



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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SEP 24 2008

Ref: 8ENF-W-NP

CERTIFIED MAIL 7003-2260-0001-7778-2358
RETURN RECEIPT REQUESTED

Tim Birk
Northstar Associates LLC
2239 Lower Valley Road
Kalispell, MT 59901

Re: Findings of Violation and Order for
Compliance under sections 308 and
309 of the Clean Water Act
Docket No. CWA-08-2008-0028

Dear Mr. Birk:

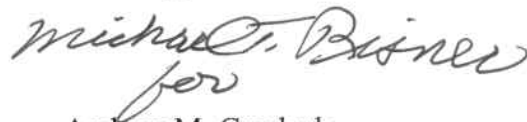
Based on our review of all available information, the United States Environmental Protection Agency ("EPA") has determined that Northstar Associates LLC ("Northstar") is in violation of the Clean Water Act, as amended ("CWA"). EPA alleges that Northstar has violated section 301(a) of the Act, 33 U.S.C. § 1311(a), and the storm water requirements specified in its Montana Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity, MTR102099 for the Spring Creek Estates construction site located in Kalispell, Montana.

Enclosed is an EPA Findings of Violation and Order for Compliance ("Order") issued to Northstar. The Order specifies the nature of the violations under the CWA and describes the actions necessary in order for Northstar to achieve compliance with the CWA. The authority for such action is provided to EPA under section 309(a) of the CWA, 33 U.S.C. § 1319(a). The Order is also issued pursuant to section 308(a) of the CWA, 33 U.S.C. § 1318(a), which authorizes the Administrator of EPA to require reports necessary to determine compliance.

The CWA requires the Administrator of EPA to take all appropriate enforcement actions necessary to secure prompt compliance with the CWA and any orders issued thereunder. Section 309(a) of the CWA provides a variety of possible enforcement actions, including the filing of a civil or criminal action (33 U.S.C. §§ 1319(a)). Section 508 allows for debarment from Federal contracts and/or loans for any noncompliance with the CWA or with an order issued pursuant to the CWA (33 U.S.C. § 1368).

Please review the Order carefully. Failure to comply with the requirements of the Order shall constitute a violation of the Order. If you have any questions regarding this letter, the enclosed Order, or any other matters pertinent to compliance with the CWA, the most knowledgeable people on my staff regarding these matters are Rosemary Rowe, Montana Office, at (406) 457-5020 or Darcy O'Connor, Technical Enforcement, at (303) 312-6392, and Marc Weiner, Enforcement Attorney, at (303) 312-6913.

Sincerely,

A handwritten signature in cursive script that reads "Michael T. Bisner" with "for" written below it.

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

Enclosures

cc: Tina Artemis, Regional Hearing Clerk
John Arrigo, MTDEQ
Jenny Chambers, MTDEQ

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2008 SEP 24 AM 9:53

IN THE MATTER OF:)	FINDINGS OF VIOLATION
)	AND
)	ORDER FOR COMPLIANCE
Northstar Associates LLC)	
2239 Lower Valley Road)	
Kalispell, MT 59901)	Proceeding under Sections 308(a) and
)	309(a) of the Clean Water Act, 33 U.S.C.
NPDES Permit No. MTR102099)	§§ 1318(a) and 1319(a)
)	
Respondent.)	Docket No. CWA-08-2008-0028
_____)	

STATUTORY AUTHORITY

The following Findings of Violation are made and Order for Compliance (“Order”) issued pursuant to section 309(a) of the Clean Water Act (the “Act”), 33 U.S.C. § 1319(a), which authorizes the Administrator of the U.S. Environmental Protection Agency (“EPA”) to issue an order requiring compliance by a person found to be in violation of sections 301, 302, 306, 307, 308, 318, or 402 of the Act, or in violation of any permit condition or limitation implementing such sections of the Act. This Order is also issued pursuant to section 308(a) of the Act, 33 U.S.C. § 1318(a), which authorizes the Administrator of EPA to require reports necessary to determine compliance. These authorities have been delegated to the Regional Administrator of EPA Region 8, and re-delegated to the undersigned official.

