



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 WYNKOOP STREET
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

2016 NOV 21 PM 12:38
FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2016-0018

IN THE MATTER OF:)
)
WAGNER CONSTRUCTION) FINAL ORDER
)
)
)
)
)
RESPONDENT)

Pursuant to 40 C.F.R. § 22.13(b) and §§ 22.18(b)(2) and (3) of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order.

The Respondent is hereby **ORDERED** to comply with all of the terms of the Consent Agreement.

SO ORDERED THIS 21st DAY OF November, 2016.

Katherin E. Hall
Katherin E. Hall
Regional Judicial Officer



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 8

1595 Wynkoop Street
Denver, Colorado 80202

EXPEDITED SETTLEMENT AGREEMENT

Docket No. : CWA-08-2016-0018 NPDES Permit No. NDR108568

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Wagner Construction, Incorporated ("Respondent") is a "person," within the meaning of Section 502(5) of the Clean Water Act (Act), 33 U.S.C. § 1362(5), and 40 C.F.R. Part 122.2.

Attached is an Expedited Settlement Offer Deficiencies Form (Form), which is incorporated by reference. By its signature, Complainant (EPA) finds that Respondent is responsible for the deficiencies specified in the Form.

Respondent failed to comply with its National Pollutant Discharge Elimination System (NPDES) storm water permit issued under section 402 of the Act, 33 U.S.C. § 1342.

EPA finds, and Respondent admits, that Respondent is subject to section 301(a) of the Act, 33 U.S.C. § 1311(a), and that EPA has jurisdiction over any person who discharges pollutants from a point source to waters of the United States. Respondent neither admits nor denies the deficiencies specified in the Form.

EPA is authorized to enter into this Consent Agreement and Final Order (Agreement) under the authority vested in the Administrator of EPA by section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and by 40 C.F.R. Part 22.13(b). The parties enter into this Agreement in order to settle the civil violation(s) alleged in this Agreement for a penalty of \$5,900.00. Respondent consents to the assessment of this penalty, and waives the right to: (1) contest the finding(s) specified in the Form; (2) a hearing pursuant to section 309(g)(2) of the Act, 33 U.S.C. § 1319(g)(2); and (3) appeal pursuant to section 309(g)(8), 33 U.S.C. § 1319(g)(8).

Additionally, Respondent certifies, subject to civil and criminal penalties for making a false statement to the United States Government, that any deficiencies identified in the Form have been corrected. Respondent shall submit a written report with this Agreement detailing the specific actions taken to correct the violations cited herein.

Respondent certifies that, within ten (10) days of receiving notice from EPA that the Agreement is effective (the effective date is thirty (30) days from the date it is signed by the Regional Judicial Officer), Respondent shall submit a bank, cashiers or certified check, with case name and docket number noted, for the amount specified above payable to the Treasurer, United States of America, via certified mail, to:


U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 69197-9000
In the Matter of: Wagner Construction, Incorporated

Docket No: CWA-08-2016-0018


This Agreement settles EPA's civil penalty claims against Respondent for the Clean Water Act violation(s) specified in this Agreement. EPA does not waive its rights to take any enforcement action against Respondent for any other past, present, or future civil or criminal violation of the Act or of any other federal statute or regulation. EPA does not waive its right to issue a compliance order for any uncorrected deficiencies or violation(s) described in the Form. EPA has determined this Agreement to be appropriate.

This Agreement is binding on the parties signing below and effective thirty (30) days from the date it is signed by the Regional Judicial Officer, unless a petition to set aside the Order approving this Agreement is filed by a commenter pursuant to section 309(g)(4)(C) of the Act, 33 U.S.C. § 1319(g)(4)(C), or a hearing is requested under section 309(g)(4) of the Act, 33 U.S.C. § 1319(g)(4).

