

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2018 APR 26 PM 2: 50

FILED
EPA REGION VIII
HEADING CI FRK

IN THE MATTER OF:)
)
Wasatch Commercial Builders, LLC) Docket No. ~~CWA-08-2018-0007~~
595 South Riverwood Parkway)
Logan, Utah 84321)
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)
)
Respondent.) **COMBINED COMPLAINT AND
CONSENT AGREEMENT**

The U.S. Environmental Protection Agency, Region 8 (EPA), and Wasatch Commercial Builders, LLC (Respondent), by their undersigned representatives, hereby consent and agree as follows:

I. AUTHORITY

1. This proceeding is subject to the EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. This Combined Complaint and Consent Agreement (CCCA) is 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 is executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. The EPA has jurisdiction over this matter pursuant to section 309(g)(1)(A) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(1)(A).

II. PARTIES BOUND

3. This CCCA, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon Respondent, and Respondent's officers, directors, agents, successors and assigns. Each signatory to this CCCA certifies that they are authorized to execute and legally bind the party they represent to this CCCA.

III. STATEMENT OF THE PARTIES

4. For the purposes of this settlement only, Respondent admits the jurisdictional allegations contained herein and neither admits nor denies the EPA's specific factual allegations and legal conclusions.
5. With respect to this settlement only, Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CCCA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701 – 706.
6. The EPA asserts that settlement of this matter is in the public interest, and the EPA and Respondent agree that entry of this CCCA and its incorporation into a Final Order without further litigation and

without adjudication of any issue of fact or law will avoid prolonged and complicated litigation between the parties.

7. The parties reserve any and all rights and defenses they may have against any person or entity not a party to this CCCA.
8. This CCCA, upon incorporation into a Final Order and full satisfaction by the parties, shall be a complete and full resolution of Respondent's liability for federal civil penalties for the violations alleged below.

IV. GENERAL ALLEGATIONS

9. In order to restore and maintain the integrity of the nation's waters, section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into waters of the United States, unless authorized by certain other provisions of the CWA, including section 402 of the CWA, 33 U.S.C. § 1342.
10. Section 402 of the CWA, 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.
11. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), establishes a program under which a NPDES permit may be issued to authorize discharges of stormwater discharges associated with industrial activities.
12. The regulations further defining requirements for NPDES permits for stormwater discharges associated with industrial activity are found at 40 C.F.R. part 122.
13. Any discharge from construction activity that disturbs at least five acres constitutes a stormwater discharge associated with industrial activity. 40 C.F.R. § 122.26(b)(14)(x).
14. Construction activity including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre and less than five acres is considered small construction activity. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres is small construction activity. 40 C.F.R. § 122.26(b)(15).
15. Dischargers of stormwater associated with industrial activity and small construction activity must either apply for an individual permit or seek coverage under an existing and lawful general permit. 40 C.F.R. § 122.26(c).
16. The Utah Department of Environmental Quality (UDEQ) was approved by the EPA to administer the NPDES program on July 7, 1987. 52 Fed. Reg. 27578-2757, July 22, 1987. A permit issued by UDEQ under Utah's EPA-approved NPDES program is known as an UPDES permit. The EPA

maintains concurrent enforcement authority with delegated states for violations of the CWA or of any permit condition or limitation implementing the CWA. 33 U.S.C. § 1342(i).

17. Effective July 1, 2014, the UDEQ issued an NPDES general permit (UPDES Permit No. UTRC00000, referenced as the Permit) authorizing discharges of stormwater 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 the UDEQ.
18. An “owner” under the Permit is defined as “the party that owns/leases the land on which the construction activities occur and has ultimate control over the project and the destiny of a project. The owner has control over construction plans and specifications, including the ability to make modifications at the highest level, to those plans and specifications.” Permit, Part 1.1.1.
19. An “operator” under the Permit is defined as “the party (usually the general contractor) that has day-to-day operational control over 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).” Permit, Part 1.1.1.
20. A “permittee” under the Permit is defined as “the owner and/or operator named in the NOI for the project.” Permit, Appendix A.
21. The Permit requires, among other things, that dischargers develop and implement an adequate stormwater pollution prevention plan (SWPPP), conduct regular stormwater inspections, and implement and maintain best management practices (BMPs) to prevent or reduce pollution. BMPs include, but are not limited to, structural controls (e.g., storm drain inlet protection) and management practices (e.g., dedicated concrete washout areas and street sweeping).

