of the equipment staging area, and the absence of the west storm water retention pond. Respondent's failure to develop and maintain an adequate SWPP plan is a violation of the NDDH General Permit.

(Failure to conduct storm water site inspections)

32. Paragraph II.C.6 and Part III.A of the NDDH General Permit set forth the requirements for conducting storm water site inspections, including frequency, scope, and recording of results.

33. The inspection report and correspondence received by the EPA reveal that Respondent has failed to conduct storm water inspections at the Site and maintain records of such inspections. Respondent did not have records of any inspections since land disturbance at the Site began in August 2012. Respondent's failure to conduct and record site inspections is a violation of the NDDH General Permit.

### **ORDER**

Based on the foregoing findings and pursuant to section 309 of the Act, 33 U.S.C. § 1319, it is hereby ORDERED that:



34. Within 15 days of receipt of this Order, the Respondent shall submit to the EPA written notice of the Respondent's intent to comply with the requirements of this Order.

35. Within 30 days of receipt of this Order, Respondent shall update and complete its SWPP plan with all missing items and submit the revised SWPP plan to the EPA and NDDH for review.

36. Within 15 days of receipt of this Order, Respondent shall conduct and record storm water site inspections in accordance with NDDH General Permit requirements and submit to the EPA and NDDH copies of all site inspection reports. Site inspection reports are due on a quarterly basis and shall be submitted by the fifteenth day of the month following the end of the quarter. The first group of reports for the period from the date of receipt of this Order through December are due on January 15, 2015; reports for January through March are due April 15; those for April through June, on July 15; and those for July through September, on October 15. Respondent shall continue sending copies of reports until Respondent submits a Notice of Termination (NOT) to NDDH in accordance with Part II.E of the NDDH General Permit or the EPA terminates this Order, whichever comes first.

37. If Respondent submits a NOT to NDDH prior to termination of this Order by the EPA, Respondent shall send a copy of the NOT to the EPA at the time of NOT submittal.

38. All submissions by Respondent to the EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official. 40 C.F.R. § 122.22.

*I certify that Geo. R. Pierce, Inc., has complied with all the applicable requirements of the Order for Compliance. I also certify under penalty of law that this document and all attachments 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. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.*

#### **OTHER PROVISIONS**

39. All documents required by this Order to be submitted to the EPA and NDDH shall be submitted by mail to the following addresses:

Michael Boeglin, 8ENF-W-NP  
U.S. EPA Region 8  
1595 Wynkoop Street

Denver, Colorado 80202-1129

And

Marty Haroldson, Manager  
Waste Water Programs  
North Dakota Department of Health  
918 East Divide Avenue  
Bismarck, North Dakota 58501-1947.

40. Any failure to comply with the requirements of this Order shall constitute a violation of the Order and may subject Respondent to penalties as provided under the Act. 33 U.S.C. § 1319.


41. This Order does not constitute a waiver of or election by the EPA to forego any civil or criminal action to seek penalties, fines or other relief under the Act. Section 309(d) of the Act, 33 U.S.C. § 1319(d), as adjusted for inflation by 40 C.F.R. Part 19, authorizes the imposition of civil penalties of up to \$37,500 per day for each violation of the Act or a permit for discharge. Section 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations.

42. This Order shall be effective upon receipt by the Respondent and shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. Such notice shall not be given until all of the requirements of this Order have been met.

43. The Respondent may seek federal judicial review of this Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706 sets forth the scope of such review.

OCT 14 2014

Date: \_\_\_\_\_

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