

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

REGIONAL HEARING CENTER
EPA REGION III PHILA. PA

2015 APR 28 AM 10:39

RECEIVED

In the Matter of	:	Act, 33 U.S.C. § 1319(g)
	:	Proceeding to Assess a Class II
	:	Administrative Penalty Under
Four Points LLC	:	Section 309(g) of the Clean Water Act, 33
1805 7th Street, NW	:	U.S.C. § 1319(g)
Suite 800	:	
Washington, D.C. 20001-3186	:	
and	:	
	:	
New Hampshire Ave. Ventures LLC	:	
11465 Sunset Hills Road	:	
Reston, VA 20190-5288	:	CONSENT AGREEMENT
	:	AND FINAL ORDER
and	:	
	:	
Comstock Homes of Washington, L.C.	:	
1886 Metro Center Drive, 4 th Floor	:	
Reston, VA 20190	:	
	:	Docket No. CWA-03-2014-0224 - incorrect
Respondents	:	CWA-03-2015-0165-New #
	:	
Property located at:	:	
	:	
6000 New Hampshire Ave., NE	:	
Washington, D.C. 20011	:	

I. STATUTORY AUTHORITY

1. The following Consent Agreement and Final Order (CAFO) is entered into under the authority vested in the United States Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g)(CWA). The Administrator of EPA has delegated this authority to the Regional Administrator of EPA Region III, who in turn has delegated it to the Director of the Water Protection Division of EPA Region III. This CAFO simultaneously commences and concludes this action pursuant to Sections 13(b)

and 18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits. 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

II. BACKGROUND

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into waters of the United States except in compliance with specified requirements of the Act, including a permit issued pursuant to the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Act, 33 U.S.C. § 1342 and 40 C.F.R. Part 122.
3. EPA administers the NPDES program within the District of Columbia.
4. Pursuant to Section 309(a)(1) of the Act, 33 U.S.C. § 1319(a)(1), EPA is authorized to enforce the terms of any permit.
5. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.1 and 122.26 provide that facilities with storm water discharges associated with industrial activity are “point sources” subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).
6. The term “industrial activity” includes, among others, “[c]onstruction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more[.]” 40 C.F.R. § 122.26(b)(14)(x).
7. “Discharge of a pollutant” includes “any addition of any pollutant or combination of pollutants to waters of the United States from any point source.” 40 C.F.R. § 122.2.
8. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).
9. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA issued an NPDES Construction General Permit which became effective on June 30, 2008 (2008 CGP). The 2008 CGP, effective within the District of Columbia, authorized discharges of storm water associated with construction activities, but only in accordance with the conditions of the permit. The 2008 CGP expired on February 15, 2012.
10. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA issued a revised CGP effective February 16, 2012 (2012 CGP). The 2012 CGP authorized discharges of storm water associated with construction activities, but only in accordance with the conditions of the permit.

Environment. Representatives of Comstock and Comstock Contracting, L.C. were also present at the Site inspection.

21. Following the inspection, on August 9, 2013, EPA sent a copy of the inspection report via email to representatives of Comstock Contracting and Comstock Homes.

Count I: Failure to prepare SWPPP prior to submission of Notice of Intent for Coverage Under the 2008 CGP

22. At the time of the EPA inspection, there was no copy of the SWPPP at the Site. At the time of the inspection, EPA requested a number of documents which were not available at the Site at that time, including the SWPPP. Respondent subsequently provided a copy of the SWPPP to EPA. The SWPPP, on its cover page, indicates a preparation date of July 25, 2012. Therefore, Respondent did not have a SWPPP at the time the NOI was submitted on November 21, 2011. This is a violation of the 2008 CGP and the CWA.

Count II: Discharging without a Permit/Failure to Obtain Coverage under the 2012 CGP

23. At the time of the inspection, the 2008 CGP was expired. Respondents did not submit an NOI for coverage of the Site under the 2012 CGP by May 16, 2012, as required by the 2012 CGP. As of May 14, 2014 Respondents had not submitted an NOI for coverage of the Site under the CGP. Therefore, any discharges of pollutants from the Site without a permit violated the CWA.

