

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2018 APR 10 PM 2:41
FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:)	
)	
Foxridge Development Corporation)	ADMINISTRATIVE ORDER
)	FOR COMPLIANCE
)	
)	Docket No. CWA-08-2018-0005
Respondent.)	

INTRODUCTION

This Administrative Order for Compliance (Order) is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency by section 309(a) of the Clean Water Act (Act), 33 U.S.C. § 1319(a). The undersigned EPA official has been duly authorized to institute this action.

FINDINGS OF FACT AND LAW

The following findings apply to all times relevant to this action and to each count of this complaint:

1. Foxridge Development Corporation (Respondent) is a Utah corporation.
2. The Respondent is a “person” as defined in section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
3. The Respondent owns and/or is engaged in constructing a housing development known as Saddlerock Subdivision, Phases 2-4, located at 900 East 600 South, River Heights, Utah (the Site).
4. The Site encompasses approximately 11.15 acres.
5. Construction activities began at the Site in March 2015.
6. The runoff and drainage from the Site is “storm water” as defined in 40 C.F.R. § 122.26(b)(13).

7. Storm water contains “pollutants” as defined by section 502(6) of the Act, 33 U.S.C. § 1362(6).
8. Storm water, snow melt, surface drainage and runoff water have been discharging from the Site and have flowed into Spring Creek through the River Heights municipal separate storm sewer system as evidenced by the July 11, 2016 inspection referenced in paragraph 24.
9. Spring Creek is a “navigable water” as defined by section 502(7) of the Act, 33 U.S.C. § 1362(7), and a “water of the United States” as defined by 40 C.F.R. § 122.2.
10. Each storm water discharge from the Site is the “discharge of a pollutant” as defined by section 502(12) of the Act, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2.
11. Each storm water discharge from the Site is a discharge from a “point source” as that term is defined in section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.
12. In order to restore and maintain the integrity of the nation’s waters, section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into navigable waters, unless authorized by certain other provisions of the Act, including section 402 of the Act, 33 U.S.C. § 1342.
13. Section 402(p) of the Act, 33 U.S.C. § 1342(p), establishes a National Pollutant Discharge Elimination (NPDES) program under which the EPA (and states with authorization from EPA) may permit discharges of pollutants into navigable waters, subject to specific terms and conditions.
14. Section 402(p) of the Act, 33 U.S.C. § 1342(p), establishes a program under which NPDES permits may be issued to authorize discharges of storm water associated with industrial activities.
15. Any discharge from construction activity that disturbs at least five acres constitutes a storm water discharge associated with industrial activity. 40 C.F.R. § 122.26(b)(14)(x).
16. Any person who discharges storm water associated with small construction activity to waters of the United States is required to seek NPDES permit coverage and to comply with the permit. 40 C.F.R. § 122.26(c).
17. 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 a Utah Pollutant Discharge Elimination System (UPDES) permit.
18. Effective July 1, 2014, the UDEQ issued an NPDES general permit (UPDES Permit No.

UTRC00000, referenced as the Permit) authorizing discharges of storm water associated with construction activities including small construction activity, 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.

