

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:)
)
Alan Kruckenberg Construction, Inc.) ADMINISTRATIVE ORDER
) FOR COMPLIANCE
)
) Docket No. GWA-08-2013-0021
Respondent.)

INTRODUCTION

This Administrative Order for Compliance (Order) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by sections 308 and 309(a) of the Clean Water Act (Act), 33 U.S.C. §§ 1318 and 1319(a). This authority has been properly delegated to the undersigned official.

FINDINGS OF FACT AND LAW

The following findings apply to all times relevant to this action and to each count of this complaint:

1. Respondent Alan Kruckenberg Construction, Inc. (Kruckenberg or Respondent) is a corporation, incorporated in the State of Utah.
2. Respondent is a "person" as defined in section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
3. Respondent owns and/or is engaged in constructing a housing development known as "On the Hill" located at 2940 E 3300 S in Millcreek, Utah (the Site).
4. The Site encompasses approximately 3.03 acres.
5. Construction activities began at the Site on approximately January 2, 2008.
6. Respondent has had day-to-day responsibility for construction at the Site.
7. The runoff and drainage from the Site is "storm water" as defined in 40 C.F.R. § 122.26(b)(13).

8. Storm water contains "pollutants" as defined by section 502(6) of the Act, 33 U.S.C. § 1362(6).
9. Storm water, snow melt, surface drainage and runoff water have been leaving the Site and have flowed into Mill Creek via the Salt Lake County municipal separate storm sewer system (MS4).
10. The Mill Creek is a "navigable water" as defined by section 502(7) of the Act, 33 U.S.C. § 1362(7), and a "water of the United States" as defined by 40 C.F.R. § 122.2.
11. Each storm water discharge from the Site is the "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.
12. 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.
13. In order to restore and maintain the integrity of the nation's waters, section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into navigable waters, unless authorized by certain other provisions of the Act, including section 402 of the Act, 33 U.S.C. § 1342.
14. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into waters of the United States except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and 40 C.F.R. Part 122, or other specific authorization.
15. Construction activity including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres is considered small construction activity. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres is small construction activity. 40 C.F.R. § 122.26(b)(15).
16. Any person who discharges storm water associated with small construction activity to waters of the United States is required to seek NPDES permit coverage and to comply with the permit. 40 C.F.R. § 122.26(c).
17. The Utah Department of Environmental Quality (UDEQ) was approved by EPA to administer the NPDES program on July 7, 1987. 52 Fed. Reg. 27578-2757, July 22, 1987. A permit issued by UDEQ under Utah's EPA-approved NPDES program is known as an UPDES permit.

18. Effective July 1, 2008, the UDEQ issued an NPDES general permit (UPDES Permit No. UTR-300000, referenced as the Permit) authorizing discharges of storm water associated with construction activities including small construction activity, if done in compliance with its terms and conditions. Dischargers may apply for authorization to discharge under the Permit by submitting a notice of intent for coverage to the UDEQ.
19. On March 6, 2012, the EPA inspectors conducted a Site visit as part of an inspection of the Salt Lake County MS4 program. At that time, the Site was not covered under the Permit.
20. As a follow-up to the Site visit, on April 23, 2012, the EPA sent Respondent a letter of violation indicating the finding that the Site was not covered under the Permit. The letter of violation indicated a permit was required. The letter of violation requested a copy of the notice of intent to be covered under the Permit, a copy of the storm water pollution prevention plan (SWPPP) required by the Permit and photos of the storm water controls at the Site.
21. On May 21, 2012, Respondent submitted a notice of intent (NOI) to the UDEQ indicating Respondent's intent to have construction at the Site covered by the Permit. Effective May 21, 2012, Respondent was authorized to discharge storm water at the Site in accordance with the requirements of the Permit.
22. In a letter dated May 21, 2012, Respondent sent to the EPA a copy of the NOI, SWPPP and photos of the storm water controls at the Site.
23. On June 13, 2012, the EPA sent a letter to Respondent indicating the SWPPP did not meet the requirements of the Permit. An updated SWPPP was requested. No updated SWPPP has been received by the EPA.
24. On August 22, 2012, EPA and UDEQ inspectors conducted a storm water inspection at the Site to determine compliance with the Permit.
25. No Site representatives could be located at the Site. As part of the inspection, Jeff Kruckenberg was called by the EPA inspector from the Site and interviewed. Jeff Kruckenberg stated that the SWPPP had not been updated since it was sent to the EPA on May 21, 2012. Jeff Kruckenberg was notified verbally that the SWPPP did not meet many of the requirements of the Permit.
26. On October 22, 2012, the EPA sent Respondent an inspection report for the August 22, 2012 inspection requesting among other items an updated SWPPP that met the requirements of the Permit. The SWPPP had not been updated since 2008; a SWPPP revision documentation form in the SWPPP does not indicate any modifications have ever been made. The following SWPPP deficiencies were identified in the inspection report:
 - a. No runoff coefficient is included in the SWPPP;
 - b. The SWPPP does not include a current copy of the permit;

