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HEARINGS CLERK
EPA REGION 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

CONNELL DEVELOPMENT COMPANY

Boise, Idaho

Respondent.

DOCKET NO. CWA-10-2019-0004

CONSENT AGREEMENT

Proceedings Under Section 309(g) of the Clean
Water Act, 33 U.S.C. § 1319(g)

I. STATUTORY AUTHORITY

1.1. This Consent Agreement is entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g).

1.2. Pursuant to CWA Section 309(g)(1)(A), 33 U.S.C. § 1319(g)(1)(A), the EPA is authorized to assess a civil penalty against any person that has violated CWA Section 301, 33 U.S.C. § 1311, and/or any permit condition or limitation in a permit issued under CWA Section 402, 33 U.S.C. § 1342.

1.3. CWA Section 309(g)(2)(B), 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of Class II civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum penalty of \$125,000.

Pursuant to 40 C.F.R. Part 19, the administrative assessment of Class II civil penalties may not exceed \$21,393 per day for each day during which the violation continues, up to a maximum penalty of \$267,415. See also 83 Fed. Reg. 1190 (January 10, 2018) (2018 Civil Monetary Penalty Inflation Adjustment Rule).

1.4. Pursuant to CWA Sections 309(g)(1)(A) and 309(g)(2)(B), 33 U.S.C. §§ 1319(g)(1)(A) and (g)(2)(B), and in accordance with Section 22.18 of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties,” 40 C.F.R. Part 22, EPA issues, and Connell Development Company (“Respondent”) agrees to issuance of, the Final Order attached to this Consent Agreement.

II. PRELIMINARY STATEMENT

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), execution of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Administrator has delegated the authority to sign consent agreements between EPA and the party against whom a penalty is proposed to be assessed pursuant to CWA Section 309(g), 33 U.S.C. § 1319(g), to the Regional Administrator of EPA Region 10, who has redelegated this authority to the Director of the Office of Compliance and Enforcement, EPA Region 10 (“Complainant”).

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CWA, together with the specific provisions of the CWA and the implementing regulations that Respondent is alleged to have violated.

III. ALLEGATIONS

Statutory and Regulatory Framework

3.1. As provided in CWA Section 101(a), 33 U.S.C. § 1251(a), the objective of the CWA is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

3.2. CWA Section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters by any person, except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

3.3. CWA Section 402(a), 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of any pollutant into navigable waters upon such specific terms and conditions as the Administrator may prescribe.

3.4. CWA Section 502(12), 33 U.S.C. § 1362(12), defines the term “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.” The term “navigable waters” is defined as “waters of the United States.” 33 U.S.C. § 1362(7). CWA Section 502(6), 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, rock, sand, biological materials, dredged spoil, and solid waste discharged into water.

3.5. Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B), requires NPDES permits for discharges associated with industrial activity. Discharges of storm water associated with construction activities, including clearing or grading of at least one acre, require an NPDES permit. 33 U.S.C. § 1342(p)(3)(A); 40 C.F.R. §§ 122.26(b)(14)(x) and 122.26(b)(15).

3.6. On February 16, 2012, EPA issued a general permit for discharges from construction activities (2012 CGP), which was replaced on February 16, 2017 with the current general permit for discharges from construction activities (2017 CGP). These permits are

collectively referred to as the CGP. Operators of construction projects subject to NPDES permitting requirements can obtain coverage under the CGP by submitting a notice of intent (“NOI”) certifying that the operator meets the permit’s eligibility requirements and that they will comply with the terms and conditions of the CGP. Prior to submission of a NOI, an operator of a construction project must develop a site-specific Stormwater Pollution Prevention Plan that describes, among other things, the nature of construction activities, the sequencing and estimated dates of construction work, and the best management practices (“BMPs”) to control the discharge of pollutants, including erosion and sediment controls.

3.7. Section 1.1.a of the CGP defines the term “operator” as (1) a party with operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or (2) a party with day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the permit).

