

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY 2015 SEP -9 PM 2: 55
REGION 8

In the Matter of:

Aspen View Homes, LLC
1710 Jet Stream Drive, Suite 100
Colorado Springs, Colorado 80921

Respondent

)
)
) ADMINISTRATIVE ORDER
) FOR COMPLIANCE ON CONSENT
)
) DOCKET NO. : CWA-08-2015-0026
)

FILED
EPA REGION VIII
DEARING CLERK

INTRODUCTION

1. This Administrative Order on Consent (Consent Order) is entered into voluntarily by Aspen View Homes, LLC (Respondent) and the United States Environmental Protection Agency (EPA). The EPA has authority to issue this Consent Order pursuant to section 309(a) of the Clean Water Act (Act), 33 U.S.C. § 1319(a), which authorizes the Administrator of the EPA to issue an order requiring compliance by a person found to be in violation of, *inter alia*, section 301(a) of the Act. This authority has been properly delegated to the undersigned EPA official.
2. The findings in paragraph numbers 3 through 51, below, are made solely by the EPA. In signing this Consent Order, the Respondent neither admits nor denies the findings. Without any admission of liability, the Respondent consents to issuance of this Consent Order and agrees to abide by all of its conditions. The Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that the Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review of this Consent Order under the Administrative Procedure Act, 5 U.S.C. §§ 701-706. The Respondent further agrees not to challenge the jurisdiction of the EPA or the EPA's findings in any proceeding to

enforce this Consent Order or in any action under this Consent Order.

FINDINGS

The following findings apply to all times relevant to this action:

3. The Respondent is a Colorado limited liability company. Jane B. Fredman is the registered agent.
4. The Respondent is a “person” as defined in section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
5. The Respondent is engaged in constructing housing within a pre-existing subdivision known as Forest Meadows 3 and located in Colorado Springs, Colorado (the Site).
6. The Respondent’s larger common plan of development at the Site encompasses approximately 20 acres of individual lots within a 390-acre subdivision.
7. Construction activities began at the Site on September 1, 2008.
8. The Respondent has had day-to-day responsibility for construction activities at the Site.
9. Storm water, snow melt, surface drainage and runoff water have been leaving the Site and have flowed into the City of Colorado Springs Municipal Separate Storm Sewer System to an outfall on an unnamed tributary of Sand Creek, to Sand Creek.
10. Sand Creek is a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7).
11. Sand Creek is a tributary of Fountain Creek.
12. Fountain Creek is a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7).
13. Fountain Creek flows year-round to the Arkansas River, which is a navigable-in-fact, interstate waterway.

14. The runoff and drainage from the Site is “storm water” as defined in 40 C.F.R. § 122.26(b)(13).
15. Storm water contains “pollutants” as defined by section 502(6) of the Act, 33 U.S.C. § 1362(6).
16. The Arkansas River, Fountain Creek, and Sand Creek are “navigable waters” as defined by section 502(7) of the Act, 33 U.S.C. § 1562(7).
17. Each storm water discharge from the Site is the “discharge of a pollutant” as defined by section 502(12) of the Act, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2.
18. Each storm water discharge from the Site is a discharge from a “point source” as that term is defined in section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2. In order to restore and maintain the integrity of the nation’s waters, section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into navigable waters, unless authorized by certain other provisions of the Act, including section 402 of the Act, 33 U.S.C. § 1342.
19. Section 402 of the Act, 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.
20. Section 402(p) of the Act, 33 U.S.C. § 1342(p), establishes a program under which NPDES permits may be issued to authorize discharges of storm water associated with industrial activities.
21. Any discharge from construction activity that disturbs at least five acres constitutes a storm water discharge associated with industrial activity. 40 C.F.R. § 122.26(b)(14)(x).