19. The Respondent submitted an NOI, and on March 2, 2015, UDEQ issued authorization under permit number UTR370179 (Permit), which authorized the discharge of storm water from construction activities at the Site. The Respondent is the listed as the "owner" on the Permit.
20. The Permit coverage under UTR370179 for the Respondent expired on March 2, 2016.
21. On February 25, 2017, UDEQ issued authorization under Permit number UTR370179, which authorized the discharge of storm water from construction activities at the Site. Again, the Respondent is the listed as the "owner" on the Permit.
22. The NOI for Permit number UTR370179 describes the covered project as Saddlerock Phases 2-4.
23. The Respondent did not have a permit for the construction activities at the Site between March 3, 2016 and February 24, 2017.
24. On July 11, 2016, the EPA inspectors conducted a Site inspection as part of a storm water construction inspection (Inspection).
25. During the Inspection, the following observations were identified by the EPA:
 - a. No storm water pollution prevention plan (SWPPP) or site map;
 - b. No self-inspections;
 - c. No log of corrective actions;
 - d. No publicly accessible sign with the Permit and SWPPP information;
 - e. No documentation regarding required storm water training of personnel;
 - f. Missing best management practices (BMPs) including, but not limited to: inlet protection, perimeter controls, and vehicle trackout controls with vehicle trackout observed in several areas of the Site;
 - g. Concrete washout observed on the ground and there was no concrete washout receptacle installed;
 - h. Evidence of a white substance flowing into a storm drain at the Site; and
 - i. Evidence of sediment having been discharged from the Site as indicated by sediment in and around storm drain inlets.
26. During the Inspection, the EPA inspectors noted the Site did not have permit coverage and verbally provided this information to representatives at the Site.
27. 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 3, 2016, and February 24, 2017, (the period of time when Respondent was not authorized to discharge), there were at least 23 days with precipitation events of 0.5 inches or greater. As such, between March 3, 2016, and February 24, 2017, there were at least fourteen days 14 days of discharge from the Site.

28. On December 21, 2016, the EPA sent the Respondent a detailed inspection report, which included a Summary of Findings and Corrective Actions, by certified mail requesting a response to the findings and corrective actions and for any information that may change the findings (Appendix A).
29. The Summary of Findings and Corrective Actions included a finding that the permit coverage expired on March 2, 2016, and a corrective action requiring the Respondent to submit a notice of intent to obtain coverage under the Permit (Appendix A).
30. The Summary of Findings and Corrective Actions included findings regarding the observations referenced in paragraph 25 above, which have associated Permit requirements (Appendix A).
31. The Respondent submitted a response to the EPA dated March 3, 2017 (Response).
32. In the Response, the Respondent asserted that it installed inlet controls, swept the street, and installed a sign with the Permit and SWPPP information.
33. Based on the EPA's review of the Response, however, the Site was not in compliance with the Permit requirements (UTR370179 reissued on February 25, 2017).
34. Part 1.5 of the Permit requires permittees to post notice of coverage that is visible from a public access point, including the UPDES permit tracking number and operator contact name (or designee) and phone number and/or email address for obtaining additional information on the Permit, the storm water pollution prevention plan (SWPPP) and/or the project.
35. The Response indicated there was a visible sign, however, the sign only contained "SWPPP" and did not identify the UPDES permit tracking number, operator contact name or phone number.
36. Part 7.3 of the Permit requires the permittee to maintain a current copy of the project SWPPP.
37. Part 7.2.5 of the Permit requires the permittee to keep a site map with the SWPPP.
38. Part 4.1.2 of the Permit requires self-inspections to be conducted on one of the following two schedules: 1) every seven calendar days; or 2) every fourteen calendar days and within 24-hours after a 0.5 inch or greater precipitation event.

39. Part 4.1.7 of the Permit requires self-inspections to be documented in a self-inspection report within 24 hours of completing the self-inspection.
40. The Response included an electronic link that said it contained the SWPPP and self-inspection reports. The electronic link did not contain a SWPPP or self-inspection reports.
41. 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 storm water or pollution control problem, including the condition identified (e.g., BMPs not installed, installed incorrectly, and need repair), the date and time the condition was identified and how it was identified.
42. Part 5.4.2 of the Permit also requires that within seven calendar days of discovery of the storm water 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.
43. The Response did not include a corrective action log or provide a description of how corrective actions were logged.
44. Part 2.1.2.c of the Permit sets forth requirements for trackout 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.
45. The Response did not demonstrate the Respondent installed vehicle trackout controls to minimize sediment trackout onto paved roads.
46. Part 2.1.2.b of the Permit requires the permittee to install perimeter controls along areas of the Site that will receive storm water from areas earth disturbing activities are occurring.
47. The Response did not demonstrate that the Respondent installed perimeter controls.
48. Part 2.1.2.h of the Permit requires the permittee to install inlet protection on storm drain inlets the permittee has access to and that carry storm water flow from disturbed areas of the Site to surface water.
49. The Response indicated that the Respondent installed inlet protection at one inlet, however, Respondent did not address the additional inlets that required protection.
50. Part 2.3.3.d of the Permit requires the permittee to provide an effective means of eliminating the discharge of water from concrete washout by directing all washout to a

leak-proof container or leak-proof pit that is designed so that no overflows can occur due to inadequate sizing or precipitation.

