

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

2018 JUL 31 PM 3: 15

IN THE MATTER OF:)
)
Tom Stuart Construction, Inc.)
360 North 700 West)
North Salt Lake, Utah 84054)
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)
)
Respondent.)

Docket No. **CWA-08-2018-0010**

FILED
EPA REGION VIII
HEARING CLERK

**COMBINED COMPLAINT AND
CONSENT AGREEMENT**

The U.S. Environmental Protection Agency, Region 8 (EPA), and Tom Stuart Construction, Inc. (Respondent), by their undersigned representatives, hereby consent and agree as follows:

I. AUTHORITY

1. This proceeding is subject to the EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. part 22. This Combined Complaint and Consent Agreement (CCCA) is entered into by the parties for the purpose of simultaneously commencing and concluding this matter, as authorized by 40 C.F.R. § 22.13(b), and is executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. The EPA has jurisdiction over this matter pursuant to section 309(g)(1)(A) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(1)(A).

II. PARTIES BOUND

3. This CCCA, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon Respondent, and Respondent's officers, directors, agents, successors and assigns. Each signatory to this CCCA certifies that they are authorized to execute and legally bind the party they represent to this CCCA.

III. STATEMENT OF THE PARTIES

4. For the purposes of this settlement only, Respondent admits the jurisdictional allegations contained herein and neither admits nor denies the EPA's specific factual allegations and legal conclusions.
5. With respect to this settlement only, Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CCCA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701 – 706.
6. The EPA asserts that settlement of this matter is in the public interest, and the EPA and Respondent agree that entry of this CCCA and its incorporation into a Final Order without further litigation and without adjudication of any issue of fact or law will avoid prolonged and complicated litigation between the parties.

7. The parties reserve any and all rights and defenses they may have against any person or entity not a party to this CCCA.
8. This CCCA, upon incorporation into a Final Order and full satisfaction by the parties, shall be a complete and full resolution of the Respondent's liability for federal civil penalties for the violations alleged below.

IV. GENERAL ALLEGATIONS

9. In order to restore and maintain the integrity of the nation's waters, section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into waters of the United States, unless authorized by certain other provisions of the CWA, including section 402 of the CWA, 33 U.S.C. § 1342.
10. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, under which the EPA, and states with authorization from the EPA, may permit discharges of pollutants into navigable waters, subject to specific terms and conditions.
11. Construction activity including clearing, grading, and excavating that results in land disturbance of equal to or greater than one acre and less than five acres is considered small construction activity. Small construction activity also includes the disturbance of less than one acre of total land area 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 and less than five acres is small construction activity. 40 C.F.R. § 122.26(b)(15).
12. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), establishes a program under which a NPDES permit may be issued to authorize discharges of stormwater discharges associated with small construction activity.
13. The regulations further defining requirements for NPDES permits for stormwater discharges associated with small construction activity are found at 40 C.F.R. part 122.
14. Any discharge from construction activity that disturbs one or more acres and less than five acres constitutes a stormwater discharge associated with small construction activity. 40 C.F.R. § 122.26(b)(15).
15. Dischargers of stormwater associated with small construction activity must either apply for an individual permit or seek coverage under an existing and lawful general permit. 40 C.F.R. § 122.26(c).
16. 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. The EPA maintains concurrent enforcement authority, with delegated states, for violations of the CWA or of any permit condition or limitation implementing the CWA. 33 U.S.C. § 1342(i).