APPROVED BY EPA:


Stephanie DeJong, Acting Unit Chief
NPDES Enforcement Program
Office of Enforcement, Compliance
And Environmental Justice

Date: 9/23/16


James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance
And Environmental Justice

Date: 9/23/16

APPROVED BY RESPONDENT:

Name (print): MAT GOERTON

Title (print): PROJECT MANAGER, WAGNER COURT

Signature:  Date: 09/13/16

Having determined that this Agreement is authorized by law,
IT IS SO ORDERED:

Date: _____
Hon. Elyana R. Sutin
Regional Judicial Officer

U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 8

1595 Wynkoop Street, Denver, CO 80202-1129

PUBLIC NOTICE OF PROPOSED ADMINISTRATIVE PENALTY ASSESSMENT AND OPPORTUNITY TO COMMENT ON CLEAN WATER ACT CONSENT AGREEMENT

Purpose of Public Notice

The purpose of this notice is to announce the United States Environmental Protection Agency's (EPA's) intention to enter into a Consent Agreement and Final Order with:

**Wagner Construction, Inc.
3151 Highway 53
International Falls, Minnesota 56649**

for alleged violations of the Clean Water Act (CWA) on the Souris River in Minot, North Dakota, and to give the public the opportunity to comment on the proposed consent agreement.

Process Information

Under the CWA, EPA is authorized to issue orders assessing civil penalties for violations of the CWA. 33 U.S.C. § 1319(g). EPA may issue such an order after the commencement of an administrative penalty proceeding. As required by law, EPA is hereby providing public notice of the proposed consent agreement. 33 U.S.C. § 1319(g)(4)(A) and 40 C.F.R. § 22.45(b).

Administrative enforcement proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. part 22. The procedures through which the public may submit written comment on a proposed consent agreement and participate in a proceeding are set forth in 40 C.F.R. § 22.45. The proposed consent agreement has been 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 executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3). The deadline for submitting public comment on a proposed consent agreement is thirty (30) days after the date of public notice.

Case Summary.

The case against Wagner Construction (Respondent), Docket No. CWA-08-2016-0018, was filed on 9/26/2016. The complaint that initiated this case was combined with a consent agreement for a penalty of \$5,900 for violations of the storm water discharge permit issued by the State of North Dakota. As the operator under the permit, Respondent was responsible for managing storm water at its construction of flood hazard mitigation improvements at the location of the Minot Water Treatment Plant located at 16th Street Southwest and West Burdick Expressway in Minot, North Dakota. The permit violations occurred in July 2016 and were discovered during an EPA inspection on July 21, 2016. The Respondent had failed to implement storm water and pollution prevention best management practices and failed to meet permit requirements for its Storm Water Pollution Prevention Plan. Potential discharges of storm water pollutants from Respondent's construction operations flowed toward the Souris River, which is immediately adjacent to the construction site. The Souris River is, and was at all relevant times, a water of the United States.

Further Information and Comments

Persons wishing to receive a copy of any documents filed in these proceedings, comment upon the proposed consent agreement, or otherwise participate in any of the proceedings should contact the Regional Hearing Clerk, Missy Haniewicz, U.S. Environmental Protection Agency, Region 8 (8RC), 1595 Wynkoop Street, Denver, Colorado 80202-1129, telephone: 303.312.7059. Written comments on this proposed consent

agreement must be directed to the Regional Hearing Clerk by the deadline set forth above in this public notice.

The case docket for this proceeding is located in the EPA - Region 8 office identified above and the file will be open for public inspection during normal business hours. Written comments submitted by the public are available as part of the case docket, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, no final order assessing a penalty in these proceedings will be issued prior to **40 calendar days after publication of this notice.**

09-26-2016

Date of Publication

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT AND CONSENT AGREEMENT** in the matter of **WAGNER CONSTRUCTION; DOCKET NO.: CWA-08-2016-0018** was filed with the Regional Hearing Clerk on September 26, 2016; the Final Order was filed on November 21, 2016.

Further, the undersigned certifies that a true and correct copy of the documents were emailed to, Abigail Dean, Enforcement Attorney. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt on November 21, 2016, to:


Respondent

Dennis Wagner
Chief Executive Officer
Wagner Construction
3151 Highway 53
International Falls, Minnesota
56649

And emailed to:

Jessica Farmer
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

November 21, 2016


Melissa Haniewicz
Regional Hearing Clerk