- c. The SWPPP has not been signed;
 - d. The SWPPP does not include a description of the control method used along the perimeter of Lot 17 where the soil was cut back from the sidewalk (photo 561);
 - e. The Site is less than 10 acres, and there are no silt fences or equivalent along the downslope/sideslope portions of the lots, except for along Lot 17;
 - f. The SWPPP does not discuss allowable non-storm water discharges (e.g. irrigation drainage);
 - g. In section 13, the SWPPP delegates several SWPPP implementation duties to Wilding Engineering, but Jeff Kruckenberg indicated he or someone from Alan Kruckenberg Construction implements the SWPPP; and
 - h. The SWPPP does not identify the self-inspection schedule.
27. Section 3.1 of the Permit states, "As a condition of this Permit, Permittees must implement the SWPPP as written or modified from commencement of construction until final stabilization is complete and [a notice of termination] has been submitted."
28. Section 3.5.1 of the Permit requires all SWPPPs to contain, "d. An estimate of the runoff coefficient of the site after construction activities are completed and existing data describing the soil or the quality of any discharge from the site" and "h. A copy of this Permit."
29. Section 3.2.1 of the Permit states, "A copy of the SWPPP, including a copy of the Permit, the NOI, and any amendments to the SWPPP, shall be retained on-site at the site which generates the storm water discharge in accordance with this Part 3.2 and with Part 5.10 of this Permit. If the site is inactive or does not have an onsite location adequate to store the copy of the SWPPP, reasonable local access to a copy of the SWPPP during normal working hours (e.g., at a local library or government building), must be provided and the location of the SWPPP, along with a contact phone number, shall be posted on site at a publicly-accessible location."
30. Section 3.2.6 of the Permit states, "All SWPPPs must be signed and certified in accordance with Part 5.16 of this Permit."
31. Section 3.3.1 of the Permit states, "The Permittee shall amend the SWPPP whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the discharge of pollutants to the waters of the State and which has not otherwise been addressed in the SWPPP."
32. Section 3.5.2 of the Permit states, "Each plan shall include a description of appropriate controls and measures that will be implemented... The description and implementation of controls shall address the following minimum components:

a. Erosion and Sediment Controls...

2) Structural Practices. The permittee shall provide a description of structural practices that divert flows from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable....

B. Less Than 10 Acre BMP Requirement. For drainage locations serving less than 10 acres, sediment basins and/or sediment traps should be used. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries (and those side slope boundaries deemed appropriate as dictated by individual site conditions) of the construction area unless a sediment basin providing storage for 3,600 cubic feet of storage per acre drained is provided.”

33. Section 3.5.5 of the Permit states, “Except for flows from fire fighting activities, sources of non-storm water listed in Part 1.5 of this Permit that are combined with storm water discharges associated with industrial activity must be identified in the SWPPP. The SWPPP shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.”
34. Section 3.3.3 of the Permit states, “The Permittee shall amend the SWPPP whenever a new owner/operator becomes responsible for implementing all or part of the SWPPP, as further described in Part 3.4 and Part 4.3 of this Permit.”
35. Section 3.5.4 of the Permit states, “Inspections must be conducted in accordance with one of the two schedules listed below. The Permittee shall specify in its SWPPP which schedule it will be following.
- 1) At least once every 7 calendar days; or
 - 2) At least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater.”
36. In a response dated November 11, 2012, a response to the EPA’s inspection report was provided. No updated SWPPP was included in the response.

