



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

AUG 17 2010

Ref: 8ENF-W-NP

HAND DELIVERED

John Kleinschmidt
Environmental Program Manager
General Service Administration
Denver Federal Center
P.O. Box 25546
Building 41, Room 240
Denver, CO 80225-0546

Re: Federal Facilities Compliance Agreement

Dear Mr. Kleinschmidt:

Enclosed please find a signature copy of the Federal Facilities Compliance Agreement between the Environmental Protection Agency and the General Services Administration relating to discharges from the Department of State Facility Project and the Utility Infrastructure Project at the Denver Federal Center. After Mr. Conner signs it, please return it to me so that I can arrange to get it signed on behalf of EPA. You will then receive an executed copy. If you have any questions or comments, please contact me at 303-312-6392 or Amy Clark at 303-312-7014. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Darcy O'Connor".

Darcy O'Connor
Chief, NPDES Enforcement Unit
Office of Enforcement, Compliance and
Environmental Justice



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UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:)
)
The General Services Administration,) **FEDERAL FACILITIES**
) **COMPLIANCE AGREEMENT**
)
Denver Federal Center)
Lakewood, Colorado) Docket No. **CWA-08-2010-0021**

I. INTRODUCTION

1. This Federal Facilities Compliance Agreement (FFCA) is entered into voluntarily between Region 8 of the United States Environmental Protection Agency (EPA) and the United States General Services Administration (GSA).
2. The GSA agrees to abide by all the terms and conditions of this FFCA. No statement in this FFCA shall be considered an admission by any party. No statement in this FFCA shall be used by any party to this FFCA or by any other entity for purposes other than determining the basis of this FFCA. By entering into this FFCA, the GSA does not waive, other than provided for in this agreement, any claim, right, or defense that it may raise in any other proceeding or action.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The GSA is an agency of the Executive Branch of the United States.
2. As part of ongoing construction of a Department of State Facility at the Denver Federal Center in Lakewood, Colorado, the GSA proposes to discharge contaminated groundwater (generated during construction dewatering operations) after treatment to Downing

Reservoir and/or McIntyre Gulch during the months of October through December of 2010. These dates may change due to operational issues during project construction.

3. As part of ongoing construction of a Utility Infrastructure Project at the Denver Federal Center in Lakewood, Colorado, the GSA proposes to discharge contaminated groundwater (generated during construction dewatering operations) after treatment to Downing Reservoir and/or McIntyre Gulch during the months of August 2010 to March 2011. These dates may change due to operational issues during project construction.
4. Neither the GSA nor any of its contractors has applied to EPA for a Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) individual permit to authorize the discharges described in the preceding two paragraphs. Although GSA and one of its contractors have submitted Notices of Intent to be covered under an EPA NPDES General Permit for Stormwater Discharges from Construction Activities, that general permit does not cover discharges of contaminated groundwater from construction dewatering.
5. The groundwater the GSA intends to discharge to Downing Reservoir and McIntyre Gulch includes various pollutants, as that term is defined in § 502(6) of the CWA, 33 U.S.C. § 1362(6), including but not limited to trichloroethylene.
6. In this FFCA, the term “discharge” has the same meaning as in § 502(16) of the CWA, 33 U.S.C. § 1362(16).

7. McIntyre Gulch is a tributary of the South Platte River (an interstate, navigable-in-fact river) and therefore constitutes a water of the United States as that term is defined in 40 C.F.R. § 122.2 and a “navigable water” as that term is defined in § 502(7) of the CWA, 33 U.S.C. § 1362(7). In EPA's opinion, Downing Reservoir may also be a tributary of the South Platte River, although a final determination on that issue has not been made, and the parties are willing to treat it as such for the purposes of this FFCA.
8. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into navigable waters except, among other things, as in compliance with § 402 of the CWA, 33 U.S.C. § 1342.
9. Section 402 of the CWA, 33 U.S.C. § 1342, sets forth a permitting system authorizing the EPA (and, in some cases, states) to issue permits authorizing discharges of pollutants into navigable waters.
10. According to 40 C.F.R. § 122.21, any person proposing to discharge pollutants that are not covered by a general permit issued under 40 C.F.R. § 122.28 must apply to EPA for an NPDES permit at least 180 days before the proposed discharge, unless EPA grants permission for a later application.
11. Section 313 of the CWA, 33 U.S.C. § 1323, requires federal agencies to be subject to and to comply with all federal water pollution control requirements to the same extent as any nongovernmental entity.

