

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

2010 JUL 30 AM 9:00

IN THE MATTER OF:)

Parry Farms, LLC)

1257 Margaret View Circle)

Riverton, Utah 84065-4017)

Respondent.)

FILED
EPA REGION VIII
HEARING CLERK

Docket No. CWA-08-2010-0002

COMPLAINANT'S PREHEARING EXCHANGE

The Complainant, United States Environmental Protection Agency (EPA), submits the following as its initial prehearing exchange, in response to the Prehearing Order issued by the Honorable Susan L. Biro, Chief Administrative Law Judge, on June 17, 2010.

1. Witnesses, exhibits, and place of hearing

- (A) **names of the expert and other witnesses intended to be called at hearing, with a brief narrative summary of their expected testimony.**

At this time, Complainant does not expect to call any expert witnesses at hearing. Following are the fact witnesses who Complainant currently intends to call at hearing:

Aaron Urdiales: Mr. Urdiales is an Environmental Scientist with EPA Region 8. He is EPA's technical lead on this case and will testify regarding all aspects of the investigation and preparation of this case, including, but not limited to, his observations during a visit to the Parry Farms site (the Site) on March 30, 2009, and his communications with Michael Herkimer and Kendell Woolstenhulme of Tycon Construction (Tycon) about the Site. He will also testify that runoff from the Site drains to a detention pond and from there to the Jordan River, a navigable water and a water of the U.S. as defined by the Clean Water Act and EPA regulations. Mr. Urdiales is also expected to testify to the precipitation data and drainage patterns at and near the Site. Mr. Urdiales' testimony will also include his conclusions as to storm water violations as the Site, including the number of missed storm water inspections.

Mr. Urdiales will also testify about his review of the following documents: Utah Department of Environmental Quality (UDEQ) Site inspection reports; storm water pollution prevention plans (SWPPPs) prepared for the Site; the Notices of Intent to Discharge at the Site (NOIs); the State of Utah Storm Water General Permit for Construction Activities; EPA's requests for information to Tycon, Stantec Consulting, Inc.(Stantec), and Parry Farms, LLC; Stantec's and James Pack's responses to EPA's request for information; precipitation data obtained from Utah State University; USGS topographic maps of the Site, the Utah 2008 Integrated Report 303(d) list; the

U.S. Army Corps of Engineers' list of traditionally navigable waters in the Sacramento District; Utah Administrative Code Rule R562-70 (State of Utah list of navigable waters); aerial photographs of the Site; and the Jordan River Watershed Beneficial Use Designation.

Jennifer Meints: Ms. Meints is an Environmental Engineer with EPA Region 8. She formerly served as EPA's technical lead on this case. She will testify regarding development of the case, including, but not limited to, drafting and mailing of EPA's requests for information to Tycon, Stantec, and Parry Farms, LLC, and her review of the response from James Pack to the request for information. She will further testify about her communications with representatives of UDEQ, Tycon, Parry Farms, LLC, and Stantec, and her review of UDEQ Site inspection reports, and the Site SWPPPs and NOIs.

Michael Herkimer: Mr. Herkimer is an Environmental Scientist 4 in the UPDES IES Section of the Division of Water Quality of UDEQ and was the manager of that Section at the time of UDEQ's inspections of the Site and UDEQ's enforcement action against Parry Farms. He will testify regarding the State of Utah's communications and interactions with Parry Farms as well as actions taken by UDEQ relating to the Site. His testimony in that regard will include, but not limited to, his review of photographs taken of the Site and the inspection report prepared for his review after Site visits on May 25, 2006 and June 27, 2006, letters sent by UDEQ to Mike Sorenson on June 2 and July 5, 2006, the reasons for Utah's referral of the case to EPA, his observations during a Site visit with Mr. Urdiales on March 3, 2009, and the Jordan River's status as a navigable water.

Karen Nichols: Ms. Nichols is the Managing Principal of Stantec. She is expected to testify regarding the work performed by Stantec for Parry Farms, LLC relating to the Site and Stantec's response, dated September 11, 2008, to EPA's Clean Water Act section 308 request for information, dated July 28, 2008.

