

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)

CC Communities, LLC (f/k/a Century
Communities, LLC))

Docket No. **CWA-08-2016-0011**

Respondent.)

**COMBINED COMPLAINT AND
CONSENT AGREEMENT**

The U.S. Environmental Protection Agency, Region 8 (EPA), and CC Communities, LLC (f/k/a Century Communities, LLC) (Respondent), by their undersigned representatives, hereby consent and agree as follows:

I. AUTHORITY

1. This proceeding is subject to EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. This Combined Complaint and Consent Agreement (CCCA) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and is executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. EPA has jurisdiction over this matter pursuant to section 309(g)(1)(A) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(1)(A).

II. PARTIES BOUND

3. This CCCA, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, agents, successors and assigns. Each signatory to this CCCA certifies that they are authorized to execute and legally bind the party they represent to this CCCA.

III. STATEMENT OF THE PARTIES

4. Respondent admits the jurisdictional allegations contained herein and neither admits nor denies EPA's specific factual allegations, including, but not limited to, any allegations of liability.
5. Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CCCA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701 – 706.

6. EPA asserts that settlement of this matter is in the public interest, and EPA and Respondent agree that entry of this CCCA and its incorporation into a Final Order without further litigation and without adjudication of any issue of fact or law will avoid prolonged and complicated litigation between the parties.
7. This CCCA, upon incorporation into a final order and full satisfaction by the parties, shall be a complete and full resolution of the Respondent's alleged liability for federal civil penalties for the violations alleged below.

IV. GENERAL ALLEGATIONS

8. In order to restore and maintain the integrity of the Nation's waters, section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into waters of the United States unless authorized by certain other provisions of the CWA, including section 402 of the CWA, 33 U.S.C. § 1342.
9. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, under which EPA, and states with authorization from EPA, may permit discharges of pollutants into navigable waters, subject to specific terms and conditions.
10. Section 402(p)(3)(A) of the CWA, 33 U.S.C. § 1342(p)(3)(A), requires a NPDES permit for storm water discharges associated with an industrial activity to navigable waters.
11. 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.
12. 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).
13. 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(e).
14. The Colorado Department of Public Health and the Environment (CDPHE) is the state agency authorized to administer the federal NPDES program in Colorado. The EPA maintains concurrent enforcement authority with delegated states for violations of the CWA or of any permit condition or limitation implementing the CWA. 33 U.S.C. § 1342(i).
15. The CDPHE issued a general permit for the discharge of storm water under the NPDES Permit No. COR030000 (Permit). The Permit became effective July 1, 2007 and remains effective under an administrative extension past the expiration date with all conditions remaining in effect until a new permit is issued. See <https://www.colorado.gov/pacific/cdphe/wq-construction-general-permits>. The

CDPHE 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 CDPHE General Permit by submitting a notice of intent (NOI) for coverage to CDPHE.

16. The CDPHE General Permit requires, among other things, that dischargers develop and implement an adequate storm water management plan (SWMP), 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).

V. EPA'S SPECIFIC ALLEGATIONS

17. Respondent is a limited liability company organized under the laws of the State of Colorado. Respondent's principal office is located in Greenwood Village, Colorado.
18. Respondent is a "person" within the meaning of section 502(5) of the CWA and is therefore, subject to the requirements of the CWA and its implementing regulations. 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
19. Respondent was, at all times relevant to this CCCA, engaged in construction activities at the Lake of the Rockies Filing No. 1 (the Site) located in Monument, Colorado. Respondent, therefore, is or was engaged in an "industrial activity" as defined at 40 C.F.R. § 122.26(b)(14).
20. Storm water runoff, snow melt runoff, surface runoff, and/or drainage water have left the Site and have flowed into Monument Creek. Monument Creek flows to Fountain Creek which in turn flows into the Arkansas River. The runoff and drainage from the Site are "storm water" as defined by EPA regulations. 40 C.F.R. § 122.26(b)(13).
21. Monument Creek, Fountain Creek and the Arkansas River are "waters of the United States," within the meaning of 40 C.F.R. § 122.2 and therefore, are "navigable waters" within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7).
22. Storm water contains "pollutants" as defined by section 502(6) of the CWA, 33 U.S.C. § 1362(6).
23. 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 CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.
24. Each storm water discharge from the Site is a "discharge of a pollutant" as defined by section 502(12) of the CWA, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2.

25. On September 16, 2014, Respondent was issued Storm Water Authorization Number COR03M761 under the Permit, which authorized the discharge of storm water from construction activities disturbing 44.57 acres at the Site.

VI. DESCRIPTION OF ALLEGED VIOLATIONS

26. Authorized EPA employees entered the Site with the consent of Respondent on May 8, 2015, to inspect it for compliance with the CWA, CDPHE General Permit, and EPA regulations (Inspection).

27. Part I.C.2.d of the Permit requires the development of a SWMP which shall include a legible site map(s), showing the entire site identifying areas used for storage of building materials, equipment, soil, or waste.

28. As of the date of the Inspection, Respondent's SWMP site map did not include the location and areas for the concrete washout and building materials storage areas.

29. Part I.D.7 of the Permit sets forth general requirements for minimum components of storm water BMPs, including the requirement that such controls must be properly selected, installed, and maintained in accordance with the manufacturer's specifications and good engineering practices. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the permittee must replace or modify the control for site situations.

