



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

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

Ref: 8ENF-L

FEB 24 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Tony Schultz, Project Manager
Kiewit Building Group, Inc.
7200 S. Alton Way, Suite A-300
Englewood, CO 80112

Re: Administrative Complaint and Notice of
Opportunity for Hearing
Docket No. **CWA-08-2010-0008**

Dear Mr. Schultz:

On June 4, 2009, the United States Environmental Protection Agency, Region 8 (EPA) inspected the construction activities at the Soldier Family Care Clinic (the Site), Fort Carson, Colorado. The inspection determined that Kiewit Building Group, Inc. (Kiewit) violated numerous conditions in the Federal NPDES General Permit for Storm Water Discharges for Construction Activities (Federal CGP). A copy of the report from the inspection is enclosed. Please pay special attention to the Summary of Findings section of the report. Please note that the EPA inspector discussed her observations and concerns during the exit interview.

Also enclosed is an Administrative Complaint and Notice of Opportunity for Hearing (Complaint) that EPA is issuing to Kiewit under the authority of § 309(g) of the Clean Water Act (Act), 33 U.S.C. § 1319(g). In the Complaint, EPA alleges that Kiewit has violated §§ 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342, and their implementing regulations, by violating the terms of the Federal CGP. The violations that EPA is alleging are specifically set out in the Complaint. The Complaint proposes that a penalty of \$26,000.00 be assessed against Kiewit for these violations.

By law, Kiewit has the right to request a hearing regarding the violations alleged in the Complaint and the appropriateness of the proposed administrative civil penalty. Please pay particular attention to the section of the Complaint entitled "Notice of Opportunity to Request a Hearing." If Kiewit wishes to request a hearing, it must file within thirty (30) days of receipt of the enclosed Complaint, a written Answer with the EPA Regional Hearing Clerk at the address



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set forth in the Complaint. The written request must follow the requirements of the Consolidated Rules of Practice at 40 C.F.R. Part 22, a copy of which is enclosed. Note that should Kiewit fail to request a hearing within thirty (30) days of receipt of the Complaint, the right to such a hearing will be waived and the proposed civil penalty may be assessed against Kiewit without further proceedings.

If Kiewit wishes to settle this matter without further legal action, it may waive the right to a hearing and, within thirty days of receipt of this letter, pay the proposed penalty to "Treasurer, United States of America," at the address set forth in the Complaint.

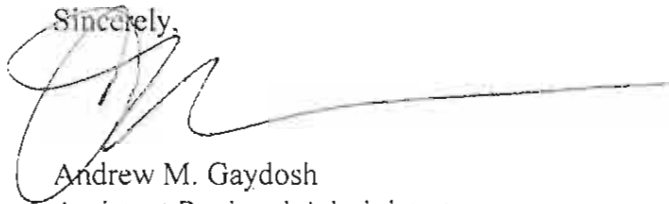
Enclosed is a copy of "U.S. EPA Small Business Resources," which can assist in complying with federal environmental laws. Also enclosed is an SEC Disclosure Notice.

Whether or not Kiewit requests a hearing, it may confer informally with EPA concerning the alleged violations and the amount of the proposed penalty. EPA encourages all parties against whom it files a Complaint proposing assessment of a penalty to pursue the possibility of settlement as a result of an informal conference. If such a mutually satisfactory settlement can be reached, it will be formalized by the issuance of a Consent Agreement signed by Kiewit and the delegated official in EPA Region 8. The issuance of such a consent agreement shall constitute a waiver by Kiewit of its right to a hearing on, and to a judicial appeal of, the agreed upon civil penalty. A request for an informal conference with EPA does not extend the thirty day period within which Kiewit must request or waive the right to a hearing, and the two procedures can be pursued simultaneously.

Kiewit has the right to be represented by an attorney at any stage in the proceedings, including any informal discussions with EPA, but it is not required. If Kiewit wishes to discuss settlement or technical questions, please contact Lee Hanley, Environmental Engineer, at (303) 312-6555. Legal questions, including any communications from an attorney, should be directed to Wendy Silver, Senior Attorney, at (303) 312-6637.

We urge your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "AG", with a long horizontal line extending to the right.