General Allegations

3.8. Respondent is a company registered to do business in Idaho. Respondent is thus a “person” under CWA Section 502(5), 33 U.S.C. § 1362(5).

3.9. The Eyrie Canyon subdivision is a multi-phase, multi-year residential development project located on North Arrow Villa Way in Boise, Idaho (“Development”). Respondent has constructed the Development in phases, the most recent of which are Phases 8 and 9. Phase 8 includes four residential lots and Phase 9 includes 16 residential lots. During these phases, Respondent has graded residential lots and has installed utilities and roads. These phases of construction, which involved the disturbance of approximately 24 acres of the Development site, are referred to herein as the “Project.”

3.10. Stormwater runoff from the Project flows to Sand Creek, either directly or through the Ada County Highway District Municipal Separate Storm Sewer System. Sand Creek flows into the Boise River.

3.11. Sand Creek is a tributary of the Boise River, which is a traditionally navigable water. As such, Sand Creek is a “navigable water” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).

3.12. By discharging industrial stormwater from the Facility into navigable waters, Respondent engaged in the “discharge of pollutants” from point sources within the meaning of CWA Sections 301(a) and 502(13), 33 U.S.C. §§ 1311(a) and 1362(12).

3.13. As the owner of the Development, Respondent has “operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications.” Respondent is thus an operator as defined by the CGP.

3.14. As required by the CGP, Respondent developed a Stormwater Pollution Prevention Plan for Phase 8, which was finalized on March 25, 2015, and for Phase 9, which was finalized on October 14, 2015.

3.15. EPA received Respondent’s NOI, certifying its intent to obtain coverage under the CGP for Phase 8 on January 22, 2015, and coverage began on February 05, 2015. For Phase 8, Respondent was permitted under CGP permit number IDR12F062 under the 2012 CGP. Respondent re-applied for permit coverage for Phase 8 under the 2017 CGP on April 24, 2017, and coverage began on May 08, 2017 with CGP permit number IDR10006B. Respondent applied for permit termination for IDR100068 on October 23, 2017 and coverage for Phase 8 has terminated. EPA received Respondent’s NOI, certifying its intent to obtain coverage under the CGP for Phase 9 on July 08, 2015, and coverage began on July 22, 2015 under CGP permit number IDR12A051. Respondent re-applied for CGP permit coverage for Phase 9 under the

2017 CGP on April 24, 2017, and coverage began on May 08, 2017 with CGP permit number IDR10006C.

Violations

3.16. The Ada County Highway District (ACHD) inspected the Project on December 7, 2015, and on December 21, 2015. Authorized EPA representatives inspected the Project on January 6, 2016, to determine compliance with CWA Section 301(a), 33 U.S.C. § 1311(a), and the CGP. Based on information obtained from these inspections, the following violations of the Permit occurred:

3.16.1. Failure to complete and then document corrective actions for stormwater controls that were not installed in accordance with Part 2 of the 2012 CGP, in violation of Sections 5.2.1.1 and 5.4 of the 2012 CGP;

3.16.2. Failure to minimize the amount of soil exposed during construction, in violation of Section 2.1.1.1 of the 2012 CGP;

3.16.3. Failure to minimize disturbance on steep slopes, in violation of Section 2.1.2.6 of the 2012 CGP;

3.16.4. Failure to adhere to installation requirements of stormwater controls, in violation of Section 2.1.1.3 of the 2012 CGP;

3.16.5. Failure to adhere to erosion and sediment maintenance requirements, in violation of Section 2.1.1.4 of the 2012 CGP;

3.16.6. Failure to account for design requirement factors in designing stormwater controls, in violation of Section 2.1.1.2 of the 2012 CGP;

3.16.7. Failure to initiate soil stabilization measures immediately whenever earth disturbing activities have permanently or temporarily ceased, in violation of Sections 2.2.1 and 2.2.2 of the 2012 CGP;

3.16.8. Failure to protect storm drain inlets, in violation of Section 2.1.2.9 of the 2012 CGP; and

3.16.9. Failure to comply with maintenance requirements of the sediment basin, in violation of Section 2.1.3.2 of the 2012 CGP.