IV. CONCLUSION OF LAW

24. EPA finds that Respondents' failure to have a SWPPP prior to submitting an NOI for the 2008 CGP violated the terms of the 2008 CGP and violates Section 301 of the Act, 33 U.S.C. § 1311(a) and the Respondents' failure to submit an NOI for coverage under the 2012 CGP violates Section 301 of the Act, 33 U.S.C. § 1311(a).

V. CONSENT AGREEMENT AND FINAL ORDER

25. Respondents neither admit nor deny EPA's findings and allegations set forth in Section III, above.
26. Respondents agree not to contest EPA's jurisdiction to issue and enforce this CAFO.
27. Respondents hereby expressly waive their rights to a hearing or other proceeding on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consent to issuance of this CAFO without adjudication.

11. The 2008 CGP required and the 2012 CGP requires that, to be covered under the permit, an applicant must submit a complete and accurate Notice of Intent (NOI) for coverage prior to commencing construction activities. 2008 CGP at Section 2.4; 2012 CGP at Section 1.4. The 2012 CGP requires that for existing construction projects, an NOI for coverage under the 2012 CGP must be submitted no later than May 15, 2012. See 2012 CGP, at page 7, also 77 FR 12286, 12291 at col.3.
12. Section 5.1 of the 2008 CGP requires the permittee to develop a Storm Water Pollution Prevention Plan (SWPPP) in order to be covered by the CGP. The permittee is required to develop the Site specific SWPPP prior to submitting the NOI. See 2008 CGP, Section 5.1.

III. EPA FINDINGS AND ALLEGATIONS

13. Respondents Four Points, LLC (Four Points), New Hampshire Ave. Ventures, LLC (New Hampshire) and Comstock Homes of Washington, L.C. (Comstock) are each a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. §1362(5).
14. Respondents Four Points and Comstock are the members of New Hampshire, which was formed specifically to develop the property at 6000 New Hampshire Avenue, NE, Washington, DC 20011 (Site). Four Points and Comstock are engaged in a joint venture for the purposes of real estate development at the Site.
15. At all times relevant to this CAFO, and upon information and belief, Respondents were either owners and/or operators of the Site.
16. Comstock and New Hampshire have been at all relevant times engaged in construction activity at the Site that discharges storm water from a point source to the Anacostia River. The construction activity at the Site has disturbed or will disturb approximately ten (10) acres of land.
17. The Anacostia River is a "navigable water," as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), as well as a "water of the United States," as defined in 40 C.F.R. 122.2. The Anacostia River is therefore a "water of the United States" and a "navigable water."
18. On November 21, 2011 Respondent Four Points submitted an NOI for coverage under the 2008 CGP for the Site. Respondent Four Points indicated on the NOI form that a SWPPP had been prepared for the Site.
19. On November 21, 2011, EPA notified Four Points that the Site was approved for coverage under the 2008 CGP. The Site was assigned Permit Number DCR10A969.
20. On February 19, 2013, representatives of EPA conducted an inspection at the Site. In addition to representatives of EPA and the District of Columbia Department of the

28. Each party shall bear its own costs and attorney fees.
29. The provisions of this CAFO shall be binding upon Respondents, their officers, principals, directors, successors and assigns.
30. The parties agree that settlement of this matter prior to the initiation of litigation, any hearing or adjudication is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.
31. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on this CAFO prior to issuing the Final Order.
32. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violation(s) alleged, Respondents' ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA and Respondents agree that Respondents will pay a civil penalty in the amount of forty thousand dollars \$40,000 in full and final settlement of EPA's claims for the violations alleged herein.
33. Respondents shall pay the amount of forty thousand dollars (\$40,000) pursuant to this CAFO within thirty (30) days of the effective date, in the following manner:
 - A. All payments by Respondents shall reference Respondents' name and address, and the Docket Number of this action, CWA 03-2014-0224;
 - B. All checks shall be made payable to "United States Treasury";
 - C. All payments made by check and sent by regular mail shall be addressed to:

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

Contact: Craig Steffen 513-487-2091
 - D. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank
Government Lockbox 979077
U.S. EPA, Fines & Penalties
1005 Convention Plaza

Mail Station SL-MO-C2-GL
St. Louis, MO 63101
Contact: Craig Steffen 513-487-2091

- E. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance
US EPA, MS-NWD
26 W. M.L. King Drive
Cincinnati, OH 45268-0001

- F. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York
ABA = 021030004
Account No. = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

- G. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: John Schmid 202-874-7026 or
Remittance Express (REX) 866-234-5681

- H. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV
Enter sfo 1.1 in the search field. Open and complete the form.

Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

34. Respondents shall send notice of such payment, including a copy of the check if payment is made by check, to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

-and-

Deane Bartlett, Esquire
Mail Code 3RC20
Office of Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

35. This CAFO shall not relieve Respondents of their obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251 *et seq.*, or any regulations promulgated thereunder.
36. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondents' failure to make timely payments as required herein or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondents. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which it is due. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

37. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). A

penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

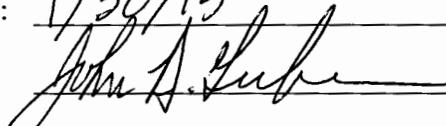
38. This Consent Agreement and the accompanying Final Order resolve only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondents, in response to any condition which EPA determines may present and imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. § 301 et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.
39. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondents' violation of any applicable provision of law.
40. The penalty specified in Paragraph 33, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
41. Entry of this CAFO is a final settlement of all violations alleged in this CAFO. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO if the EPA obtains evidence that the information and/or representations of the Respondents are false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.
42. Each of the undersigned representative of Respondents certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.
43. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

VI. EFFECTIVE DATE

44. Pursuant to 40 C.F.R. § 22.45, this CAFO shall be issued after a 40-day public notice period has concluded. This CAFO will become final 30 days after issuance, 33 U.S.C. § 1319(g)(4), and will become effective on the date that it is filed with the Regional Hearing Clerk, 40 C.F.R. § 22.31(b).

FOR Four Points, LLC:

Date: 1/30/15

By: 

John D.T. Gerber, Managing Member

FOR: New Hampshire Ave. Ventures, LLC

Date: 2-3-15

By: _____

~~Comstock Ventures XVI, L.C., Manager~~
~~Comstock Holding Companies, Inc., Manager~~
~~Christopher Clemente, CEO~~

FOR: Comstock Homes of Washington, LLC.

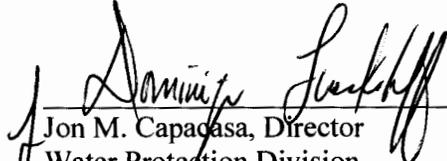
Date: 2-3-15

By: _____

Comstock Holding Companies, Inc., Manager
Christopher Clemente, CEO

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

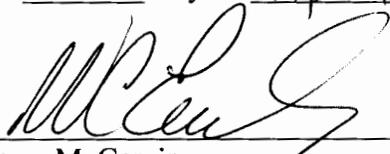
Date: 2/24/15



Jon M. Capadusa, Director
Water Protection Division
U.S. EPA Region III

SO ORDERED, pursuant to 33 U.S.C. 1319(g), and 40 C.F.R. Part 22,

this 21ST day of April, 2015



Shawn M. Garvin
Regional Administrator
U.S. EPA Region III

CERTIFICATE OF SERVICE

I certify that on the below date the enclosed Consent Agreement and Final Order, Docket No. CWA-03-2014-0224 was delivered to the following persons in the manner indicated:

Hand delivery of original and one copy:

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Copy by regular mail, postage prepaid

Alisa Vogt
Associate General Counsel
Comstock Holding Companies, Inc.
1886 Metro Center Drive
Fourth Floor
Reston, VA 20190

Date: April 28, 2015



Deane H. Bartlett
Senior Assistant Regional Counsel