22. The State of Colorado was approved by the EPA to administer the NPDES program on March 27, 1975. 40 Fed. Reg. 16713, April 14, 1975. A permit issued by the Colorado Department of Public Health and Environment (CDPHE) under Colorado's EPA-approved NPDES program is known as a CDPS permit.
23. Effective July 1, 2007, CDPHE issued an NPDES general permit, CDPS Permit Number COR030000 (Permit) authorizing discharges of storm water associated with construction activities, if done in compliance with its terms and conditions. Dischargers may apply for authorization to discharge under the Permit by submitting a notice of intent for coverage to CDPHE.
24. On April 6, 2010, the Respondent was issued CDPS Authorization Number COR03G200 under the Permit, which authorized the discharge of storm water from construction activities disturbing 5.75 acres at the Site.
25. On July 31, 2012, the Respondent was issued CDPS Authorization Number COR03J432 under the Permit, which authorized the discharge of storm water from construction activities disturbing 5.785 acres at the Site.
26. Part 1.A.4.a of the Permit requires permittees to seek authorization prior to initiating construction activities as well as develop a Storm Water Management Plan (SWMP) prior to seeking authorization to discharge under the Permit.
27. Part I.A.4.b.4 of the Permit requires permittees to provide an application that contains an estimate of the total area of the site, the area of the site that is expected to be disturbed, and the total area of the larger common plan of development or sale to undergo disturbance.
28. Part I.D.5.b of the Permit requires permittees to retain a copy of the SWMP on site.

29. Part I.C.1.c of the Permit requires the permittee's SWMP to provide a site description, including estimates of the total area of the site and the area and location expected to be disturbed by clearing, excavation, grading, or other construction activities.
30. Part I.C.2.b of the Permit requires the permittee's SWMP to include a site map which shows all areas of ground surface disturbance.
31. Part I.C.2.f of the Permit requires permittees to develop a SWMP with a site map which shows the locations of all structural BMPs.
32. Part I.C.2.g of the Permit requires permittees to develop a SWMP with a site map which shows the locations of all non-structural BMPs.
33. Part I.C.3.a of the Permit requires the permittee's SWMP to identify a specific individual(s), position or title who is responsible for developing, implementing, maintaining and revising the SWMP.
34. Part I.C.3.c.2 of the Permit requires the permittee's SWMP site map to locate all non-structural practices, including permanent vegetation or landscaping installed by the permittee.
35. Part I.D.2 of the Permit requires permittees to select, install, implement, and maintain best management practices (BMPs) to prevent or reduce pollution. According to Part I.C.3.c of the Permit, BMPs include but are not necessarily limited to structural controls (such as straw wattles and silt fences) and management practices (such as a dedicated concrete washout area and street sweeping).
36. Part I.D.7 of the Permit requires permittees to maintain sediment control practices and other protective measures in effective operating condition.
37. Part I.D.8 of the Permit requires permittees to address failed BMPs as soon as possible,

and immediately in most cases, to minimize discharge of pollutants.

38. Part I.D.5.d.1 of the Permit requires the permittees to revise the SWMP, including the site map, within 72 hours of changing, adding, or modifying BMPs.
39. Part I.D.6 of the Permit requires permittees to conduct regular storm water inspections of the relevant construction site. At a minimum, permittees must conduct inspections at least once every 14 calendar days and within 24 hours after the end of any precipitation or snowmelt event that causes surface erosion. The Permit also requires permittees to create a record of inspections and sign that record when all deficiencies identified have been corrected.
40. On October 29, 2013, EPA inspectors conducted a storm water inspection at the Site to determine compliance with the Act.
41. During the inspection, the EPA inspectors observed sediment in the streets, sediment within the storm water drains, and missing, failed, and/or inadequate BMPs. For example, the inspectors observed sediment and debris in storm water drains and roadside gutters along Chasewood Loop, Springwood Terrace, and Forest Valley Loop, a concrete washout located at 7814 Springwood Terrace that was not built to specification, straw wattles that were not maintained in effective operating condition, and trash scattered throughout the site.
42. During the inspection, Respondent could not provide the SWMP for the Site as it was not located on Site or with the Site representative.
43. Three weeks after the inspection, on November 21, 2013, the SWMP, Site maps, and inspection records were provided to the EPA for the entire 20 acre development for the duration of the project.