3.17. On January 26, 2016, authorized EPA representatives conducted an inspection of a neighboring property to determine compliance with CWA Section 301(a), 33 U.S.C. § 1311(a), and the CGP. At the time of the inspection, the authorized EPA representatives observed or learned of the following violations of the Permit at the Project:

3.17.1. Failure to comply with dewatering practices, in violation of Section 2.1.3.4 of the 2012 CGP; and

3.17.2. Failure to provide effective means of eliminating the discharge of water from the washout and cleanout of concrete, in violation of Section 2.3.3.4 of the 2012 CGP.

3.18. On September 12, 2017, authorized EPA representatives conducted an inspection of the property to determine compliance with CWA Section 301(a), 33 U.S.C. § 1311(a), and the CGP. At the time of the inspection, the authorized EPA representatives observed or learned of the following violations of the Permit at the Project:

3.18.1. Failure to accurately identify stormwater controls on the site map, in violation of Section 7.2.4 of the 2017 CGP;

3.18.2. Failure to restrict vehicle use to properly designated exit points, in violation of Section 2.2.4(a) of the 2017 CGP;

3.18.3. Failure to use appropriate stabilization techniques at all points that exit onto paved roads, in violation of Section 2.2.4(b) of the 2017 CGP; and

3.18.4. Failure to install sediment controls along perimeter areas of the site that will receive pollutant discharges, in violation of Section 2.2.3 of the 2017 CGP.

3.19. EPA representatives reviewed the Phase 8 and Phase 9 Stormwater Pollution Prevention Plans (SWPPPs), which were provided at the time of the January 6, 2016 inspection. Both SWPPPs contain the following deficiencies:

3.19.1. Failure to identify the personnel that are part of the stormwater team, in violation of Section 7.2.1 of the 2012 CGP;

3.19.2. Failure to include the following features of the Project on the site map:

3.19.3. Locations where earth-disturbing activities will occur, noting any phasing of construction activities, in violation of Section 7.2.6.1(a) of the 2012 CGP;

3.19.4. Approximate slopes before and after grading activities and the locations of steep slopes, in violation of Section 7.2.6.2 of the 2012 CGP;

3.19.5. Topography of the site, existing vegetative cover, and drainage patterns, in violation of Section 7.2.6.5 of the 2012 CGP;

3.19.6. Locations of stormwater control measures, in violation of Section 7.2.6.8 of the 2012 CGP;

3.19.7. Failure to describe stormwater control measures used at the Project, in violation of Section 7.2.10 of the 2012 CGP;

3.19.8. Failure to document that the stormwater team is trained in accordance with Part 6 of the CGP, in violation of Section 7.2.13 of the 2012 CGP; and

3.19.9. Failure to modify the SWPPPs to reflect site conditions, in violation of Section 7.4.1 of the 2012 CGP.

IV. TERMS OF SETTLEMENT

4.1. Respondent admits the jurisdictional allegations contained in this Consent Agreement.

4.2. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.3. As required by CWA Section 309(g)(3), 33 U.S.C. § 1319(g)(3), EPA has taken into account “the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require.” After considering all of these factors as they apply to this case, EPA has determined that an appropriate penalty to settle this action is \$68,000.

4.4. Respondent consents to the assessment of the civil penalty set forth in Paragraph 4.3. Respondent must pay the \$68,000 penalty in four installments with interest, at the current interest rate of one percent per annum, as established by the United States Department of Treasury as follows: 1) within 90 days of the effective date of the Final Order, Respondent must pay \$17,113; 2) within 180 days of the effective date of the Final Order, Respondent must pay \$17,128; 3) within 270 days of the effective date of the Final Order, Respondent must pay \$17,085; and 4) within 365 days of the effective date of the Final Order, Respondent must pay \$17,043. Should Respondent choose to pay any remaining portion of the entire proposed civil settlement penalty prior to the dates outlined in this paragraph, Respondent

may do so as long as the civil penalty payment also includes the payment of all of the per annum interest on the remaining balance.