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

IN THE MATTER OF:)
)
Kiewit Building Group, Inc.)
7200 S. Alton Way, Suite A-300)
Englewood, CO 80112)
)
Respondent.)
_____)

2010 FEB 24 AM 8:52
EPA REGION VIII
HEARING CLERK

**ADMINISTRATIVE COMPLAINT
AND NOTICE OF OPPORTUNITY
FOR HEARING**
**Proceeding to Assess Class II
Administrative Penalty Under
Clean Water Act, Section 309(g)**

Docket No. **CWA-08-2010-0008**

1. This Administrative Complaint and Notice of Opportunity for Hearing (Complaint) is issued pursuant to § 309(g) of the Clean Water Act (CWA or the Act), 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.13. Section 309(g) of the Act authorizes the Administrator of the United States Environmental Protection Agency (EPA) to make findings and to assess civil penalties for violations of § 301 of the CWA, 33 U.S.C. § 1311, and for violations of any limitation or condition in a permit issued under § 402 of the Act, 33 U.S.C. § 1342. This proceeding is subject to the 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, a copy of which accompanies this Complaint.

2. The undersigned EPA official has been properly delegated the authority to issue this Complaint.

STATUTORY AND REGULATORY FRAMEWORK

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), among other things, prohibits the discharge of any pollutant into waters of the United States except as in compliance with a permit issued pursuant to § 402 of the Act, 33 U.S.C. § 1342.

4. Section 402 of the Act, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, under which EPA and, upon receiving authorization from EPA, states may permit discharges of pollutants into navigable waters, subject to specific terms and conditions.

5. Pursuant to § 402 of the Act, 33 U.S.C. § 1342, and 40 C.F.R. Part 122, EPA is authorized to implement the NPDES program for discharges on Federal lands in Colorado.

6. Section 402(p) of the Act, 33 U.S.C. § 1342(p), requires a permit for storm water discharges associated with industrial activity.

7. 40 C.F.R. § 122.26(b)(14)(x) defines the term “storm water discharge associated with industrial activity” to include storm water discharges from construction activities, including

clearing, grading, and excavation activities, that result in a disturbance of five or more acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is part of a larger common plan of development or sale if the larger plan will ultimately disturb equal or greater than five acres. Id.

8. EPA regulations also define the term “storm water discharge associated with small construction activity” to include storm water discharges from construction activities, including clearing, grading, and excavation activities, that result in a disturbance of equal to or greater than one acre and less than five acres. 40 C.F.R. § 122.26(b)(15)(I). Construction activity also includes the disturbance of less than one acre 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 acre. Id.

9. In 1992, EPA issued a Final NPDES General Permit for Storm Water Discharges for Construction Activities (Federal CGP). 57 Fed. Reg. 41176, 41209 (Sept. 9, 1992). EPA has, on various occasions, subsequently modified and reissued the Federal CGP. See 63 Fed. Reg. 7858-7906 (Feb. 17, 1998); 63 Fed. Reg. 36490-36519 (July 6, 1998); 65 Fed. Reg. 25122-25145 (Apr. 28, 2000); 68 Fed. Reg. 39087-39091 (July 1, 2003); 73 Fed. Reg. 40338-40343 (July 14, 2008).

10. The Federal CGP requires any person subject to the permit to develop a storm water pollution prevention plan (SWPPP) which sets forth a plan to control and reduce pollutants in storm water discharges from construction activities. The SWPPP must meet specific requirements and include certain information. Federal CGP, Part 5.

11. The SWPPP must describe all control measures (e.g., best management practices (BMPs)) to be used to meet the effluent limits set forth in the Federal CGP. Federal CGP Parts 5.1 and 5.3.A.

12. The SWPPP must describe the function of the project and estimate the total area expected to be disturbed, among other things. Federal CGP Part 5.2.B.

13. The SWPPP must contain a legible site map showing, among other things, areas of soil disturbance and locations of major structural and nonstructural BMPs identified in the SWPPP. Federal CGP Part 5.2.C.

14. The SWPPP must be modified: to reflect modifications to BMPs made in response to changes in the design, construction, operation, or maintenance at the site; if inspections determine that the existing BMPs are ineffective; and based on an inspection, as necessary to properly document additional or modified BMPs designed to correct identified problems. Federal CGP Part 5.10.

15. Part 3.1 of the Federal CGP requires implementation of control measures to minimize pollutants in storm water discharges. Off-site tracking of sediments onto paved surfaces must be

minimized, Federal CGP Part 3.1.B., and runoff flows and discharges of pollutants from exposed areas of the site must be minimized, Federal CGP Part 3.1.C.