51. The Response did not demonstrate that the Respondent provided an effective means of eliminating discharge from concrete washout.
52. On June 29, 2017, the EPA sent the Respondent a Letter of Potential Violation of the Act inviting Respondent to discuss this matter prior to the EPA making a final compliance determination.
53. The Respondent provided no response to the Letter of Potential Violation.
54. The EPA has the authority to request information under section 308 of the Act, 33 U.S.C. § 1318, in order to carry out its responsibility for protecting the nations water from pollution.
55. On September 28, 2017, the Respondent received through certified mail, the EPA's information request pursuant to section 308 of the Act. The section 308 information request is attached as Appendix B.
56. The Respondent did not reply to the section 308 information request.

FINDINGS OF VIOLATION

57. The Respondent discharged pollutants in storm water into a water of the United States from the Site without authorization between March 3, 2016, and February 24, 2017, in violation of section 301(a) of the Act.
58. The Respondent failed to respond to the September 28, 2017 EPA information request, in violation of section 308 of the Act.
59. The Respondent failed to identify the UPDES permit tracking number, operator contact name or phone number on a posting that is visible from a public access point as required by the Permit.
60. The Respondent failed to develop and implement a SWPPP and site map as required by the Permit.
61. The Respondent failed to conduct and document self-inspections and log corrective actions as required by the Permit.
62. The Respondent failed to install, implement and maintain BMPs as required by the Permit including trackout controls, perimeter controls, inlet protection, and concrete washout control.

ORDER

63. Within 10 calendar days of receipt of this Order, the Respondent shall submit a written statement to the EPA and the UDEQ of the Respondent's intent to comply with the requirements of this Order and with all provisions of the Permit.
64. Effective immediately, the Respondent shall comply with all provisions of the Permit.
65. Within 30 calendar days of the receipt of this Order, the Respondent shall provide a response to the EPA's request for information pursuant to section 308 of the Act. See Appendix B.
66. Within 30 calendar days of the receipt of this Order, the Respondent shall review Parts 4 and 5 of the Permit and submit copies to the EPA and UDEQ of all self-inspection reports and corrective action logs from the commencement of construction to the date of this order. If there are no documents to submit, state this in the submittal.
67. Beginning April 10, 2018, the Respondent shall submit quarterly reports containing copies of the previous calendar quarter's self-inspection reports and corrective action logs for the Site (required by Parts 4.1.7 and 5.4 of the Permit) to the EPA and UDEQ. Each quarterly report is due 10 days after the end of each calendar quarter (e.g., July 10, 2018, for the second calendar quarter of 2018; October 10, 2018, for the third calendar quarter of 2018). Quarterly reports shall continue until written notice is given by the EPA that the submissions may cease or a Notice of Termination is submitted per the requirements of Part 8 of the Permit.
68. Within 30 calendar days of the receipt of this Order, the Respondent shall review Part 7 of the Permit and provide EPA and UDEQ a copy of the SWPPP and site map for the Site that meets Permit requirements.
69. Within 30 calendar days of the receipt of this Order, the Respondent shall provide the EPA and UDEQ a narrative description, including photographs, demonstrating BMPs required by the Permit have 1) been developed and implemented at the Site, and 2) detailed in the SWPPP including, but not limited to, perimeter controls, inlet protection, good housekeeping, concrete washout control and vehicle trackout control.
70. Within 30 calendar days of the receipt of this Order, the Respondent shall provide the EPA and UDEQ photographs showing that the SWPPP sign contains the elements required by the Permit including the UPDES permit tracking number and operator contact name (or designee) and phone number and/or email address for obtaining additional information on the Permit, the storm water pollution prevention plan (SWPPP) and/or the project.
71. Upon final stabilization of the Site, or as otherwise allowed by the Permit, the

Respondent shall submit a Notice of Termination as required by Part 8 the Permit and send a copy to the EPA and UDEQ within 10 calendar days.