FINDINGS OF VIOLATION

1. Respondent Northstar Associates, LLC (“Respondent”) is incorporated and is authorized to do business in the State of Montana. Respondent is therefore a “person” as defined in 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.

2. Respondent is the owner and developer of a 50 acre, 170 lot residential subdivision located at 550 Three Mile Road, Kalispell, MT located in Section 11, Township 28 North, Range 22 West, Flathead County (the "Site"). The Site discharges storm water to West Spring Creek (aka Browser Spring Creek).
3. The Site is a "point source" within the meaning of section 502(14) of the Act, 33 U.S.C. § 1362(14).
4. West Spring Creek flows into Ashley Creek. Ashley Creek flows into the Flathead River. The Flathead River is a water of the United States within the meaning of 40 C.F.R. § 122.2 and, therefore, a navigable water within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7).
5. Sediment is a "pollutant" within the meaning of section 502(6) of the Act, 33 U.S.C. § 1362(6).
6. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits, among other things, the discharge of pollutants by any person into waters of the United States except as in compliance with section 402 of the Act, 33 U.S.C. § 1342.
7. Section 402 of the Act, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System ("NPDES") program, administered by EPA and/or, under certain circumstances, the State, to permit discharges into navigable waters, subject to specific terms and conditions.
8. The Respondent is authorized to discharge storm water under the Montana Department of Environmental Quality's ("MDEQ's") General Permit for Storm Water Discharges

Associated with Construction Activity, MTR100000 (the "Permit"). The Respondent's permit number for the Site is MTR102099.

9. Section II.C. of the Permit states that a discharge of storm water must not cause or contribute to a violation of water quality standards.
10. The stream classification for West Spring Creek allows for a discharge of turbid water not to exceed 10 Nephelometric Turbidity Units ("NTUs") above naturally occurring levels. Exceedance of water quality standards caused by a discharge of sediment from a construction site is a violation of the Permit, Section II.C. and sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.
11. On March 7, 2007 MDEQ received a complaint that a sediment laden discharge from the Site was flowing into West Spring Creek. Turbidity measurements of the storm water entering the Creek were in excess of the maximum reading of 999 NTUs of the turbidmeter. The upstream Creek water was measured at 20.6 NTUs. The downstream turbidity was measured at 142.7 NTUs.
12. The discharge of sediment from the Site caused the turbidity level in West Spring Creek to increase by 122 NTUs and is therefore a violation of the Water Quality Standard, Section II.C. of the Permit, and sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.
13. On February 28, 2008 MDEQ received another complaint reporting that turbid storm water discharge from Springs Creek Estates was flowing into West Spring Creek. On February 29, 2008, representatives from MDEQ conducted a site investigation. A snow melt event was occurring at the time of the inspection. Sediment laden storm water was discharging from the site to West Spring Creek. Turbidity in the creek downstream of the discharge was 72.5

NTUs. Upstream of the discharge, the creek turbidity was 8.98 NTUs. At the time of the inspection, the Respondent stated that most of the sediment laden water was coming from lots within the development, and that he had asked the building contractors to address the problem.

14. The discharge of sediment from the Site caused the turbidity level in West Spring Creek to increase by 63 NTUs and is therefore a violation of the Water Quality Standard and Section II.C. of the Permit and sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.
15. Section IV.A. of the Permit states the permittee shall develop a Storm Water Pollution Prevention Plan (“SWPPP”) the objective of which is to minimize the erosion of disturbed land during construction and post-construction activities and to minimize pollutants, such as sediment, fuels, oil, grease, fertilizer, pesticides, concrete truck washout, etc. from discharging to state waters.
16. On June 19, 2008, EPA Inspectors inspected the Site (Attachment 1). At the time of the inspection, there was a completed storm water detention chamber located underground on the northeast downgradient corner of the Site which discharges to a roadside swale which discharges to West Spring Creek a short distance away. All of the roads and all of the storm drain system, including inlets along the road, had been constructed. EPA observed several lots where houses were under construction or had recently been completed, and the yards had not been stabilized. At these lots, there were no Best Management Practices (“BMPs”) in place to prevent sediment from leaving the lot and entering the storm drain system. In addition only two storm drain inlets on site were observed to have inlet protection. A review of the SWPPP at the time of the inspection determined that the SWPPP did not include

BMPs to address discharges of sediment from the unstabilized home lots or inlet protection.