16. The control measures must be installed and maintained in effective operating condition, Federal CGP Part 3.6, and in accordance with good engineering practices, Federal CGP Part 3.

17. Part 4.A. of the Federal CGP requires that inspections be conducted in accordance with the schedule set forth in the SWPPP. Respondent's SWPPP states that inspections will be conducted weekly and within 24 hours of a storm of ½ inch or greater.

18. Part 7 of the Federal CGP states that copies of the SWPPP and all documentation required by the Federal CGP must be retained for at least three years following the date that permit coverage expires or is terminated.

19. Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), authorizes the assessment of a Class II civil penalty of up to \$16,000.00 per violation of § 301 of the Act, 33 U.S.C. § 1311, and per violation of any condition or limitation in a permit issued pursuant to § 402 of the Act, 33 U.S.C. § 1342, up to a maximum for all violations of \$177,500.00, for violations occurring after January 12, 2009.

GENERAL ALLEGATIONS

20. All general allegations set forth in this Complaint are specifically incorporated into each count by this reference.

21. Respondent Kiewit Building Group, Inc. (Kiewit or Respondent) is and was at all relevant times a Delaware corporation doing business in Colorado and registered with the Colorado Secretary of State.

22. At all times relevant to this action, Kiewit engaged in construction activities at the Soldier Family Care Clinic (the Site), Fort Carson, Colorado. The Site is a construction project consisting of adding a new clinic onto the east side of the existing Evans Army Hospital with associated site and utility work needed to serve the clinic. The project also includes construction of two new parking areas and installation of a new gas line from Gate 5 to the west side of the hospital.

23. Respondent's construction activities at the Site resulted in the disturbance of at least five acres of Federal land.

24. On October 30, 2008, Respondent submitted a notice of intent (NOI) to EPA requesting authorization to discharge at the Site pursuant to the Federal CGP.

25. On or about November 2008, Respondent commenced construction at the Site.

26. On June 4, 2009, EPA inspectors inspected the Site and observed, among other things, the following:
- a. The SWPPP was deficient in the following respects:
 - i. The gas line installation was not included in the total estimated acreage to be disturbed or in the Site map showing areas of soil disturbance, in violation of Federal CGP Parts 4.2.B. and 5.2.C.; and
 - ii. Historical information on the BMPs was not maintained, in violation of Federal CGP Parts 5.1, 5.3A., 5.10, and 7.
 - b. On May 25, 2009, and April 17, 2009, inspections were not conducted within 24 hours of storm events measuring greater than ½ inch in violation of Respondent's SWPPP and Part 4.A. of the Federal CGP.
 - c. BMPs were not maintained in effective operation condition at various locations, in violation of Federal CGP Parts 3 and 3.6, including but not limited to:
 - i. Straw wattles near the vehicle track out pad at the Site exit east of Sutherland Circle failed to minimize sediment loading into the streets;
 - ii. Straw wattles were not trenched in along Cochrane Circle;
 - iii. There were no BMPs in place above storm drain inlets; and
 - iv. Straw bale barriers were not installed as required by the SWPPP, i.e., using sandbags to seal gaps around storm drain inlets and outlets.
 - d. BMPs were not in place to divert flows from exposed soils or otherwise minimize runoff from exposed areas, in violation of Federal CGP Parts 3 and 3.1.C., at the following locations:
 - i. No BMPs were in place to minimize storm water runoff from the Site at several locations along Cochrane Circle;
 - ii. The BMPs (rock dams) were insufficient to minimize sediment loading along Harr Avenue;
 - iii. Silt fencing was not installed along the entire length of an unstabilized slope along Harr Avenue; and
 - iv. A trench had been dug to channel storm water runoff to a culvert.
 - e. BMPs were either lacking or insufficient to minimize offsite vehicle tracking of sediments onto paved streets, in violation of Federal CGP Parts 3 and 3.1.B., at the following locations:
 - i. The vehicle track-out pad onto Sutherland Circle was not maintained, resulting in sediment loading onto the street; and

