

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:)

Field #4, LLC)
401 Kokopelli, Unit 1, Ste. 200)
Fruita, CO 81521)

and)

Constructors West, Inc.)
401 Kokopelli, Unit 1, Ste. 200)
Fruita, CO 81521)

Respondents.)

ADMINISTRATIVE ORDER
FOR COMPLIANCE ON CONSENT

Docket No. CWA-08-2014-0005

INTRODUCTION

1. This Administrative Order for Compliance on Consent (Consent Order) is entered into voluntarily by Field #4, LLC and Constructors West, Inc. (collectively, Respondents) and the United States Environmental Protection Agency (EPA). The EPA has authority to issue this Consent Order pursuant to section 309(a) of the Clean Water Act (Act), 33 U.S.C. § 1319(a), which authorizes the Administrator of the U.S. Environmental Protection Agency (EPA) to issue an order requiring compliance by a person found to be in violation of, *inter alia*, section 301(a) of the Act. This authority has been properly delegated to the undersigned EPA official.
2. The Findings in paragraph numbers 3 through 34, below, are made solely by the EPA. In signing this Consent Order, the Respondents neither admit nor deny the Findings. Without any admission of liability, the Respondents consent to issuance of this Consent Order and agree to abide by all of its conditions. The Respondents waive any and all

remedies, claims for relief, and otherwise available rights to judicial or administrative review that the Respondents may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review of this Consent Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-706. The Respondents further agree not to challenge the jurisdiction of the EPA or the Findings in any proceeding to enforce this Consent Order or in any action under this Consent Order.

FINDINGS

The following findings apply to all times relevant to this action:

3. Respondent Field #4, LLC (Field #4) is a Colorado limited liability company. Kenneth B. Milyard, Jr. is the registered agent and manager for Field #4.
4. Respondent Constructors West, Inc. (Constructors West) is a Colorado corporation. Kenneth B. Milyard, Jr. is the registered agent and manager for Constructors West.
5. Each 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.
6. The Respondents are engaged in constructing a housing subdivision known as Chatfield IV and located at 3152 E Road in Grand Junction, Colorado (the Site).
7. The Site encompasses approximately 11.75 acres.
8. Construction activities began at the Site in the summer of 2010.
9. Field #4 owns the Site.
10. Each Respondent has had day-to-day responsibility for construction at the Site.
11. Storm water runoff, snow melt runoff, surface runoff, and drainage have been leaving the Site and have flowed into the Preston Drain irrigation canal.

12. The Preston Drain flows year-round to the Colorado River, which is a navigable-in-fact, interstate waterway.
13. The runoff and drainage from the Site referenced in paragraph 11, above, are “storm water” as defined in 40 C.F.R. § 122.26(b)(13).
14. Storm water contains “pollutants” as defined by section 502(6) of the Act, 33 U.S.C. § 1362(6).
15. The Colorado River and the Preston Drain are “navigable waters” as defined by section 502(7) of the Act, 33 U.S.C. § 1562(7), and “waters of the United States” as defined by 40 C.F.R. § 122.2.
16. 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.
17. 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.
18. 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.
19. Section 402 of the Act, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, under which the EPA (and states with authorization from the EPA) may permit discharges of pollutants into navigable waters, subject to specific terms and conditions.

20. Section 402(p) of the Act, 33 U.S.C. § 1342(p), establishes a program under which NPDES permits may be issued to authorize discharges of storm water associated with industrial activities.
21. Any discharge from construction activity that disturbs at least five acres constitutes a storm water discharge associated with industrial activity. 40 C.F.R. § 122.26(b)(14)(x).
22. The state of Colorado was approved by the EPA to administer the NPDES program on March 27, 1975. 40 Fed. Reg. 16713 (April 14, 1975). A permit issued by the Colorado Department of Public Health and Environment (CDPHE) under Colorado's EPA-approved NPDES program is known as a CDPS permit.
23. Effective July 1, 2007, CDPHE issued an NPDES general permit (CDPS Permit No. COR-030000, referenced as the Permit) authorizing discharges of storm water associated with construction activities, 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 (NOI) for coverage to CDPHE.
24. Part I.D.2 of the Permit requires permittees to select, install, implement, and maintain best management practices (BMPs) to prevent or reduce pollution. According to Part I.C.3.c of the Permit, BMPs include but are not necessarily limited to structural controls (such as straw wattles and silt fences) and management practices (such as a dedicated concrete washout area and street sweeping).
25. Part I.D.8 of the Permit requires permittees to address failed BMPs as soon as possible, and immediately in most cases, to minimize discharge of pollutants.