12. The actions required by this FFCA are necessary to achieve the CWA’s objective “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters,” according to § 101(a) of the CWA, 33 U.S.C. § 1251(a).

III. COMPLIANCE REQUIREMENTS

1. From the effective date of this FFCA to and including March 31, 2011, the GSA shall not discharge (or authorize any of its contractors to discharge) any pollutant, including contaminated groundwater (groundwater that has levels above detection limits for known plume contaminants), contaminated stormwater (stormwater that contains known groundwater plume contaminants) or a mixture of contaminated groundwater/stormwater into Downing Reservoir, McIntyre Gulch, or any other water of the United States, unless such discharge complies with the following interim limitations:

Department of State Facility Project:

Parameter	30-Day Average	7-Day Average	Daily Maximum
Flow, in gallons per day	Monitor only	Monitor only	Monitor only
Total suspended solids, in milligrams per liter (mg/l)	45	30	n/a
Oil and grease, in mg/l	n/a	n/a	10
BTEX, in micrograms per liter (µg/l)	n/a	n/a	100
Benzene, in µg/l	2.2	n/a	5.0

1,1 – Dichloroethane, in µg/l	n/a	n/a	700
1,1 – Dichloroethylene (DCE), in µg/l	n/a	n/a	7.0
Trichloroethylene (TCE), in µg/l	2.5	n/a	5.0
1,1,1 – Trichloroethane (1,1,1-TCA), in µg/l	n/a	n/a	200
1,4-Dioxane, in µg/l	Monitor only	Monitor only	Monitor only
Effective Date of FFCA – 12/31/10			
1/1/11 – 3/31/11	n/a	n/a	6.1
Carbon tetrachloride, in µg/l	0.23	n/a	5.0
Chloroform, in µg/l	3.4	n/a	n/a
Tetrachloroethene (PCE), in µg/l	0.69	n/a	5.0
Vinyl Chloride, in µg/l	0.023	n/a	2.0
Color	Visually clear	Visually clear	Visually clear
Mercury (dissolved), in µg/l	n/a	n/a	2.0
Thallium, in µg/l	0.24	n/a	n/a

Utility Infrastructure Project:

Parameter	30-Day Average	7-Day Average	Daily Maximum
Flow, in gallons per day	Monitor only	Monitor only	Monitor only
Total suspended solids, in milligrams per liter (mg/l)	45	30	n/a
Oil and grease, in mg/l	n/a	n/a	10
BTEX, in micrograms per liter (µg/l)	n/a	n/a	100
Benzene, in µg/l	2.2	n/a	5.0
1,1 - Dichloroethane, in µg/l	n/a	n/a	700
1,1 – Dichloroethylene (DCE), in µg/l	n/a	n/a	7.0
Trichloroethylene (TCE), in µg/l	2.5	n/a	5.0
1,1,1 – Trichloroethane (1,1,1-TCA), in µg/l	n/a	n/a	200
1,4-Dioxane, in µg/l			
Effective Date of FFCA – 12/31/10	Monitor only	Monitor only	Monitor only
1/1/11 – 3/31/11	n/a	n/a	6.1
Chloroform, in µg/l	3.4	n/a	n/a

Vinyl Chloride, in µg/l	0.023	n/a	2.0
Asbestos, in million fibers/l	7.0	n/a	n/a

The pH of the all discharges shall not be less than 6.5 or greater than 9.0 at any time.

Temperature of the discharge shall maintain a normal pattern of diurnal and seasonal fluctuations with no abrupt changes and shall not increase in a magnitude, rate, or duration deemed deleterious to resident aquatic life. Color shall be visually clear at all times. The GSA shall monitor their discharges into Downing Reservoir and McIntyre Gulch for each pollutant listed in the preceding paragraph at least once per week, by grab sample, except that (1) the GSA shall monitor for all pollutants listed in EPA Method 624 and EPA Method 625 once a month for the first 3 months and then quarterly thereafter by grab sample (2) the GSA shall monitor flow at least daily, by estimation and (3) the GSA shall visually monitor for oil and grease daily. If a visible sheen is detected, a grab sample shall be taken and analyzed immediately. The concentration of oil and grease shall not exceed 10 mg/L in any sample.