As a result of the inspection, EPA determined that the SWPPP did not meet the requirements of the permit in respect to minimizing the erosion of disturbed land and to minimize pollutants such as sediment from discharging to state waters.

17. Failure to develop a SWPPP that includes BMPs to minimize sediment discharge is a violation of Section IV.A. of the Permit and sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.
18. Section II.E. of the Permit requires the permittee to implement and maintain all BMPs and storm water management controls in accordance with the requirements of the General Permit.
19. On March 7, 2007 a representative from MDEQ conducted a site inspection and documented that the Respondent had not maintained BMPs resulting in the following: (1) Silt fencing was lying on the soil surface and had been undermined by gully erosion; (2) Storm water flowed over the top and around the sides of a detention pond; and (3) Sediment laden storm water flowed off-site into the Three Mile Drive roadway ditch and entered West Spring Creek, a tributary of Ashley Creek which is a tributary of the Flathead River.
20. Failure to maintain the silt fence is a violation of Section II.E. of the Permit and sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.
21. During the June 18, 2008 inspection, the EPA inspectors observed that one of the two storm drains with inlet protection was caked with mud and had not been maintained.
22. Failure to maintain the inlet protection is a failure of Section II.E. of the Permit and sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

23. Section II.A. of the Permit requires the permittee to inspect erosion and sediment control measures at least once every 14 days and within 24 hours after any rainfall event of 0.5 inches or greater.
24. Based on the inspection conducted by EPA on June 19, 2008 (Attachment 1) and the subsequent records review, inspections had not been conducted at the minimum frequency.
25. Failure to conduct inspections at the required frequency is a violation of Section II.A. of the Permit and sections 301 and 402 of the Act, 33 U.S.C. §§ 1311 and 1342.

ORDER

Based on the foregoing FINDINGS OF VIOLATION, and pursuant to the authority vested in the Administrator of EPA pursuant to sections 308 and 309(a) of the Act, 33 U.S.C. §§ 1318 and 1319(a), as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance, and Environmental Justice, EPA Region 8, it is hereby ORDERED:

1. Within ten (10) calendar days of receipt of this Order, Respondent shall submit to EPA written notice of intent to comply with the requirements of this Order.
2. Within fifteen (15) calendar days of receipt of this Order, the Respondent shall submit a revised SWPPP which must meet all SWPPP requirements outlined in Part IV of the Permit. The SWPPP must address (1) the installation and maintenance of BMPs at all individual home sites where final stabilization has not occurred and (2) the installation and maintenance of storm drain inlet protection for all storm drain inlets. For BMPs at individual home sites, describe structural practices (i.e., silt fences, fiber rolls, etc.) including design specifications and details to filter and trap sediment before it leaves the home construction site. For storm

drain inlet protection, describe the controls (i.e., inserts, rock-filled bags, blocks and gravel, etc.) including design specifications and details that will be implemented to protect all inlets receiving storm water from the project. These storm drain inlet protections shall be in place through out the year until such time as the Site has reached final stabilization, as defined in Part VI.8. of the Permit.

3. As a part of the SWPPP, the Respondent shall prepare and maintain an updated site map which shows the construction and stabilization status of all lots, the current location of BMPs, and the dates that changes to the BMPs were made.
4. Upon EPA's review of the SWPPP, EPA may approve the SWPPP, disapprove it and require the Respondent to make changes, or approve it with modifications. If EPA requires the Respondent to make changes, such changes will be made and resubmitted to EPA within seven (7) days.
5. Upon EPA's approval of the SWPPP, it shall become an enforceable part of this order, and the Respondent shall implement the SWPPP within five (5) working days of the approval unless EPA allows for additional time.
6. The Respondent will conduct, at a minimum, weekly inspections of all BMPs at the site using the inspection form and directions in Attachment 2. These inspections shall be conducted throughout the year. Within 24 hours of completion of the inspection, a copy shall be faxed to EPA. In addition to weekly inspections, inspections shall also be conducted at any time when site conditions are likely to produce run-off such as during snowmelt or after a precipitation event of 0.5 inches or greater.
7. The Respondent shall keep a record of all precipitation events on site as part of its SWPPP.