44. The EPA inspectors reviewed the SWMP and found 1) that the SWMP did not adequately describe the size of the Site or the area planned for disturbance; 2) the SWMP did not identify the current SWMP administrator; 3) it did not describe practices being used on Site for controlling allowable non-storm water discharges; and 4) the SWMP was not revised when BMPs were changed, added or modified.
45. The EPA inspectors reviewed the notice of intents (NOIs) or application filed by or on behalf of the Respondent with CDPHE. The NOI for COR03G200 submitted by or on behalf of the Respondent for the Site was not submitted prior to initiating construction activities. Additionally, the NOIs for both COR03G200 and COR03J432 stated that the larger common plan of development was 11.535 acres. After reviewing the Site maps it appears to the EPA that the Respondent's larger common plan of development was at least 19.8 acres and this was not reflected in the NOIs for the Site or within the SWMP.
46. The EPA inspectors reviewed the Site maps and found 1) that the Site maps did not include all the areas that were under construction; 2) structural BMPs on Site, permanent vegetation installed for stabilization, and good housekeeping practices were not located on the Site maps; and 3) the Site maps were not kept up to date with Site conditions.
47. The EPA inspectors reviewed the self-inspections conducted by the contractor for the Respondent. The inspection records showed that post rain event inspections were not conducted and the inspection records were not signed. When the inspections revealed issues with BMPs that needed to be corrected a corrective action log was created. The majority of corrective actions were not addressed within 72 hours as required by the Permit.

48. On June 6, 2014, the EPA received an updated SWMP that addressed most of the deficiencies identified in paragraph 44, 45, and 46, photographs demonstrated that all BMP deficiencies identified in paragraph 41 had been addressed, and information that starting in 2013 post rain event storm water inspections were being conducted as required.
49. On December 16, 2014, the EPA met with the Respondent and received updates to the SWMP that addressed the remainder of deficiencies identified in paragraph 44, 45, and 46. The Respondent also provided an amended NOI for CDPS Authorization Number COR03J432 which encompassed the Respondent's larger common plan of development at the Site, addressing the deficiency identified in paragraph 45.
50. The Respondent has discharged pollutants from the Site in violation of the Permit and Authorization Numbers COR03G200 and COR03J432 in violation of section 301(a) of the Act, 33 U.S.C. § 1311(a).

ORDER

Respondent shall:

- i. Submit quarterly reports to the EPA and CDPHE beginning with a report for the third calendar quarter of 2015. The quarterly report shall include: (1) copies of self-inspection reports (with all elements required by Part I.D.6.b.2 of the Permit); and (2) color copies of the site maps (with all elements required by Part I.C.2 and maintained as required by Part I.D.5.c and d of the Permit).
 - ii. Each quarterly report to be due 10 days after the end of each calendar quarter (e.g., October 10, 2015, for the third calendar quarter of 2015, January 10, 2016, for the fourth calendar quarter of 2015, etc.) for the life of the construction project at the Site or until written notice is given by the EPA that the submissions may cease; and
 - iii. Upon final stabilization of the Site, submit an Inactivation Notice as required by Part I.A.6 of the Permit.
1. The Respondent shall send all written notices and reports required by this Consent Order to the following:

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

To CDPHE:
Nathan Moore
Colorado Department of Public
Health and Environment
Water Quality Control Division
4300 Cherry Creek Drive South
Denver, CO 80246-1530

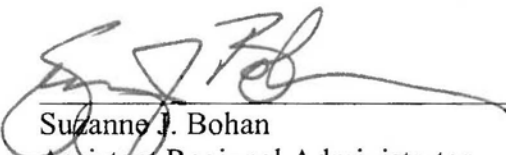
2. If the Respondent asserts a business confidentiality claim for information required to be submitted under this Consent Order, Respondent shall provide such information only to the EPA and adhere to the procedures in 40 C.F.R. part 2, subpart B. The EPA will determine if the information the Respondent has designated meets the criteria in 40 C.F.R. § 2.208 for being treated as confidential. Unless the Respondent asserts a confidentiality claim at the time the information is submitted, the information shall be provided to both the EPA and CDPHE as specified in this Order, and the EPA may make

the information available to the public without further notice to Respondent.