30. Part I.D.2 of the Permit sets forth BMP Implementation and Design Standards, including a requirement that facilities select, install, implement and maintain appropriate BMPs following good engineering, hydrologic and pollution control practices.

31. At the time of the Inspection, there were missing BMPs at the Site and Respondent had improperly maintained storm water BMPs near Monument Creek, as required by the Permit, which led to sediment discharges into Monument Creek.

32. Part I.D.3.d of the Permit sets forth general requirements for discharges to the ground of water from construction dewatering activities including a requirement that these discharges do not leave the site as surface runoff or to surface waters.

33. At the time of the Inspection, Respondent had not properly implemented dewatering practices at the site, which allowed water from dewatering activities to be discharged into Monument Creek.

34. Part I.D.3.c of the Permit sets forth general requirements for the disposal of concrete washout water including a requirement that BMPs for concrete washout be included in the SWMP to prevent pollution of groundwater. Part I.C.3.c.7 of the Permit states that "the practices used for concrete washouts must ensure that these activities do not result in the contribution of pollutants associated with the washing activity to stormwater runoff."

35. At the time of the Inspection. Respondent had not properly implemented concrete washout BMPs at the Site.
36. As set forth in paragraphs 28, 31, 33 and 35, above, Respondent failed to comply with the conditions of the Permit in violation of 33 U.S.C. § 1342 of the CWA.

VII. CIVIL PENALTY

37. Pursuant to section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and after consideration of the facts of this case as they relate to the factors set forth in section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has determined that a civil penalty of twenty-six thousand dollars (\$26,000.00) is appropriate to settle this matter.
38. Respondent consents and agrees, without admission of liability, to pay a civil penalty in the amount of twenty-six thousand dollars (\$26,000.00) in the manner described below:
- a. Payment shall be in a single payment of \$26,000, due no later than thirty (30) calendar days from the date of the Final Order. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
 - b. The payment shall be made by remitting a check or making a wire transfer or on-line payment. The check or other payment shall designate the name and docket number of this case, be in the amount stated in the preceding paragraph, and be payable to "Treasurer, United States of America." The payment shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. Environmental Protection Agency
P.O. Box 979077
St. Louis, Missouri 63197-9000

If remitted by any overnight commercial carrier:

U.S. Bank
Government Lockbox No. 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101

Contact: Craig Steffen, 513-487-2091, steffen.craig@epa.gov

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Beneficiary: US Environmental Protection Agency

If remitted through the Automated Clearing House (ACH) for receiving US currency:

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 -- checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737
Contacts: REX (Remittance Express): 866-234-5681

If remitted online with a debit card or credit card: No user name, password, or account number is necessary for this option. Online payment can be accessed via WWW.PAY.GOV, entering SFO 1.1 in the form search box on the left side of the screen, opening the form, and following the directions on the screen.

Copies of the check or record of payment shall be sent to:

Emilio Llamozas
U.S. Environmental Protection Agency (8ENF-W-NP)
1595 Wynkoop Street
Denver, Colorado 80202-1129

and

Melissa Haniewicz
Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)

1595 Wynkoop Street
Denver, Colorado 80202-1129

A transmittal letter identifying the case title and docket number must accompany the remittance and copies of the check.

39. If the payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (e.g., on the 1st late day, 30 days of interest will have accrued).
40. A handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the Final Order, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 30 days of the due date. Payments are first applied to outstanding handling charges, second to penalty assessments, third to accrued interest, and then to the outstanding principal amount.
41. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

VIII. PUBLIC NOTICE

42. As required by section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45, EPA will provide public notice and a reasonable opportunity to comment on the penalty that Respondent has agreed to pay in this matter. EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper, or inadequate.
43. If comments received during the public comment period do not require modification or withdrawal by EPA from this Agreement, the parties agree to submit this Agreement to the Regional Judicial Officer for Region 8 following the close of the public comment period specified in 40 C.F.R. § 22.45, with a request that it be incorporated into a final order.

IX. GENERAL PROVISIONS

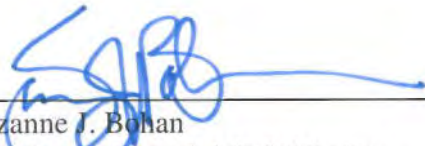
44. Nothing in this Agreement shall relieve Respondent of the duty to comply with the CWA and any regulation, order, or permit issued pursuant to the CWA.
45. Any failure by Respondent to comply with this Agreement shall constitute a breach of this Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Agreement and such other relief as may be appropriate.

46. Nothing in this Agreement shall be construed as a waiver by EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of any failure by Respondent to comply with this Agreement.

47. Each party shall bear its own costs and attorney's fees in connection with this matter.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,

Date: 7/28/16

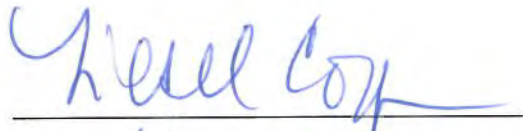
By: 
Suzanne J. Bohan
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice

United States Environmental Protection Agency
1595 Wynkoop Street, 8ENF
Denver, Colorado 80202-1129

Complainant

CC COMMUNITIES, LLC (f/k/a CENTURY
COMMUNITIES, LLC),

Date: July 29, 2016

By: 
Name: Liesel Cooper
Title: VP

CC Communities, LLC
8390 East Crescent Parkway, Suite 650
Greenwood Village, Colorado 80111

Respondent