72. All submissions by the Respondent to the EPA pursuant to the requirements of this Order shall contain the following certification signed by an authorized official as defined in 40 C.F.R. § 122.22(a)(3).

I 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 who manage the system, or those persons directly 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 and imprisonment for knowing violations.

73. The Respondent shall send all written notices and reports required by this Order to the following:

To the EPA:

Laurel Dygowski
U.S. EPA Region 8
Office of Enforcement, Compliance
and Environmental Justice
Technical Enforcement Program
1595 Wynkoop Street (8ENF-W-NP)
Denver, CO 80202-1129

To the UDEQ:

Jeanne Riley, Manager
UPDES IES Section
Division of Water Quality
Utah Department of Environmental
Quality
P.O. Box 144870
Salt Lake City, UT 84114-4870

74. If the Respondent asserts a business confidentiality claim for information required to be submitted under this Order, the Respondent shall provide such information only to the EPA and adhere to the procedures in 40 C.F.R. part 2, subpart B. The EPA will determine if the information the Respondent has designated as confidential meets the criteria in 40 C.F.R. § 2.208. Unless the Respondent asserts a confidentiality claim at the time the information is submitted, the information shall be provided to both the EPA and the UDEQ as specified in this Order, and the EPA may make the information available to the public without further notice to the Respondent.
75. Any failure to comply with the requirements of this Order shall constitute a violation of this Order and may subject the Respondent to penalties as provided under the Act. 33 U.S.C. § 1319.
76. This Order does not constitute a waiver or modification of the terms and conditions of the Permit, which remains in full force and effect. Nor does this Order waive any other legal responsibility or liability of the Respondent.

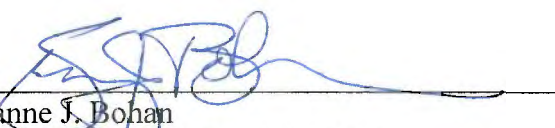
77. This Order does not constitute a waiver of or election by the EPA to forego any civil or criminal action to seek penalties, fines or other relief under the Act. Section 309(d) of the Act, 33 U.S.C. § 1319(c), as adjusted for inflation by 40 C.F.R. part 19, authorizes the imposition of civil penalties of up to \$51,570 per day for each violation of the Act or the Permit. Section 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations.
78. Nothing in this Order shall be construed to prevent the EPA from instituting further action under section 309 of the Act for the violations cited in this Order or to relieve the Respondent from responsibilities, liabilities, or penalties pursuant to any applicable federal, state, or local law or regulation.
79. The Respondent may seek federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

OPPORTUNITY TO CONFER

80. The Order shall not take effect until the Respondent has had an opportunity to confer with the Administrator concerning the alleged violations 33 U.S.C. § 1319(a)(4).
82. The Administrator has delegated the authority to issue orders under section 309 of the Act to the Regional Administrators of the EPA by Delegation 2-22 (May 11, 1994). In EPA Region 8 this authority was re-delegated to the Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice by the Regional Administrator (December 20, 1996).

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

Date: 4/9/18

By: 
Suzanne J. Bohan
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice

CERTIFICATE OF SERVICE

I certify that the foregoing administrative order was sent or delivered on this day as follows:

Original and one copy hand delivered to:

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

Copy by certified mail, return receipt requested (no. 7012 2210 0000 5369 8080)
to:

Mr. Dan Hogan
Foxridge Development Corporation
225 Buckingham Dr.
Providence, Utah 84332

4/10/18
Date

Joan Detty
Joan Detty
Secretary