- ii. There was no sediment track-out pad to minimize sediment loading onto Cochrane Circle.
 - f. Storm water runoff containing significant sediment was discharged from the Site to the surrounding streets, storm drains, and the road-side ditch next to Titus Boulevard.
 - g. Dewatering of the storm water retention pond to the road-side ditch next to Titus Boulevard on May 28, 2009, was performed without BMPs sufficient to minimize pollutants in the discharge, in violation of Federal CGP Part 3.1.
27. Runoff from the Site flows from the road-side ditch next to Titus Boulevard to Un-Named Ditch, a perennial tributary to Fountain Creek as shown on the United States Geological Society topographic map of the area. Fountain Creek is a perennial tributary to the Arkansas River.
28. Un-Named Ditch, Fountain Creek, and the Arkansas River are each a “water of the United States” within the meaning of 33 C.F.R. § 328.3(a), and therefore a “navigable water” within the meaning of the definition set forth in § 502(7) of the Act, 33 U.S.C. § 1362(7).
29. Respondent is, and was at all relevant times, a “person” within the meaning of the definition set forth in § 502(5) of the Act, 33 U.S.C. § 1362(5).
30. Runoff and drainage from the Site is “storm water” as defined in 40 C.F.R. § 122.26(b)(13).
31. Storm water contains “pollutants” as defined in § 502(6) of the Act, 33 U.S.C. § 1362(6).
32. The storm water discharge from the Site is the “discharge of a pollutant” as defined in § 502(12) of the Act, 33 U.S.C. § 1362(12) and 40 C.F.R. § 122.2.
33. The Site, as well as the storm drains, ditches, and other conveyances referenced above, constitute “point source[s]” within the meaning of § 502(14) of the Act, 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2.
34. Pursuant to § 309(g) of the Act, 33 U.S.C. § 1319(g), EPA has consulted with Martha Rudolph, Executive Director, Colorado Department of Public Health and Environment (CDPHE), regarding assessment of this administrative penalty by furnishing a copy of this complaint and inviting her to comment on behalf of the State of Colorado.

COUNT I

35. As described in paragraph 26.a., above, the SWPPP for the Site prepared by Respondent did not comply with all of the requirements of the Federal CGP.
36. Respondent's failure to prepare and maintain a SWPPP in compliance with all of the terms and conditions of the Federal CGP constitutes a violation of the Federal CGP.

COUNT II

37. As described in paragraph 26.b., above, Respondent failed to perform inspections within 24 hours of storm events exceeding ½ inch on April 17 and May 25, 2009.
38. Respondent's failures to perform inspections within 24 hours of storm events exceeding ½ inch constitute violations of Respondent's SWPPP and the Federal CGP.

COUNT III

39. As described in paragraph 26.c. - e. and g., above, Respondent failed to properly install, implement and/or maintain certain BMPs at the Site, resulting in the discharge of storm water containing significant sediment to the road-side ditch along Titus Boulevard and, from there, to Un-Named Ditch.
40. Respondent's failures to properly install, implement, and/or maintain certain BMPs constitute violations of the Federal CGP.

NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

41. Based on the foregoing allegations and pursuant to the authority of § 309(g) of the Act, 33 U.S.C. §1319(g), EPA Region 8 hereby proposes that a penalty of \$26,000.00 be assessed against Respondent for the violations alleged above, as explained below:

Nature, Circumstances, Extent, and Gravity of Violations

The sediment loading into Un-Named Ditch would have been minimized if the SWPPP had been updated and followed and the BMPs properly implemented and maintained, as required by the Federal CGP. Storm water that runs off of large construction sites can carry sediment, debris, and other pollutants into surrounding waterways. Polluted runoff can harm or damage aquatic habitat. High volumes of storm water runoff can erode stream banks.

The Respondent is a major contractor on large construction projects in the State of Colorado and has taken storm water training from the Colorado Department of Transportation (CDOT). CDOT has conducted storm water training and has published a BMP manual on storm

water controls and record-keeping requirements. The Respondent has also taken storm water training sponsored by the Fort Carson Environmental Office during which the importance of storm water compliance on Fort Carson was discussed.

Prior Compliance History

On May 13, 2003, CDPHE issued a notice of violation/cease and desist order (NOV) to Southeast Corridor Constructors, a Kiewit Western Co. and Parsons Transportation Group, Inc. joint venture, for storm water violations at the CDOT Southeast Corridor Multi-Modal Project in Douglas, Arapahoe, and Denver Counties, Colorado. The NOV cited numerous SWPPP deficiencies, failure to implement/maintain BMPs, discharging sediment- and pollutant-laden water to waters of the State, failure to conduct inspections, and failure to conduct storm water training. These violations were documented in CDPHE inspections and CDOT audits in 2002 and 2003. Kiewit Western Co. and Kiewit Building Group, Inc. are both subsidiaries of Kiewit Corporation.