4.5. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent must note on the check the title and docket number of this action.

4.6. Respondent must serve photocopies of the check, or proof of other payment method described in Paragraph 4.5, on the Regional Hearing Clerk and EPA Region 10 Compliance Officer at the following addresses:

Teresa Young
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 155
Seattle, WA 98101
Young.teresa@epa.gov

Brian Levo
Compliance Officer
U.S. Environmental Protection Agency
Region 10, Mail Stop OCE-201
1200 Sixth Avenue, Suite 155
Seattle, WA 98101
levo.brian@epa.gov

4.7. If Respondent fails to pay an installment payment as set forth in Paragraph 4.4, the entire unpaid balance of the civil penalty, and any other amount required by Paragraph 4.4 shall become immediately due and owing. Such failure may also subject Respondent to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and

additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.7.1. Interest. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), any overdue portion of the assessed penalty shall bear interest at a rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of the Final Order set forth in Part V.

4.7.2. Attorneys Fees, Collection Costs, Nonpayment Penalty. Pursuant to CWA Section 309(g)(9), 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty as described in Paragraph 4.4, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. The penalty described in Paragraphs 4.3 and 4.4, including any additional costs incurred under Paragraph 4.7 above, represents an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes.

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to this document.

4.10. Except as described in Subparagraph 4.7.2, above, each party shall bear its own costs in bringing or defending this action.

4.11. Respondent expressly waives any right to contest the allegations and waives any right to appeal this Consent Agreement and the Final Order.

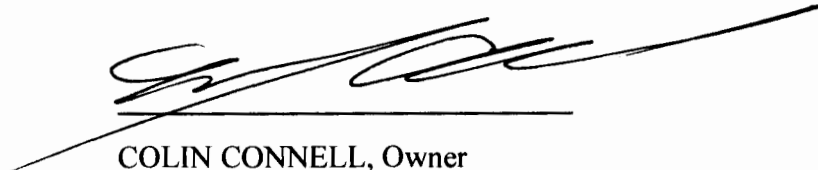
4.12. The provisions of this Consent Agreement and the Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.13. The above provisions are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

10/25/18

FOR RESPONDENT:

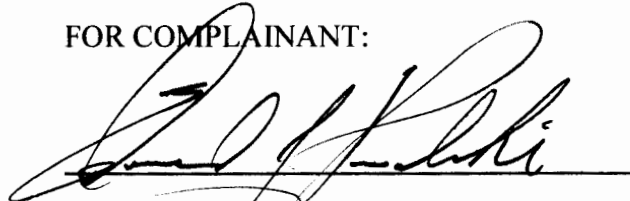


COLIN CONNELL, Owner
Connell Development Company

DATED:

11/1/2018

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director
Office of Compliance and Enforcement
EPA Region 10

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

CONNELL DEVELOPMENT COMPANY

Boise, Idaho

Respondent.

DOCKET NO. CWA-10-2019-0004

FINAL ORDER

Proceedings Under Section 309(g) of the Clean
Water Act, 33 U.S.C. § 1319(g)

1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.
2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.
3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the Clean Water Act (CWA) for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

4. This Final Order shall become effective upon filing.

SO ORDERED this 5th day of November, 2018.

A handwritten signature in black ink, appearing to read "Richard Mednick", is written over a horizontal line.

RICHARD MEDNICK
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 10

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Connell Development Company, DOCKET NO.: CWA-10-2019-00004** was served on the addressees in the following manner on the date specified below:

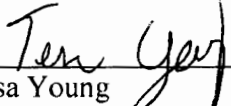
The undersigned certifies that a true and correct copy of the document was delivered to:

Ashley Palomaki
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 10, Mail Stop ORC-113
1200 Sixth Avenue, Suite 155
Seattle, WA 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Colin Connell
P.O. Box 2723
Boise, Idaho 83701-2723

DATED this 6 day of November 2018.



Teresa Young
Regional Hearing Clerk
EPA Region 10