17. Effective July 1, 2014, the UDEQ issued a UPDES general permit (UPDES Permit No. UTRC00000, referenced as the Stormwater Permit) authorizing discharges of stormwater 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 Stormwater Permit by submitting a notice of intent (NOI) for coverage to the UDEQ.
18. An “owner” under the Stormwater Permit is defined as “the party that owns/leases the land on which the construction activities occur and has ultimate control over the project and the destiny of a project. The owner has control over construction plans and specifications, including the ability to make modifications at the highest level, to those plans and specifications.” Stormwater Permit, Part 1.1.1.a.
19. An “operator” under the Stormwater Permit is defined as “the party (usually the general contractor) that has day-to-day operational control over those activities at a project that are necessary to ensure compliance with the permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the permit).” Stormwater Permit, Part 1.1.1.b.
20. A “permittee” under the Stormwater Permit is defined as “the owner and/or operator named in the NOI for the project.” Stormwater Permit, Appendix A.
21. The Stormwater Permit requires, among other things, that dischargers develop and implement an adequate stormwater pollution prevention plan (SWPPP), conduct regular stormwater inspections, and implement and maintain best management practices (BMPs) to prevent or reduce pollution. BMPs include, but are not necessarily limited to, structural controls (e.g., storm drain inlet protection) and management practices (e.g., dedicated concrete washout areas and street sweeping).
22. The Stormwater Permit prohibits, among other things, discharge of groundwater, stormwater, or any water, if it is heavily soiled from contact with construction activity, that is extracted from excavations, trenches, foundations, vaults, or other similar points of accumulation. Such discharges are associated with construction dewatering activities and may be authorized by another requisite NPDES permit. Stormwater Permit, Part 2.1.3.d.
23. Effective January 1, 2014, the UDEQ issued a UPDES general permit (UPDES Permit No. UTG070000, referenced as the Dewatering Permit) authorizing discharges of groundwater and surface water sources, including stormwater, associated with construction dewatering activities, if done in compliance with its terms and conditions. Dischargers may apply for authorization to discharge under the Dewatering Permit by submitting a NOI for coverage to the UDEQ.
24. An “operator” under the Dewatering Permit is defined as “usually the general contractor or the excavation contractor or anyone else that fits the definition of operator. An operator is anyone that has control over the site/project specifications and/or control of day to day operations activities.” Dewatering Permit NOI, Instructions.
25. The Dewatering Permit requires, among other things, that dischargers conduct monitoring and reporting of discharges associated construction dewatering activity and that such discharges satisfy narrative standards and numeric effluent limitations (e.g., total suspended solids).

V. EPA'S SPECIFIC ALLEGATIONS

26. Respondent is a corporation organized under the laws of the State of Utah and authorized to do business in the State of Utah. Respondent's principal office is located in North Salt Lake, Utah. Romm Jackson is the Chief Operating Officer for Respondent.
27. Respondent is a "person" within the meaning of section 502(5) of the CWA and is therefore, subject to the requirements of the CWA and its implementing regulations. 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
28. Respondent was, at all times relevant to this CCCA, engaged in construction activities at a commercial development known as Riverfront located at 3655 South 700 West, South Salt Lake, Utah (the Site). Respondent was engaged in "small construction activity" as defined at 40 C.F.R. § 122.26(b)(15) beginning on November 21, 2016.
29. The Site encompassed approximately 4.83 acres.
30. The Stormwater Permit NOI filed for the Site listed Respondent as the "operator," and Respondent was covered under the Stormwater Permit tracking number UTR378113 between November 21, 2016, and November 21, 2017.
31. Respondent discharged stormwater associated with construction dewatering activities without authorization under the Dewatering Permit on at least two occasions. The exact date of the first unpermitted dewatering discharge is not known, but it is believed to have taken place in the first quarter of 2017. The second unpermitted dewatering discharge occurred during an EPA inspection of the Site on March 28, 2017.
32. Stormwater runoff, snow melt runoff, surface runoff, and/or drainage water left the Site and flowed through the South Salt Lake municipal separate storm sewer system (MS4) into the Jordan River.
33. The runoff and drainage from the Site are "stormwater" as defined by EPA regulations. 40 C.F.R. § 122.26(b)(13).
34. The Jordan River is a navigable water of the United States as defined in section 502(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.
35. Stormwater contains "pollutants" as defined by section 502(6) of the CWA, 33 U.S.C. § 1362(6).
36. Stormwater discharge from the Site is a discharge from a "point source" as defined by section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.
37. Each stormwater discharge from the Site is a "discharge of pollutants" as defined by section 502(12) of the CWA, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2.