FINDINGS OF VIOLATION

37. Respondent has failed to develop and implement a complete SWPPP as required by the Permit and therefore violated the Permit and the Act.

ORDER

38. Within 10 days of receipt of this Order, Respondent shall submit written notice of intent to the EPA and the UDEQ of Respondent's intent to comply with the requirements of this Order.
39. Effective immediately, Respondent shall comply with all provisions of the Permit. Compliance shall include but not be limited to all requirements relating to developing and implementing a SWPPP. **In addition, Respondent shall within 30 days of receipt of this Order, provide the EPA and the UDEQ with a revised SWPPP that meets the requirements of the Permit.**
40. Upon final stabilization of the Site, Respondent shall submit an Inactivation Notice as required by the Permit.
41. Respondent shall send all written notices and reports required by this Order to the following:
- | | |
|---|---|
| To the EPA: | To the UDEQ: |
| Stephanie Gieck (8ENF-W-NP)
U.S. EPA Region 8
Office of Enforcement, Compliance
and Environmental Justice
Technical Enforcement Program
1595 Wynkoop Street
Denver, CO 80202-1129 | Jeff Studenka, Manager
UPDES IES Section
Division of Water Quality
Utah Department of Environmental
Quality
P.O. Box 144870
Salt Lake City, UT 84114-4870 |
42. If Respondent asserts a business confidentiality claim for information required to be submitted under this Order, Respondent shall provide such information only to the EPA and adhere to the procedures in 40 C.F.R. part 2, subpart B. EPA will determine if the information Respondent has designated meets the criteria in 40 C.F.R. § 2.208 for being treated as confidential. Unless Respondent asserts a confidentiality claim at the time the information is submitted, the information shall be provided to both the EPA and the UDEQ as specified in this Order, and the EPA may make the information available to the public without further notice to Respondent.
43. Any failure to comply with the requirements of this Order shall constitute a violation of this Order and may subject Respondent to penalties as provided under the Act. 33 U.S.C. § 1319.
44. This Order does not constitute a waiver or modification of the terms and conditions of the Permit, which remains in full force and effect. Nor does this Order waive any other legal responsibility or liability of Respondent.

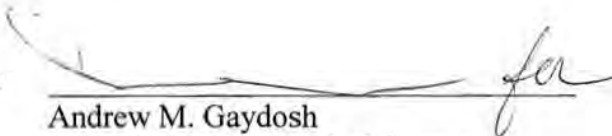
45. This Order does not constitute a waiver of or election by the EPA to forego any civil or criminal action to seek penalties, fines or other relief under the Act. Section 309(d) of the Act, 33 U.S.C. § 1319(c), as adjusted for inflation by 40 C.F.R. part 19, authorizes the imposition of civil penalties of up to \$37,500 per day for each violation of the Act or the Permit. Section 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations.
46. Nothing in this Order shall be construed to prevent the EPA from instituting further action under section 309 of the Act for the violations cited in this Order or to relieve Respondent from responsibilities, liabilities, or penalties pursuant to any applicable federal, state, or local law or regulation.
47. Respondent may seek federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

Date:

6/14/13

By:



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

IN THE MATTER OF: **Alan Kruckenberg Construction, Inc.**
DOCKET NUMBER: **DOCKET No. CWA-08-2013-0021**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original and one true and correct copy of the foregoing administrative order was hand-carried to the Regional Hearing Clerk:

Tina Artemis
Region 8 Hearing Clerk
United States Environmental Protection Agency, Region 8
1595 Wynkoop Street
Mail Code (8RC)
Denver, Colorado 80202-1129

and that a true copy of the same was sent via United States Postal Service, certified mail, return receipt requested no. 7009 3410 0000 2598 4600 to:

Alan L. Kruckenberg
Alan Kruckenberg Construction, Inc.
6782 South 1300 East
Salt Lake City, UT 84121

Date: June 18, 2013

By: Dayle Aldinger
Dayle Aldinger