Degree of Culpability

Respondent could have minimized the discharge of pollutants into the road-side ditch and Un-Named Ditch if it had properly installed, implemented, and maintained BMPs.

Economic Benefit

For storm water cases, the actual cost for developing and updating a SWPPP and implementing and maintaining BMPs is minimal with respect to the overall project. However, the impact to the environment caused by the failure to develop a complete SWPPP and to implement appropriate BMPs is significant.

Ability to Pay

The proposed penalty was not reduced based upon the statutory factor of an inability to pay. However, EPA will consider any new information that Respondent may present regarding their inability to pay the penalty proposed in this complaint.

Other Matters That Justice May Require

At this time, EPA has not made any adjustment to the proposed penalty based on this statutory factor.

42. As required by § 309(g)(4) of the Act, 33 U.S.C. § 1319(g)(4), prior to assessing a civil penalty, EPA will provide public notice of the proposed penalty and a reasonable opportunity for the public to comment on the matter and, if a hearing is held, to be heard and present evidence.

43. EPA may issue the Final Order Assessing Administrative Penalties thirty days after Respondent's receipt of this Notice, unless Respondent, within that time, requests a hearing on this Notice pursuant to the following section.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

44. As provided in § 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. § 22.15(c), Respondent has the right to request a hearing in this matter. If Respondent (1) contests any material fact upon which the Complaint is based, (2) contends that the amount of penalty proposed in the Complaint is inappropriate, or (3) contends that it is entitled to judgment as a matter of law, it must file a written answer in accordance with 40 C.F.R. § 22.15 within thirty days after service of the Complaint.

45. Respondent's answer must (1) clearly admit, deny, or explain each of the factual allegations contained in the Complaint, (2) state the circumstances or arguments which are alleged to constitute grounds of defense, (3) state the facts intended to be placed at issue, (4) state the basis for opposing any proposed relief, and (5) specifically request a hearing, if desired. 40 C.F.R. § 22.15(b). Failure to admit, deny, or explain any factual allegation contained in the Complaint constitutes an admission of the allegation. 40 C.F.R. § 22.15(c).

46. Respondent's answer, an original and one copy, must be filed with:

Regional Hearing Clerk
U.S. EPA Region 8 (8RC)
1595 Wynkoop Street
Denver, Colorado 80202-1129

A copy of the answer and all other documents filed in this action must be served on:

Wendy Silver
Senior Attorney
U.S. EPA, Region 8 (8ENF-L)
1595 Wynkoop Street
Denver, CO 80202-1129

47. Be aware that should Respondent request a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under § 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to be heard and to present evidence on the appropriateness of the penalty assessment.

**IF RESPONDENT FAILS TO REQUEST A HEARING, IT WILL WAIVE THE
RIGHT TO CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE
COMPLAINT.**

IF RESPONDENT FAILS TO FILE A WRITTEN ANSWER WITHIN THE THIRTY (30) DAY LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 C.F.R. § 22.17. THIS JUDGMENT MAY IMPOSE THE FULL PENALTY PROPOSED IN THE COMPLAINT.

48. Should Respondent not request a hearing, EPA will issue a Final Order Assessing Administrative Penalties, and only members of the public who submit timely comments on this proposal will have an additional 30 days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.

TERMS OF PAYMENT FOR QUICK RESOLUTION

49. If Respondent does not contest the findings and assessments set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within thirty (30) calendar days of receipt of this Complaint, no Answer need be filed. For more time for payment, Respondent may file a statement agreeing to pay the penalty within thirty (30) days of receipt of the Complaint, then pay the money within sixty (60) days of such receipt. Penalty payment must be made by certified or cashier's check payable to "Treasurer, the United States of America," and remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Copies of the check shall be sent to:

Lee Hanley
U.S. Environmental Protection Agency (8ENF-W-NP)
1595 Wynkoop Street
Denver, CO 80202-1129

and

Wendy Silver
U.S. Environmental Protection Agency (8ENF-L)
1595 Wynkoop Street
Denver, CO 80202-1129

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

50. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing in this matter.

51. Neither assessment nor payment of an administrative civil penalty pursuant to § 309 of the Act, 33 U.S.C. § 1319, shall affect Respondent's continuing obligation to comply with the Clean Water Act or any other federal, state, or local law or regulations and any separate Compliance Order issued under § 309(a) of the Act, 33 U.S.C. §1319(a), for the violations alleged herein.