(B) copies of all documents and exhibits intended to be introduced into evidence

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| Complainant's Ex. 1: | Utah Storm Water General Permit for Construction Activities, Permit No. UTR100000, effective October 1, 2002. |
| Complainant's Ex. 2: | Notice of Intent for Storm Water Discharges Associated with Construction Activity Under the UPDES General Permit No. UTR104357, certification provided 05/06/05. |
| Complainant's Ex. 3: | Stormwater Pollution Prevention Plan for Construction Activities for Parry Farms Phase 1, dated May 2005. |
| Complainant's Ex. 4: | Stormwater Pollution Prevention Plan for Construction Activities for Parry Farms Phase 2, dated November 2006, Revision 1. |

- Complainant's Ex. 5: Letter dated June 2, 2006, from Rand Fisher, Utah Department of Environmental Quality, to Mike Sorenson, and accompanying 3560 Form, Findings/Corrective Actions Page, and NPDES Compliance Inspection Report for May 25, 2006, inspection of Parry Farms.
- Complainant's Ex. 6: Photographs from June 27, 2006, inspection of Parry Farms by the Utah Department of Environmental Quality.
- Complainant's Ex. 7: Letter dated July 5, 2006, from Walter L. Baker, Utah Department of Environmental Quality, to Mike Sorenson, and accompanying Notice of Violation and Order.
- Complainant's Ex. 8: Letter dated May 14, 2008, from U.S. EPA Region 8 to Michael Sorenson, Parry Farms LLC, regarding Request for Information Pursuant to Section 308 of the Clean Water Act, 33 U.S.C. § 1318.
- Complainant's Ex. 9: Letter dated June 12, 2008, from U.S. EPA Region 8 to Michael Sorenson, Parry Farms LLC, regarding Request for Information Pursuant to Section 308 of the Clean Water Act, 33 U.S.C. § 1318.
- Complainant's Ex. 10: Letter and enclosures dated July 18, 2008, from James Pack to EPA, responding to EPA's June 12, 2008, request for information.
- Complainant's Ex. 11: Letter dated July 28, 2008, from U.S. EPA Region 8 to Kendell Woolstenhulme, Tycon, Inc., regarding Request for Information Pursuant to Section 308 of the Clean Water Act, 33 U.S.C. § 1318.
- Complainant's Ex. 12: Letter dated July 28, 2008, from U.S. EPA Region 8 to Karen Nichols, Stantec Consulting, Inc., regarding Request for Information Pursuant to Section 308 of the Clean Water Act, 33 U.S.C. § 1318.
- Complainant's Ex. 13: Letter and attachments dated September 11, 2008, from Karen Nichols, Stantec Consulting, Inc., to U.S. EPA Region 8, regarding Request for Information, Parry Farms Development, Bluffdale, Utah.
- Complainant's Ex. 14: Photographs of the Site taken on March 30, 2009, by Aaron Urdiales, and accompanying descriptions.
- Complainant's Ex. 15: Precipitation data from weather stations located at Alpine and Draper - Point of Mountain, Utah, from Utah State University's website, <http://climate.usurf.usu.edu>.

- Complainant's Ex. 16: Spreadsheet entitled "Summary of Required Stormwater Inspections" compiled by Mr. Urdiales.
- Complainant's Ex. 17: List of "navigable-in-fact" traditional navigable waters from the U.S. Army Corps of Engineers, Sacramento District's website, <http://www.spk.usace.army.mil>
- Complainant's Ex. 18: Utah Administrative Code Rule R652-70.
- Complainant's Ex. 19: Utah 2008 Integrated Report 303(d) List.
- Complainant's Ex. 20: Jordan River Watershed Beneficial Use Designation from <http://www.waterresources.slco.org>
- Complainant's Ex. 21: Montage containing USGS topographic map of the Site to the Great Salt Lake, Site-specific USGS topographic map, and aerial photo of the Site.