2. The monitoring locations shall be immediately prior to discharge into either Downing Reservoir or McIntyre Gulch. If the wastewater is trucked to either receiving water, the monitoring point shall be after loading the wastewater into the truck, but prior to discharge from the truck to either receiving water. If the wastewater is discharged via pipe (e.g.,

storm drains) to either receiving water, the wastewater shall be sampled after the treatment system, but prior to the introduction of other wastestreams (e.g. uncontaminated stormwater).

3. If any discharge for either of the projects mentioned above exceeds any interim limit in this FFCA, the GSA shall immediately (and in no event more than 24 hours after GSA or any of its contractors discovers the exceedance) stop all discharges from that project and notify EPA.
4. The notification in paragraph III.3 shall include the suspected cause of the exceedance, actions taken to address the exceedance, a description of how water was managed during the time frame that the discharges ceased, and actions taken to ensure that future discharges are within the limits identified in paragraph III.1.
5. All samples required by this FFCA shall be representative of the discharge. Sampling and analysis shall be done in accordance with 40 C.F.R. part 136.
6. The GSA shall mail a copy of all monitoring results from each project including quality assurance/quality control data to EPA by the 15th day of the following month along with the certification statement in paragraph III.11. If no discharge occurs during the following month, the GSA shall indicate “no discharge” with a certification statement.
7. This FFCA may be amended (following proper administrative procedures) to include the appropriate interim limitations or other appropriate requirements, as necessary.

8. The GSA shall maintain the monitoring records and other documents generated under this FFCA for at least three (3) years after the date of this FFCA and make them available for inspection or copying upon request by an authorized representative of EPA.
9. For any future construction project involving any discharge of contaminated groundwater as part of dewatering the construction site, the GSA agrees to apply to EPA for an individual NPDES permit at least 180 days before the discharge begins, unless EPA Region 8's Assistant Regional Administrator for the Office of Partnerships and Regulatory Assistance provides a later deadline in writing for the permit application. The individual permit shall be in addition to any available coverage under EPA's NPDES General Permit for Stormwater Discharges from Construction Activities.
10. Any notice the GSA is required by this FFCA to provide to EPA is to be provided to:

Amy Clark, 8P-W-WW
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129
Telephone: 303-312-7014
Facsimile: 303-312-6116

11. All reports and information required by this FFCA to be submitted to EPA shall include the following certification statement, signed and dated by an individual meeting the definition in 40 C.F.R. §122.22(a)(3) of a principal executive officer:

I hereby certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons responsible for gathering the

information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations.

12. EPA agrees to submit all notifications and correspondence required by this FFCA to be provided to the GSA to:

John Kleinschmidt
Denver Federal Center Environmental Program Manager
Rm 240, Bldg 41
One Federal Place
PO Box 25546
Denver, Colorado, 80225
Telephone: 303-236-8000x5030
Cell: 303-868-0795
Fax: 303-236-5328
Email: john.kleinschmidt@gsa.gov

13. Any party hereto may, by notice, change the address to which future notices shall be sent or the identity of the person designated to receive notices hereunder. Actual receipt by an individual specified above of any written notice, whether or not given in accordance with the terms of this paragraph, shall be deemed to be notice given pursuant to the FFCA.
14. This FFCA, or the signature pages thereof, may be executed in counterparts, all of which shall have full force and effect as an original, including admission into evidence, and facsimile signatures shall constitute originals for all purposes.

15. The GSA shall allow access by any authorized representatives of EPA or its contractors, upon proper presentation of credentials, to sites and records relevant to this FFCA, for any of the following purposes:

- a. To inspect and monitor compliance with this FFCA; and
- b. To verify and evaluate data and other information submitted to EPA.

This FFCA shall in no way limit or otherwise affect EPA's authority, or the authority of any other governmental agency, to enter the sites, conduct inspections, have access to records, issue notices and orders for enforcement, compliance, or abatement purposes, or monitor compliance pursuant to any statute, regulation, permit, or court order.

16. The GSA understands and acknowledges that compliance with the terms and conditions of the FFCA shall not be construed to relieve it of its obligation to comply with any applicable Federal, state, or local law or regulation.

17. Failure to obtain adequate funding or appropriations does not in any way release GSA from its obligation to comply with the Clean Water Act.

18. The GSA agrees to use every available mechanism to seek sufficient funding to fulfill its obligations under this FFCA. Should it fail to do so, the EPA reserves the right to initiate an action against any other person, or to take any action that would be appropriate absent this FFCA.