VI. DESCRIPTION OF ALLEGED VIOLATIONS

38. On March 28, 2017, EPA inspectors conducted a stormwater inspection at the Site to determine compliance with the CWA, the Stormwater Permit, and EPA regulations (Inspection).

39. Part 7.2.15 of the Stormwater Permit requires owner/operator certification of the SWPPP.
40. During the Inspection, the SWPPP had not been certified by the project owner or operator.
41. Part 1.5 of the Stormwater Permit requires the posted notice of Stormwater Permit coverage to include, among other things, the UPDES Stormwater Permit tracking number.
42. During the Inspection, the posted notice of Stormwater Permit coverage did not include the UPDES Stormwater Permit tracking number.
43. Part 7.2.11.a of the Stormwater Permit requires the SWPPP include identification of personnel responsible for conducting inspections of the Site.
44. During the Inspection, the SWPPP did not identify personnel who had been conducting inspections of the Site.
45. Part 2.1.2.b of the Stormwater Permit requires installation of sediment controls along those perimeter areas of the Site that will receive stormwater from areas where earth disturbing activities are occurring.
46. During the Inspection, along the eastern portion of the northern property boundary, there were no perimeter controls along West 3655 South to prevent disturbed sediment from overtopping the curb and there was sediment deposition present in the curb gutter.
47. Part 2.1.2.c of the Stormwater Permit requires minimization of the track-out of sediment onto off-Site streets, other paved areas, and sidewalks from vehicles exiting disturbed areas through the use of stabilization techniques at all points that exit onto paved roads so that removal of sediment from vehicles occurs prior to exit.
48. Part 2.1.1.d.i of the Stormwater Permit requires all erosion and sediment controls remain in effective operating condition.
49. During the Inspection, at several onsite entry/exit points, vehicle track-out controls had not been maintained and were not in effective operating condition, and there was vehicle track- on adjacent paved roadways.
50. Part 2.1.2.h of the Stormwater Permit requires installation and maintenance of inlet protection measures that remove sediment from discharges prior to entry into the storm drain inlet for each inlet carrying stormwater flow from disturbed areas of the Site directly to a surface water.
51. During the Inspection, one southern adjacent inlet along West Carlisle Park Lane did not have inlet protection. Also, a northern adjacent inlet protection measure along West 3655 South required replacement where stormwater discharged into the inlet. Several other inlet protection measures were in need of maintenance due to sediment accumulation inside or upgradient of the inlets.
52. Part 2.1.3.d of the Stormwater Permit prohibits discharge of ground water (or any water, even storm water, see note) that is extracted from excavations, trenches, foundations, vaults, or other similar

points of accumulation, unless such waters are covered by the Dewatering Permit. The note to Part 2.1.3.d states that water that is present at construction sites, whether it is ground water, storm water, or from where ever, if it is heavily soiled from contact with construction activity, must be covered under the Dewatering Permit with a total suspended solids limit if it is to be discharged

53. During the Inspection, Respondent discharged stormwater from an excavation on the Site without authorization under the Dewatering Permit. The stormwater discharged from the excavation was brown in color and entered the South Salt Lake MS4 through a stormwater inlet along West 3655 South, adjacent north of the Site. The section of the South Salt Lake MS4 receiving the stormwater flowed into the Jordan River. Based on discussions with Site personnel during the Inspection, on at least one prior occasion, Respondent had discharged stormwater from an excavation on the Site without authorization by the Dewatering Permit.
54. As set forth in paragraphs 38-53, above, Respondent failed to comply with the conditions of the Stormwater Permit in violation of 33 U.S.C. § 1342 of the CWA.
55. As set forth in paragraphs 52-53 above, Respondent discharged pollutants to navigable waters of the United States without authorization by the Dewatering Permit in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