26. Part I.D.6 of the Permit requires permittees to conduct regular storm water inspections of the relevant construction site. At a minimum, permittees must conduct inspections at least once every 14 calendar days and within 24 hours after the end of any precipitation or snowmelt event that causes surface erosion. The Permit also requires permittees to keep records of inspections for at least three years.
27. On July 17, 2012, EPA inspectors conducted a storm water inspection at the Site to determine compliance with the Act.
28. At the time of the inspection, neither Respondent had sought or obtained authorization from CDPHE to discharge storm water from the Site under the Permit, under any other applicable general permit, or under any individual permit.
29. During the inspection, the EPA inspectors observed sediment in the streets, sediment within the Preston Drain irrigation outlet, and missing, failed, and/or inadequate BMPs. For example, the inspectors observed sediment in the roadside gutters along Glendam Drive, South Pond Lane, and Pear Pond Couth, as well as the use of hay bales at the outfall into the Preston Drain that were not maintained in effective operating condition.
30. On December 4, 2012, the EPA issued a Request for Information (Request) to each Respondent pursuant to section 308 of the Act, 33 U.S.C. § 1318. Among other things, the Requests required the Respondents to provide EPA information about permit coverage, copies of the Storm Water Management Plan (SWMP) for the Site, a description and map of the BMPs installed at the Site, and reports of all storm water self-inspections conducted at the Site. Alternatively, the Respondents were requested to provide the dates of the self-inspections if the reports were not available.

31. By letter dated January 9, 2013, the Respondents replied to the Request, stating that they did not have certain information including, but not limited to, any notice of intent submitted to CDPHE to obtain coverage under the Permit, any copy of a SWMP for the Site, any map of the Site showing storm water BMPs, or any reports of self-inspections.
32. Part I.C.2 of the Permit requires each permittee to create a map of its site showing the construction site boundaries, areas of ground surface disturbance, areas used for storage of building materials, equipment, soil, or waste, the location of structural and non-structural BMPs, and location of springs, streams, wetlands, or other surface waters.
33. The Response contained a map of the Site, but that map did not include all elements referenced in the preceding paragraph.
34. The Respondents have discharged pollutants from the Site without authorization by the Permit, any other applicable general permit, or any individual permit, in violation of section 301(a) of the Act, 33 U.S.C. § 1311(a).

ORDER

35. Within 10 days of the effective date of this Consent Order (see paragraph 44, below), each Respondent shall submit written notice to the EPA of that Respondent's intent to comply with the requirements of this Order.
36. The Respondents shall:
 - i. within 10 calendar days of the effective date of this Consent Order, submit an NOI to CDPHE for the Site to be covered under the Permit and thereafter comply with all provisions of the Permit or, alternatively, submit an application for an individual permit authorizing storm water discharges from the Site;
 - ii. before submitting the NOI or applying for an individual permit, develop a map and SWMP for the Site in compliance with the Permit;

- iii. within 10 days of the effective date of this Consent Order, submit copies of the SWMP, site map, and either the NOI or individual permit application to the EPA;
- iv. beginning with a report for the fourth calendar quarter of 2013, submit copies of self-inspection reports (with all elements required by Part I.D.6.b.2 of the Permit or the comparable provision in the individual permit, if any) quarterly to the EPA and CDPHE, with each quarterly report to be due 10 days after the end of each calendar quarter (e.g., January 10, 2014, for the fourth calendar quarter of 2013, April 10, 2014, for the first calendar quarter of 2014, etc.) for the life of the construction project at the Site or until written notice is given by the EPA that the submissions may cease;
- v. within 30 days of the effective date of this Consent Order, provide the EPA and CDPHE a narrative description, as well as photos, of corrections made since the date of EPA's inspection to address sediment observed in the streets in and around the Site as well as sediment in and around the outlet to the Preston Drain;
- vi. within 45 days of the effective date of this Consent Order, submit written documentation to the EPA and CDPHE, including photographs, that BMPs have been developed and implemented at the Site as required by the Permit (or individual permit, if any) and detailed in the SWMP, including, but not limited to, erosion control and good housekeeping practices; and
- vii. upon final stabilization of the Site, submit an Inactivation Notice as required by Part I.A.6 of the Permit (or comparable provision in the individual permit, if any).