V. EPA’S SPECIFIC ALLEGATIONS

22. Respondent is a limited liability company organized under the laws of the State of Utah and authorized to do business in the State of Utah. Respondent’s principal office is located in Logan, Utah. Scott Overman is the Registered Agent.
23. Respondent is a “person” within the meaning of section 502(5) of the CWA and is therefore, subject to the requirements of the CWA and its implementing regulations. 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
24. Respondent was, at all times relevant to this CCCA, engaged in construction activities at:
 - a. A commercial building known as Conservice 2 located at 760 South Gateway Drive, River Heights, Utah (Conservice);
 - b. An apartment complex known as 4th West Apartments located at 255 North 400 West, Salt Lake City, Utah (4th West); and
 - c. An apartment complex known as Milagro Apartments located at 255 West 200 South, Salt Lake City, Utah (Milagro) (each hereinafter collectively referred to as the “Sites” or individually referred to as a “site”).

25. The acreage for each site is as follows:
 - a. Conserveice encompassed approximately 5.64 acres;
 - b. 4th West encompassed approximately 5 acres; and
 - c. Milagro was part of an approximately 2-acre common plan of development.
26. The Permit information for each site is as follows:
 - a. For Conserveice, Respondent submitted a NOI and was covered under the Permit number UTR371045 between May 8, 2015 and May 8, 2016;
 - b. For 4th West, Respondent submitted a NOI and was covered under the Permit number UTR370437 between August 15, 2016 and August 15, 2017; and
 - c. For Milagro, Respondent submitted a NOI and was covered under the Permit number UTR377993 between November 8, 2016 and November 8, 2017.
27. Respondent had day-to-day responsibility for the construction at the Sites.
28. Respondent is listed as the operator on the NOI submitted for Permit coverage at the Sites.
29. For the Conserveice site, stormwater runoff, snow melt runoff, surface runoff, and/or drainage water flowed into the Logan River through the Logan City municipal separate storm sewer system (MS4).
30. For the 4th West and Milagro sites, stormwater runoff, snow melt runoff, surface runoff, and/or drainage water flowed into the Jordan River through the Salt Lake City MS4.
31. The runoff and drainage from the Sites are “stormwater” as defined by EPA regulations. 40 C.F.R. § 122.26(b)(13).
32. The Jordan River and the Logan River are both a navigable water of the United States as defined in section 502(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.
33. Stormwater contains “pollutants” as defined by section 502(6) of the CWA, 33 U.S.C. § 1362(6).
34. The stormwater discharge from the Sites is a discharge from a “point source” as defined by section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.
35. Each stormwater discharge from the three Sites is a “discharge of a pollutant” as defined by section 502(12) of the CWA, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2.

VI. DESCRIPTION OF ALLEGED VIOLATIONS AT THE CONSERVICE SITE

36. On July 12, 2016, the EPA inspectors conducted a stormwater inspection of the site. The purpose of the inspection was to determine compliance with the CWA, the Permit, and EPA regulations.
37. Part 1 of the Permit requires entities engaged in construction activity to obtain coverage under the Permit.

38. The Permit coverage expired on May 8, 2016, and Respondent did not submit a NOI to renew coverage under the Permit.
39. Precipitation data collected on the National Oceanic and Atmospheric Administration website for the LOGAN UTAH ST U, UT US USC00425186 weather station Logan Utah indicates that between March 9, 2016 and September 30, 2016 (the period of time when Respondent was not authorized to discharge), there were at least five (5) days with precipitation events of 0.5 inches or greater. Thus, between March 9, 2016 and September 30, 2016, there were at least five days of discharge of stormwater from the site.
40. Part 1.5 of the Permit requires there to be a publicly accessible SWPPP sign that contains, among other things, the permit information.
41. During the inspection, the site had a SWPPP sign but it did not include the required permit information.
42. Part 7.2 of the Permit requires the permittee to include certain items in their SWPPP, including but not limited to:
 - a. A copy of the Permit;
 - b. Identification of the stormwater team;
 - c. Records of personnel training in stormwater;
 - d. The maximum area to be disturbed at any one time;
 - e. Areas of construction support;
 - f. Areas of final stabilization;
 - g. A list and description of all pollutant-generating activities;
 - h. An inventory of pollutants for each pollutant generating activity;
 - i. Identification of sources of allowable non-stormwater discharges;
 - j. Procedures for spill prevention and spill response; and
 - k. The identification of the person responsible for conducting inspections.
43. During the inspection, all of the permit requirements in paragraph no. 42 were missing in the SWPPP.
44. Part 7.2.5 of the Permit requires the permittee to include certain items on the site map, including but not limited to:
 - a. The location of earth disturbing activities;
 - b. Any phasing of construction activity, locations where construction materials will be stockpiled;
 - c. The location of construction support activities,
 - d. The topography of the site;
 - e. Existing vegetative cover;
 - f. Drainage patterns for stormwater and authorized non-stormwater flows; and
 - g. The location of all potential pollutant-generating activities.
45. During the inspection, the site map did not include the permit requirements in paragraph no. 44.