3. Any failure to comply with the requirements of this Consent Order shall constitute a violation of this Consent Order and may subject the Respondent in violation of this Consent Order to penalties as provided under the Act. 33 U.S.C. § 1319.
4. This Consent Order does not constitute a waiver or modification of the terms and conditions of the Permit, which remains in full force and effect. Nor does this Consent Order waive any other legal responsibility or liability of the Respondent.
5. This Order does not constitute a waiver of or election by the EPA to forego any civil or criminal action to seek penalties, fines or other relief under the Act. Section 309(d) of the Act, 33 U.S.C. § 1319(d), as adjusted for inflation by 40 C.F.R. part 19, authorizes the imposition of civil penalties of up to \$37,500 per day for each violation of the Act or the Permit. Section 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations.
6. Nothing in this Consent Order shall be construed to prevent the EPA from instituting further action under section 309 of the Act for the violations cited in this Consent Order or to relieve the Respondent from responsibilities, liabilities, or penalties pursuant to any applicable federal, state, or local law or regulation.
7. The undersigned representative of the Respondent certifies that he is fully authorized to enter into the terms and conditions of this Consent Order and to bind the Respondent to the terms and conditions of this Consent Order.
8. This Consent Order shall be effective immediately upon the Respondent's receipt of a fully executed copy.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Date: 9/8/15

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

Aspen View Homes, LLC
Respondent

Date: 6.13.15

By: 
Kevin Hart, Regional Manager

CERTIFICATE OF SERVICE

I certify that the foregoing Administrative Order for Compliance on Consent was sent or delivered on this day as follows:

Original and one copy hand delivered to:

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

Copy by certified mail, return receipt requested (no. 7008 3230 0003 0726 074)
to:

Tad Foster, Esquire
LAW OFFICE OF TAD S. FOSTER
20 Boulder Crescent #100
Colorado Springs, Co 80903

tadfoster@tsfosterlaw.com

SEP 09 2015
Date

By: Gayle Aldinger



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region08

SEP -9 2015

Ref: 8ENF-W-NP

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Kevin Hart
Regional Manager
Aspen View Homes, LLC
1710 Jet Stream Drive, Suite 100
Colorado Springs, Colorado 80921

Re: Administrative Order on Consent

Dear Mr. Hart:

In a letter dated March 14, 2014, the U.S. Environmental Protection Agency (EPA) advised Aspen View Homes, LLC (Aspen) that it was in violation of the Clean Water Act (CWA). Specifically, the EPA determined that Aspen had violated and was continuing to violate certain provisions of its National Pollutant Discharge Elimination System (NPDES) Permit No. COR03J432.

Based on numerous conversations with Aspen, the EPA and Aspen have agreed to enter into an Administrative Order on Consent (Consent Order) that specifies the nature of the violations and directs Aspen to comply with the terms of its NPDES permit. The EPA's authority for issuing the Consent Order is provided by section 309(a) of the CWA, 33 U.S.C. § 1319(a). The final signed Consent Order is enclosed.

If you have any questions, the most knowledgeable people on my staff are Brenda Morris, Enforcement Attorney, at (303) 312-6891 and Natasha Davis, Enforcement Officer, at (303) 312-6225.

Sincerely,

A handwritten signature in black ink, appearing to read "Gwenette C. Campbell".

Gwenette C. Campbell, Unit Chief
NPDES Enforcement Unit
Office of Enforcement, Compliance, and
Environmental Justice

cc: Mr. Tad Foster, Attorney
Enclosures