8. Any needed maintenance, repairs, or changes to the BMPs noted during the inspection shall be completed by the Respondent within 24 hours of the inspection. A log shall be kept of all corrective actions as part of the SWPPP.
9. All written notices, correspondence, plans, schedules, and reports required by this Order shall be sent to the following address:

Rosemary Rowe
U.S. Environmental Protection Agency, Region 8
Montana Office
10 West 15th Street, Suite 3200
Helena, MT 59626

Inspection reports shall be faxed to: (406)457-5055 Attention: Rosemary Rowe

10. All written notices, correspondence, plans, schedules, and reports submitted pursuant to this Order must be signed by a principal executive officer, ranking elected official, or duly authorized representative of Respondent (as specified by 40 C.F.R. § 122.22(b)) and shall include the following statement:

“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, I certify that 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.”

11. Any failure to comply with the requirements of this Order shall constitute a violation of said Order and may subject Respondent to penalties as provided under section 309 of the Act, 33 U.S.C. § 1319.

12. This Order does not constitute a waiver or modification of the terms and conditions of the Permit, which remains in full force and effect.
13. Please be advised that section 309(d) of the Act, 33 U.S.C. § 1319(d), authorizes civil penalties of up to \$32,500 per day for each violation of section 301 of the Act, 33 U.S.C. § 1311, and for each violation of an order issued by the Administrator of EPA under section 309(a) of the Act, 33 U.S.C. § 1319(a), including this Order. Additionally, section 309(g) of the Act, 33 U.S.C. § 1319(g), authorizes EPA to impose administrative penalties for violations of the Act. Further, section 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the Act. Issuance of this Order shall not be deemed an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act for violations giving rise to this Order.
14. Compliance with the terms and conditions of this Order shall not be construed to relieve Respondent of its obligation to comply with any applicable Federal, state, or local law or regulation.
15. This Order shall be effective upon receipt by Respondent.
- 16.

DATED this 22nd day of September, 2008.

for Michael T. Bioner
Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance, and
Environmental Justice

NPDES Inspection Summary

Facility: Spring Creek Estates
Permit #: MTR102099
Inspection Date: June 19, 2008
Inspectors: Rosemary Rowe and David Rise
Location: 550 Three Mile Road
Kalispell, MT
48.2096/114.3642

Site Description:

The site is a residential subdivision development in Kalispell, Montana and is authorized under the State of Montana's General Permit for Storm Water Discharges Associated with Construction Activity. During snow melt events in 2007 and 2008, the site experienced discharge of storm water with turbidity levels in excess of State water quality standards. EPA inspected the site to determine the current status of Best Management Practices (BMPs) at the site.

The operator listed on the Notice of Intent (NOI) is:

Tim Birk
Northstar Associates LLC
2239 Lower Valley Road
Kalispell, MT 59901

Site Review:

Prior to going to the site, the inspectors called Brett Walcheck, 48 North, P.C. Brett Walcheck and Judy Mundell met the inspectors at the site at approximately 10:40 am. Mr. Walcheck said they would show us the site and the BMPs currently in place but stressed that 48 North was not a permittee on site and did not have responsibility for the implementation of the BMPs.

The site is approximately 50 acres and has 170 residential lots. Roads and infrastructure have been installed. Individual lots are currently being sold and built on. About 10 lots have been built on or are being built on to date. The project began in 2006. No site wide stabilization was done until this spring. All runoff at the site enters the storm drain system and flows to an underground detention basin located in the northeastern corner of the site. The detention basin discharges to a ditch running beside Three Mile Road. The ditch discharges to Browser Spring Creek approximately 175 feet from the site.

The inspectors and the representatives of 48 North walked the site beginning with the