46. Part 7.4.1 of the Permit requires the permittee to update the SWPPP and site map to reflect current operating conditions at the site.
47. The SWPPP and site map were not updated to reflect the operating conditions at the site.
48. Part 4.1.2 of the Permit requires the permittee to conduct self-inspections every seven calendar days or once every fourteen calendar days and within 24-hours of the occurrence of a precipitation event of 0.5 inches or greater.
49. There were no self-inspections conducted during construction at the site.
50. Part 5.4.1 of the Permit requires the permittee to make an entry in a report/log or other device for monitoring corrective action following the discovery of a stormwater or pollution control problem, including the condition identified (e.g., BMPs not installed, installed incorrectly, and need repair) and the date and time the condition was identified and how identified.
51. Part 5.4.2 of the Permit requires that the permittee within seven calendar days of discovery the stormwater or pollution control problem, the permittee must make an entry in a corrective action report/log or other device describing follow up actions and whether modification to the SWPPP is required.
52. There were no corrective actions logged or a description of any corrective actions taken during construction at the site.
53. Part 2.1.2.c of the Permit requires the permittee to meet the requirements for track-out controls, including the restriction of vehicle use to properly designated exit points, the use of stabilization techniques at all exits onto paved roads to ensure sediment removal prior to vehicle exit, and the removal of deposited sediment before it accumulates significantly beyond the immediate vicinity of the project.
54. At the time of the inspections there was vehicle track-out observed in one area with no vehicle track-out controls.
55. Part 2.1.1.d.i of the Permit requires the permittee to maintain all stormwater controls in effective working order.
56. During the inspection, a vehicle track-out pad in need of maintenance was observed after vehicles had driven over the track-out controls.
57. Part 2.1.2.b of the Permit requires the permittee to install sediment controls along the perimeter areas of the site that will receive stormwater from where earth disturbing activities are occurring.
58. During the inspection, there were areas with no perimeter controls and evidence of sediment leaving the site was observed.

59. Part 2.1.1.c.ii of the Permit requires the permittee to install stormwater controls in accordance with good engineering and construction practices and manufacture's specifications.
60. During the inspection, the site had inlet protection that was not installed in accordance with good engineering or construction practices.
61. Part 2.1.2.h of the Permit requires the permittee to install inlet stormwater controls to remove minimize sediment going into the inlet.
62. During the inspection, inlets without inlet controls contained sediment.
63. Part 2.3.1. of the Permit prohibits the discharge of wastewater from, among other things, washout of concrete and wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials.
64. During the inspection, there was evidence of a prohibited discharge of a white substance, which according to the site contact was mortar.
65. As set forth in paragraphs 43, 45, 47, 49, 52, 54, 56, 58, 60, 62, and 64 Respondent failed to comply with the conditions of the Permit in violation of 33 U.S.C. § 1342 of the CWA.

VII. DESCRIPTION OF ALLEGED VIOLATIONS AT THE 4TH WEST SITE

66. On March 27, 2017, the EPA inspectors conducted a stormwater inspection of the site. The purpose of the inspection was to determine compliance with the CWA, the Permit, and EPA regulations.
67. Part 2.1.2.c of the Permit requires the permittee to meet the requirements for track-out controls, including the restriction of vehicle use to properly designated exit points, the use of stabilization techniques at all exits onto paved roads to ensure sediment removal prior to vehicle exit, and the removal of deposited sediment before it accumulates significantly beyond the immediate vicinity of the project.
68. At the time of the inspection, there was vehicle track-out observed in one area with no vehicle track-out controls.
69. Part 2.1.2.b of the Permit requires the permittee to install sediment controls along the perimeter areas of the site that will receive stormwater from where earth disturbing activities are occurring.
70. During the inspection, there were areas with no perimeter controls and evidence of sediment leaving the site was observed.
71. As set forth in paragraphs 68 and 70, Respondent failed to comply with the conditions of the Permit in violation of 33 U.S.C. § 1342 of the CWA.

VIII. DESCRIPTION OF ALLEGED VIOLATIONS AT MILAGRO

72. On March 27, 2017, the EPA inspectors conducted a stormwater inspection at 4th West. The purpose of the inspection was to determine compliance with the CWA, the Permit, and EPA regulations.
73. Part 1.5 of the Permit requires there to be a publicly accessible SWPPP sign that contains, among other things, the permit information.
74. There was no SWPPP sign at the time of the inspection.
75. Part 2.1.1.b.i of the Permit requires the permittee to install stormwater controls to handle what is estimated as normally expected for the area including seasonal considerations.
76. During the inspection, the stormwater control at one inlet had sediment overtopping it and evidence of sediment having been discharged into the inlet was observed.
77. Part 2.1.2.b of the Permit requires the permittee to install sediment controls along the perimeter areas of the site that will receive stormwater from where earth disturbing activities are occurring.
78. During the inspection, there were areas with no perimeter controls installed and evidence of sediment leaving the site was observed.
79. As set forth in paragraphs 74, 76, and 78, Respondent failed to comply with the conditions of the Permit in violation of 33 U.S.C. § 1342 of the CWA.