19. Each party shall bear its own costs and attorneys fees in connection with this matter.

20. This FFCA constitutes the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied in this FFCA. The parties acknowledge that there are no representations, agreements, or understandings relating to the settlement of this matter other than those expressly contained in this FFCA. This FFCA shall not be modified except in writing signed by all of the parties hereto or their authorized representatives.
21. Each party agrees to execute, approve, and adopt any and all instruments, documents, and resolutions as may be reasonably required to effectuate the terms, conditions, and provisions contained in this FFCA. Such instruments, documents, and resolutions shall be in form and substance reasonably acceptable to the parties.
22. This FFCA constitutes the entire agreement of the parties and a complete merger of all prior negotiations and agreements.
23. If a dispute arises under this FFCA, the procedures of paragraphs III.23 – III.30 shall apply. During the pendency of any dispute, GSA agrees that it shall continue to implement those portions of this FFCA that are not in dispute. The pendency of any dispute under this FFCA shall not affect GSA's responsibility to perform the work required by this FFCA in a timely manner, except that the time period for completion of work affected by such dispute may, at EPA's discretion, be extended for a period of time not to exceed the actual time taken to resolve any dispute in accordance with the procedures specified in this FFCA.

24. GSA and EPA shall make reasonable efforts to resolve disputes informally at the Project Manager or immediate supervisor level. With respect to EPA, "Project Manager" means Amy Clark, or any duly identified successor. With respect to GSA, "Project Manager" means John Kleinschmidt, or any duly identified successor.
25. Within fourteen (14) days (or a longer period if so agreed in writing by the parties) after GSA is aware that any action generates a dispute, GSA shall submit to EPA a written statement of dispute setting forth the nature of the dispute, GSA's position with respect to the dispute, and the information GSA is relying upon to support its position. If GSA does not provide such written statement within the time period specified in the preceding sentence, GSA shall be deemed to have agreed with EPA's position with respect to the dispute.
26. Upon EPA's receipt of the written statement of dispute from GSA, EPA and GSA shall engage in dispute resolution among the Project Managers and/or their immediate supervisors. EPA and GSA shall have fourteen (14) days (or a longer period if so agreed in writing by the parties) from EPA's receipt of GSA's written statement of dispute to resolve the dispute. During this period, the Project Managers shall meet or confer as many times as necessary to discuss and attempt to resolve the dispute; if, during this period the Project Managers and/or their supervisors cannot reach agreement on any issue, then GSA may, within ten days (10) thereafter submit a written notice to EPA elevating the dispute to a Dispute Resolution Committee (DRC). If GSA does not elevate the dispute to the DRC

within this ten (10) day period, GSA shall be deemed to have agreed with EPA's position with respect to the dispute.

27. The DRC shall serve as a forum for resolving disputes for which GSA and EPA have not reached agreement pursuant to paragraphs III.23-26. After a dispute is elevated to the DRC, the DRC shall have thirty (30) days to resolve the dispute unanimously. EPA's representative on the DRC is the Assistant Regional Administrator for the Office of Enforcement, Compliance, and Environmental Justice for EPA Region 8. GSA's representative on the DRC is the Director of the Denver Federal Center Service Center. If the authority of any individual to serve on the DRC is delegated, notice shall be given to the other party within five (5) days.
28. If the DRC does not achieve unanimous resolution within the thirty (30) day period, any member of the DRC may, within ten (10) days after the conclusion of this 30-day period, submit a written Notice of Dispute to the Regional Administrator of Region 8 of the EPA and the Deputy Regional Administrator of the GSA. If the dispute is not so elevated within this 10-day period, GSA shall be deemed to have agreed with the EPA DRC representative's position with respect to this dispute.
29. If a dispute cannot be mutually resolved, EPA Region 8 may take enforcement action as otherwise appropriate, and GSA may take appropriate actions to protect its rights.
30. Mutual resolution of a dispute pursuant to paragraphs III.23-30 of this FFCA constitutes a final resolution of that dispute.

31. The effective date of this FFCA is the latest date of the parties' signatures, below.

**FOR UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8**

Date: 8/18/10

By: Sharon L Kercher
for Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice
Region 8
U.S. Environmental Protection Agency
1595 Wynkoop St.
Denver, Colorado 80202

**FOR THE GENERAL SERVICES
ADMINISTRATION**

Date: 8/17/10

By: Scott L Conner
Scott L. Conner
Director, Denver Federal Center Service Center
Rm 240, Bldg 41
One Federal Place
Denver, Colorado, 80225