



BLACK DIAMOND ENGINEERING

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HEARINGS CLERK
EPA -- REGION 10

December 17, 2007

Regional Hearing Clerk
Attn: Carol Kennedy
EPA Region 10 (ORC-158)
Suite 900
1200 Sixth Ave. NW
Seattle, Washington 98101

Submittal letter

List of witnesses..... Expected Testimony

Colin Burnett – Mr. Burnett will present testimony regarding inspection by EPA Staff, M. Young and R. Grandinetti. Since Mr. Petty was not aware of this inspection, he was unable to be at the project site to hear the conversation exchanged between the parties present. Mr. Burnett left the employment of Black Diamond Engineering shortly after the proposed SWPPP violation. This incident and ensuing charges, enforcement action and penalties assessed were one of the major factors in his decision to leave the engineering profession and go back to building houses.

Annette Duerock of Panhandle Health District (PHD) – Ms. Duerock was a co-host of a two day SEEP workshop that was held in February of 2007. Ms. Duerock is being called to testify to overview the contents of said workshop and the amount of information regarding paperwork requirements that is typically presented during these two day workshops. She is also expected to testify as to the contribution of Mr. Petty's testimony about specific requirements and penalties involved by not performing and documenting inspections and completing the required monitoring of a CGP.

City of Kootenai - City Clerk - Mary Luzmoor - Ms. Luzmoor will present testimony as to the character, commitment and knowledge that Mr. Petty has demonstrated while acting as the City Engineer. Ms. Luzmoor will testify as to the performance of recent developers in the presentation and performance of their duty to properly implement, construct and maintain approved SWPPP BMP's. Her testimony will clarify that while over three years have passed; two development projects on North Main Street are still not complete and still continue to discharge sediment into the City's stormwater system. In addition, Ms. Luzmoor will testify as to the impact that the news release from EPA staff had on the Mayor, City Council members and her as to the performance of their City Engineer in this matter.

Copies of all documents, 2 CD's of photos, and exhibits that Black Diamond Engineering has prepared to offer as evidence at the hearing, have been attached to the **Black Diamond Engineering Response to US Environmental Protection Agency Docket No. CWA-10-2007-0147, Administrative Complaint (BDE Response).**



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The detailed stipulations of factual and/or legal issues have also been addressed in above referenced BDE Response to reduce the number of contested issues. Black Diamond Engineering has also requested certain documents from EPA that need to be addressed with this Claim and have been requested in our Response.

It is the request of BDE that the time and location for the hearing be in Sandpoint, Idaho within 60 days from the delivering of documents requested in the Response. These documents have been requested so that the closure of this complaint may expedite the disposition of these proceedings.

In addition, precedents well established in other court cases in other portions of the US, have addressed counter claim issues relating to the amount of time and money that has been saved by the primary enforcement agency by not properly implementing their obligations to inspect and enforce the Act in a fair and equitable manner. Enforcement actions by Region I of EPA have created a tremendous imbalance in the ability of operators to compete on a level playing field with their competitors.

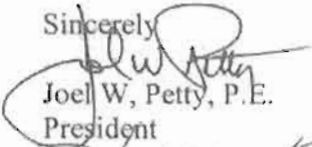
What bothers us most is we drive by Sand Creek everyday and after each major storm event observe sediment laden water flowing from Sand Creek into Lake Pend Oreille. In observing the developments throughout Kootenai County, Bonner County, and Boundary County during any storm event; we observe the lack of effort to contain sediment from running off project sites.


For many years a local auto wrecking yard has operated within and adjacent to a major drainage way just a short distance from Lake Pend Oreille. Yet on several occasions EPA and Army Corps of Engineers have turned their backs on the placement of garbage and fill into these wetlands. This continues and has expanded unchecked discharging oil, battery acid, antifreeze and other waste into Lake Pend Oreille. This inaction is appalling to say the least.

We have photos of erosion on the shoulders of roadways being washed directly into receiving streams due to poor maintenance practices. After observing that these discharges continue, with no enforcement action, it is very hard for Black Diamond Engineering to sign a settlement agreement and write a check to pay a penalty for our minor violations.

The dispute of the complaint is not about money but about principle and equitable treatment. In their recent press release, and subsequent unsubstantiated comments to the press by their staff, EPA has already violated due process.

Sincerely


Joel W. Petty, P.E.
President


Virginia K. Petty
CEO

Enclosures