37. The Respondents shall send all written notices, documentation, and reports required by this Consent Order to the following:

To the EPA:
 Natasha Davis (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

To CDPHE:
 Nathan Moore
 Colorado Department of Public
 Health and Environment
 Water Quality Control Division
 4300 Cherry Creek Drive South
 Denver, CO 80246-1530

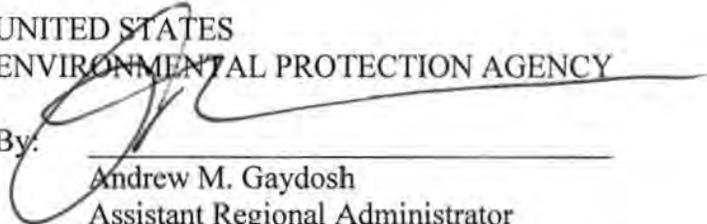
38. If either Respondent asserts a business confidentiality claim for information required to be submitted under this Consent Order, that Respondent shall provide such information only to EPA and adhere to the procedures in 40 C.F.R. part 2, subpart B. The EPA will determine if the information the Respondent has designated meets the criteria in 40 C.F.R. § 2.208 for being treated as confidential. Unless the Respondent asserts a confidentiality claim at the time the information is submitted, the information shall be provided to both the EPA and CDPHE as specified in this Order, and the EPA may make the information available to the public without further notice to either Respondent.
39. Any failure to comply with the requirements of this Consent Order shall constitute a violation of this Consent Order and may subject the Respondent(s) in violation of this Consent Order to penalties as provided under the Act. 33 U.S.C. § 1319.
40. This Consent 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 Consent Order waive any other legal responsibility or liability of either Respondent.
41. This Consent 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 the Permit. Section 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations.
42. Nothing in this Consent Order shall be construed to prevent the EPA from instituting further action under section 309 of the Act for the violations cited in this Consent Order

or to relieve either Respondent from responsibilities, liabilities, or penalties pursuant to any applicable federal, state, or local law or regulation.

43. The undersigned representative of each Respondent certifies that he is fully authorized to enter into the terms and conditions of this Consent Order and to bind the relevant Respondent to the terms and conditions of this Consent Order.
44. This Consent Order shall be effective immediately upon Respondents' receipt of a fully executed copy.

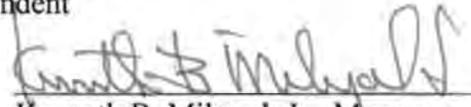
UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

Date: November 1, 2013

By: 

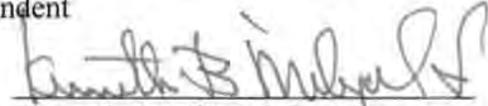
Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance, and
Environmental Justice

FIELD #4, LLC,
Respondent

By: 

Kenneth B. Milyard, Jr., Manager

CONSTRUCTORS WEST, INC.,
Respondent

By: 

Kenneth B. Milyard, Jr., Manager

CERTIFICATE OF SERVICE

I certify that the foregoing Administrative Order for Compliance on Consent was sent or delivered on this day as follows:

Original and one copy hand delivered to:

Tina Artemis
Regional Hearing Clerk
U.S. Environmental Protection
Agency (8RC)
Region 8
1595 Wynkoop Street
Denver, Colorado 80202

Copy by certified mail, return receipt requested (no. 7009 3410 0000 2998 4877)
to:

Mr. Richard Livingston
Attorney for Field #4, LLC and Constructors West, Inc.
2764 Compass Drive, Suite 200A
Grand Junction, Colorado 81506

Date

11-01-2013

By:

Gayle Aldinger