SETTLEMENT CONFERENCE

52. EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation process. If a settlement can be reached, its terms will be expressed in a written consent agreement signed by the parties and incorporated into a final order signed by the Regional Judicial Officer. 40 C.F.R. § 22.18. To explore the possibility of settlement in this matter, contact Wendy Silver, Senior Attorney, at the address below. Ms. Silver can also be reached at (303) 312-6637.

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

Date:

2/18/10

By:

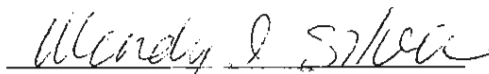


Andrew M. Gaydosh
Assistant Regional Administrator

Date:

2/23/10

By:



Wendy I. Silver, Senior Attorney
Legal Enforcement Program

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by certified mail, return receipt requested, a copy of the foregoing ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING, and a copy of the Consolidated Rules of Practices Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, to:

Tony Schultz, Project Manager	and	The Corporation Company
Kiewit Building Group, Inc.		1675 Broadway, Suite 1200
7200 S. Alton Way, Suite A-300		Denver, CO 80202-4682
Englewood, CO 80112		

Certified Return Receipt Nos. 7008-3230-0003-0730-4420 - 7008-3230-0003-0730-4437

I further certify that on the same date below I sent by certified mail, return receipt requested, a copy of this document to:

Martha Rudolph
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, CO 80246-1530

Certified Return Receipt No. 7008-3230-0003-0730-4413

The original and one copy were hand-delivered to:

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

Date: 2/24/2010 Judith M. McTernan

§21.13

40 CFR Ch. I (7-1-08 Edition)

approve or disapprove the State issued statement, in accordance with the requirements of §21.5.

(2) The Regional Administrator will periodically review State program performance. In the event of State program deficiencies the Regional Administrator will notify the State of such deficiencies.

(3) During that period that any State's program is classified as deficient, statements issued by a State shall also be sent to the Regional Administrator for review. The Regional Administrator shall notify the State, the applicant, and the SBA of any determination subsequently made, in accordance with §21.5, on any such statement.

(i) If within 60 days after notice of such deficiencies has been provided, the State has not taken corrective efforts, and if the deficiencies significantly affect the conduct of the program, the Regional Administrator, after sufficient notice has been provided to the Regional Director of SBA, shall withdraw the approval of the State program.

(ii) Any State whose program is withdrawn and whose deficiencies have been corrected may later reapply as provided in §21.12(a).

(g) Funds appropriated under section 106 of the Act may be utilized by a State agency authorized to receive such funds in conducting this program.

§21.13 Effect of certification upon authority to enforce applicable standards.

The certification by EPA or a State for SBA Loan purposes in no way constitutes a determination by EPA or the State that the facilities certified (a) will be constructed within the time specified by an applicable standard or (b) will be constructed and installed in accordance with the plans and specifications submitted in the application, will be operated and maintained properly, or will be applied to process wastes which are the same as described in the application. The certification in no way constitutes a waiver by EPA or a State of its authority to take appropriate enforcement action against the owner or operator of such facilities for violations of an applicable standard.

PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

Subpart A—General

- Sec. 22.1 Scope of this part. 22.2 Use of number and gender. 22.3 Definitions. 22.4 Powers and duties of the Environmental Appeals Board, Regional Judicial Officer and Presiding Officer; disqualification, withdrawal, and reassignment. 22.5 Filing, service, and form of all filed documents; business confidentiality claims. 22.6 Filing and service of rulings, orders and decisions. 22.7 Computation and extension of time. 22.8 Ex parte discussion of proceeding. 22.9 Examination of documents filed.

Subpart B—Parties and Appearances

- 22.10 Appearances. 22.11 Intervention and non-party briefs. 22.12 Consolidation and severance.

Subpart C—Prehearing Procedures

- 22.13 Commencement of a proceeding. 22.14 Complaint. 22.15 Answer to the complaint. 22.16 Motions. 22.17 Default. 22.18 Quick resolution; settlement; alternative dispute resolution. 22.19 Prehearing information exchange; prehearing conference; other discovery. 22.20 Accelerated decision; decision to dismiss.

Subpart D—Hearing Procedures

- 22.21 Assignment of Presiding Officer; scheduling the hearing. 22.22 Evidence. 22.23 Objections and offers of proof. 22.24 Burden of presentation; burden of persuasion; preponderance of the evidence standard. 22.25 Filing the transcript. 22.26 Proposed findings, conclusions, and order.