VII. CIVIL PENALTY

77. Pursuant to section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319 (g)(2)(A), and after consideration of the facts of this case as they related to the factors set forth in section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), the EPA has determined that a civil penalty of eighty-five thousand dollars (\$85,000.00) is appropriate to settle this matter.
78. Respondent consents and agrees to pay a civil penalty in the amount of eighty-five thousand dollars (\$85,000.00) in the manner described below:
 - a. Payment shall be in a single payment of \$85,000, due no later than thirty (30) calendar days from the date of the Final Order. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
 - b. The payment shall be made by remitting a check or making a wire transfer or on-line payment. The check or other payment shall designate the case name and docket number, be in the amount stated in the preceding paragraph, and be payable to the “Environmental Protection Agency.” The payment shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. EPA Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If remitted by any overnight commercial carrier:

U.S. Bank
1005 Convention Plaza Mail Station
SL-MO-C2-GL
St. Louis, Missouri 63101

If remitted by wire transfer:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read: "D 68010727 Environmental Protection Agency"

If remitted through the Automated Clearing House (ACH) for receiving US currency:

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 -- checking

Physical location of U.S. Treasury facility:

5700 Rivertech Court
Riverdale, Maryland 20737
Contacts: REX (Remittance Express): 866-234-5681

If remitted online with a debit card or credit card: No user name, password, or account number is necessary for this option. Online payment can be accessed via WWW.PAY.GOV, entering SFO 1.1 in the form search box on the left side of the screen, opening the form, and following the directions on the screen.

Copies of the check or record of payment shall be sent to:

Laurel Dygowski
U.S. Environmental Protection Agency (8ENF-W-NP)
1595 Wynkoop Street
Denver, Colorado 80202-1129

and

Melissa Haniewicz
Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)
1595 Wynkoop Street
Denver, Colorado 80202-1129

A transmittal letter identifying the case title and docket number must accompany the remittance and copies of the check.

79. If the payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (e.g., on the 1st late day, 30 days of interest will have accrued).
80. A handling charge of \$15 shall be assessed the 31st day from the date of the Final Order, and for each subsequent 30-day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 30 days of the due date. Payments are first applied to outstanding handling charges, second to penalty assessments, third to accrued interest, and then to the outstanding principal amount.
81. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

VIII. PUBLIC NOTICE

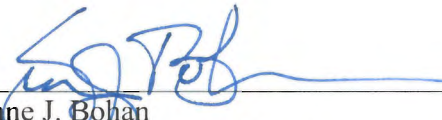
82. As required by section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45, the EPA will provide public notice and a reasonable opportunity to comment on the penalty that Respondent has agreed to pay in this matter. The EPA may modify or withdraw its consent to this CCCA if comments received disclose facts or considerations which indicate that this CCCA is inappropriate, improper, or inadequate.
83. If comments received during the public comment period do not require modification or withdrawal by the EPA from this CCCA, the parties agree to submit this CCCA to the Regional Judicial Officer for Region 8 following the close of the public comment period specified in 40 C.F.R. § 22.45, with a request that it be incorporated into a final order.

IX. GENERAL PROVISIONS

- 84. Nothing in this CCCA shall relieve Respondent of the duty to comply with the CWA and any regulation, order, or permit issued pursuant to the CWA.
- 85. Any failure by Respondent to comply with this CCCA shall constitute a breach of this CCCA and may result in referral of the matter to the United States Department of Justice for enforcement of this CCCA and such other relief as may be appropriate.
- 86. Nothing in this CCCA shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of any failure by Respondent to comply with this CCCA.
- 87. The parties agree to submit this CCCA to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.
- 88. Each party shall bear its own costs and attorney's fees in connection with this matter.

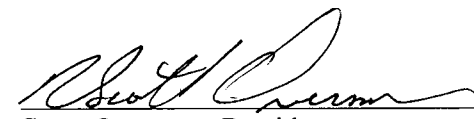
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant

Date: 4/26/18

By: 
Suzanne J. Bohan
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice
Region 8, U.S. EPA
1595 Wynkoop Street
Denver, Colorado 80202

Wasatch Commercial Builders, LLC
Respondent

Date: 4/13/18

By: 
Scott Overman, President