(C) views as to appropriate place of hearing and estimated time to present case

EPA proposes to hold the hearing in Salt Lake City, Utah. EPA estimates that its case can be presented in one day. No translation services are necessary.

2. Additional information required by the Prehearing Order

(A) A copy of the pertinent portions of Permit referenced in Paragraphs 9 - 16 and 22 of the Complaint.

Please see Complainant's Exhibit 1.

(B) A copy of any report(s) of the May 25, 2006 inspection referenced in Paragraph 25 of the Complaint, and a copy of any maps, drawings, diagrams, photographs, videos, and/or field notes created or taken during the inspection.

Please see Complainant's Exhibit 5.

(C) A copy of any report(s) of the June 27, 2006 inspection referenced in Paragraph 25 of the Complaint, and a copy of any maps, drawings, diagrams, photographs, videos, and/or field notes created or taken during the inspection.

Please see Complainant's Exhibit 6.

- (D) A copy of any other documents in support of the allegations in Paragraphs 25 and 26 of the Complaint.**

Please see Complainant's Exhibit 7.

- (E) A copy of the SWPPP submitted to the Utah Division of Water Quality (DWQ) by Respondent, referenced in Paragraph 27 of the Complaint.**

Please see Complainant's Exhibit 4.

- (F) A copy of the SWPPP submitted to EPA by Respondent's consultant, referenced in Paragraph 28 of the Complaint.**

Please see Complainant's Exhibit 3.

- (G) A copy of any documentation, photographs or other evidence supporting the allegation in Paragraph 29 of the Complaint that Respondent completed construction activity on December 31, 2006.**

Please see item VI. in Complainant's Exhibit 2.

- (H) A copy of the requests for information issued by EPA on May 14, 2008, and June 12, 2008, referenced in Paragraph 30 of the Complaint.**

Please see Complainant's Exhibits 8 and 9.

- (I) A copy of any response to the aforementioned request for information, referenced in Paragraph 31 of the Complaint.**

Please see Complainant's Exhibit 10.

- (J) A copy of any documentation supporting the allegation in Paragraph 33 of the Complaint that stormwater originating at the Site flowed into a detention pond and ultimately flowed into the Jordan River.**

Please see Complainant's Exhibits 13 and 14.

- (K) A statement regarding whether the Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. § 3501 et seq., applies to this proceeding, whether there is a current Office of Management and Budget control number involved herein and whether the provisions of Section 3512 of the PRA are applicable in this case.**

The three counts in the Complaint involve violations of a state-issued permit and are therefore not the type of information collection activity covered by the PRA.

3. Supplemental Prehearing Exchange

EPA reserves the right to move to supplement this prehearing exchange with any information that may subsequently become available to EPA, or if it determines the need for expert witnesses.

United States Environmental Protection Agency, Region 8
Office of Enforcement, Compliance, and
Environmental Justice, Complainant.
1595 Wynkoop Street
Denver, CO 80202-1129

Date: 7/29/10

By: Wendy I. Silver
Wendy I. Silver, Senior Attorney
Legal Enforcement Program

CERTIFICATE OF SERVICE

I certify that the foregoing PREHEARING EXCHANGE, with all exhibits, was sent or delivered, as indicated below, to each of the following:

One copy mailed by certified mail, return receipt requested, to:

Michael Sorenson
James Pack
Parry Farms, LLC
2115 South Dallin Street
Salt Lake City, UT 84109

Certified Mail No. 7009-3410-0000-2591-9411

and

Timothy R. Pack, Esq.
Wrona Law Firm
Wrona Law Building
1745 Sidewinder Drive
Park City, UT 84060

Certified Mail No. 7009-3410-0000-2591-9480

One copy by pouch mail to:

The Honorable Susan L. Biro
Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Original and one copy hand-delivered to:

Tina Artemis
Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)
1595 Wynkoop Street
Denver, CO 80202-1129

Date: 7/30/10

By: Judith M. McTernan