Subpart E—Initial Decision and Motion to Reopen a Hearing

- 22.27 Initial decision. 22.28 Motion to reopen a hearing.



Office of Enforcement and Compliance Assurance
INFORMATION SHEET

U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance resources such as workshops, training sessions, hotlines, websites, and guides to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance, and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

Compliance Assistance Centers

(www.assistancecenters.net)

In partnership with industry, universities, and other federal and state agencies, EPA has established Compliance Assistance Centers that provide information targeted to industries with many small businesses.

Agriculture

(www.epa.gov/agriculture or 1-888-663-2155)

Automotive Recycling Industry

(www.ecarcenter.org)

Automotive Service and Repair

(www.ccar-greenlink.org or 1-888-GRN-LINK)

Chemical Industry

(www.chemalliance.org)

Construction Industry

(www.cicacenter.org or 1-734-995-4911)

Education

(www.campuserc.org)

Healthcare Industry

(www.hercenter.org or 1-734-995-4911)

Metal Finishing

(www.nmfrc.org or 1-734-995-4911)

Paints and Coatings

(www.paintcenter.org or 1-734-995-4911)

Printed Wiring Board Manufacturing

(www.pwbrc.org or 1-734-995-4911)

Printing

(www.pneac.org or 1-888-USPNEAC)

Transportation Industry

(www.transource.org)

Tribal Governments and Indian Country

(www.epa.gov/tribal/compliance or 202-564-2516)

US Border Environmental Issues

(www.bordercenter.org or 1-734-995-4911)

The Centers also provide State Resource Locators

(www.envcap.org/statetools/index.cfm) for a wide range of topics to help you find important environmental compliance information specific to your state.

EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

EPA's Home Page

www.epa.gov

Small Business Gateway

www.epa.gov/smallbusiness

Compliance Assistance Home Page

www.epa.gov/compliance/assistance

Office of Enforcement and Compliance Assurance

www.epa.gov/compliance

Voluntary Partnership Programs

www.epa.gov/partners

U.S. EPA SMALL BUSINESS RESOURCES

Hotlines, Helplines & Clearinghouses

(www.epa.gov/epahome/hotline.htm)

EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. A few examples are listed below:

Clean Air Technology Center
(www.epa.gov/ttn/catc or 1-919-541-0800)

Emergency Planning and Community Right-To-Know Act
(www.epa.gov/superfund/resources/infocenter/epcra.htm or 1-800-424-9346)

EPA's Small Business Ombudsman Hotline provides regulatory and technical assistance information.
(www.epa.gov/sbo or 1-800-368-5888)

The National Environmental Compliance Assistance Clearinghouse provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers
(www.epa.gov/clearinghouse)

National Response Center to report oil and hazardous substance spills.
(www.nrc.uscg.mil or 1-800-424-8802)

Pollution Prevention Information Clearinghouse
(www.epa.gov/opptintr/ppic or 1-202-566-0799)

Safe Drinking Water Hotline
(www.epa.gov/safewater/hotline/index.html or 1-800-426-4791)

Stratospheric Ozone Refrigerants Information
(www.epa.gov/ozone or 1-800-296-1996)

Toxics Assistance Information Service also includes asbestos inquiries.
(1-202-554-1404)

Wetlands Helpline
(www.epa.gov/owow/wetlands/wetline.html or 1-800-832-7828)

State Agencies

Many state agencies have established compliance assistance programs that provide on-site and other types of assistance. Contact your local state environmental agency for more information or the following two resources:

EPA's Small Business Ombudsman
(www.epa.gov/sbo or 1-800-368-5888)

Small Business Environmental Homepage
(www.smallbiz-enviroweb.org or 1-724-452-4722)

Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated,

businesses may be eligible for penalty waivers or reductions. EPA has two policies that potentially apply to small businesses:

The Small Business Compliance Policy
(www.epa.gov/compliance/incentives/smallbusiness)

Audit Policy
(www.epa.gov/compliance/incentives/auditing)

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established an SBA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System (NAICS) designation, number of employees, or annual receipts, defined at 13 C.F.R. 121.201 in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

Your Duty to Comply

If you receive compliance assistance or submit comments to the SBREFA Ombudsman or Regional Fairness Boards you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.