VII. CIVIL PENALTY

56. Pursuant to section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319 (g)(2)(A), and after consideration of the facts of this case as they related to the factors set forth in section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), the EPA has determined that a civil penalty of twenty-thousand dollars (\$20,000) is appropriate to settle this matter.
57. Respondent consents and agrees to pay a civil penalty in the amount of twenty-thousand dollars (\$20,000) in the manner described below:
 - a. Payment shall be in a single payment of \$20,000, due no later than 30 calendar days from the date of the Final Order. If the due date for the payment falls on a weekend or federal holiday, then the due date is the next business day. The date the payment is made is considered to be the date processed by U.S. Bank, as described below. Payment must be received by 11:00 a.m. Eastern Standard Time to be considered as received that day.
 - b. The payment shall be made by remitting a check or making a wire transfer or on-line payment. The check or other payment shall designate the case name and docket number, be in the amount stated in the preceding paragraph, and be payable to the "Environmental Protection Agency." The payment shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. EPA Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

If remitted by any overnight commercial carrier:

U.S. Bank
1005 Convention Plaza Mail Station
SL-MO-C2-GL
St. Louis, Missouri 63101

If remitted by wire transfer:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

If remitted through the Automated Clearing House (ACH) for receiving US currency:

U.S. Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 -- checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737

If remitted online with a debit card or credit card: No user name, password, or account number is necessary for this option. Online payment can be accessed via WWW.PAY.GOV, entering SFO 1.1 in the form search box on the left side of the screen, opening the form, and following the directions on the screen.

Copies of the check or record of payment shall be sent to:

Akash Johnson (8ENF-W-NP)
NPDES Enforcement Unit
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202-1129

and

Melissa Haniewicz (8RC)
Regional Hearing Clerk
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202-1129

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

58. If the payment is not received by the specified due date, interest accrues from the date of the Final Order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received (e.g., on the 1st late day, 30 days of interest will have accrued).
59. A handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the date of the Final Order, and for each subsequent 30 day period that the debt, or any portion thereof, remains unpaid. In addition, a 6% per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 30 days of the due date. Payments are first applied to outstanding handling charges, second to penalty assessments, third to accrued interest, and then to the outstanding principal amount.
60. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

VIII. PUBLIC NOTICE

61. As required by section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45, the EPA will provide public notice and a reasonable opportunity to comment on the penalty that Respondent has agreed to pay in this matter. The EPA may modify or withdraw its consent to this CCCA if comments received disclose facts or considerations which indicate that this CCCA is inappropriate, improper, or inadequate.
62. If comments received during the public comment period do not require modification or withdrawal by the EPA from this CCCA, the parties agree to submit this CCCA to the Regional Judicial Officer for Region 8 following the close of the public comment period specified in 40 C.F.R. § 22.45, with a request that it be incorporated into a Final Order.


IX. GENERAL PROVISIONS

63. Nothing in this CCCA shall relieve Respondent of the duty to comply with the CWA and any regulation, order, or permit issued pursuant to the CWA.
64. Any failure by Respondent to comply with this CCCA shall constitute a breach of this CCCA and may result in referral of the matter to the U.S. Department of Justice for enforcement of this CCCA and such other relief as may be appropriate.


- 65. Nothing in this CCCA shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of any failure by Respondent to comply with this CCCA.
- 66. This Agreement constitutes the entire agreement and understanding of the parties and supersedes any prior agreements or understandings, whether written or oral, among the parties with respect to the subject matter hereof, with the exception of the Final Order.
- 67. This Agreement may be signed in any number of counterparts, each of which will be deemed an original and, when taken together, constitute one agreement; the counterparts are binding on each of the parties individually as full and completely as if the parties had signed one single instrument, so that the rights and liabilities of the parties will be unaffected by the failure of any of the undersigned to execute any or all of the counterparts; any signature page and any copy of a signed signature page may be detached from any counterpart and attached to any other counterpart of this Agreement.
- 68. The parties agree to submit this CCCA to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.
- 69. Each party shall bear its own costs and attorney's fees in connection with this matter.

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

Date: 7/24/2018

By: 
Amy Swanson, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice

Date: 7/25/18

By: 
Stephanie DeJong, Unit Chief
Water Technical Enforcement Unit
Office of Enforcement, Compliance,
and Environmental Justice

Tom Stuart Construction, Inc.
Respondent

Date: 9 July 2018

By: 
ROMM JACKSON, CHIEF OPERATING OFFICER