

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

FILED

5/28/2024

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U.S. EPA REGION 8
HEARING CLERK

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| <p>IN THE MATTER OF:</p> <p>Traditional Homes, LLC, and MH Pablo, LLC, Respondents</p> | <p>Docket No. CWA-08-2024-0009</p> <p>ADMINISTRATIVE ORDER FOR COMPLIANCE</p> <p>Section 309(a)(3) of the Clean Water Act, 33 U.S.C. § 1319(a)(3)</p> |
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INTRODUCTION

1. This Administrative Order for Compliance (Order) is issued pursuant to section 309(a) of the Clean Water Act (Act), 33 U.S.C. § 1319(a). This authority has been properly delegated to the undersigned U.S. Environmental Protection Agency (EPA) official.
2. The respondents in this Order are Traditional Homes, LLC (Traditional Homes) and MH Pablo, LLC (MH Pablo). Collectively, Traditional Homes and MH Pablo are referenced as the Respondents.
3. This Order pertains to storm water discharges from a construction site (the Site) located northwest of the intersection of Hillcrest Drive and LaVista Drive in Polson, Montana.

STATUTORY AND REGULATORY BACKGROUND

The Clean Water Act

4. 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.

5. The Act defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).
6. The Act defines “pollutant” to include “sewage . . . chemical wastes, biological materials . . . and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6).
7. The Act defines “navigable waters” as “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).
8. The Act defines “point source” to include any “discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure [or] container . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).
9. 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.

The NPDES Construction Storm Water Control Program

10. The term “storm water” is defined as storm water runoff, snow melt runoff and surface runoff and drainage. 40 C.F.R. § 122.26(b)(13).
11. Storm water runoff occurs when rain or snowmelt flows over land or impervious surfaces, such as paved streets, parking lots, and building rooftops, and does not soak into the ground. The runoff picks up pollutants such as trash, chemicals, oils, and dirt/sediment.
12. Any storm water discharge from construction activity that disturbs between one and five acres constitutes a storm water discharge associated with small construction activity, as described in more detail in 40 C.F.R. § 122.26(b)(15).

13. Pursuant to section 402(p)(6) of the Act, the EPA has designated discharges of storm water from small construction activity as subject to the NPDES permit requirement. 40 C.F.R. § 122.26(a)(9)(i)(B).
14. Effective February 17, 2022, the EPA issued its 2022 NPDES Construction General Permit for Stormwater Discharges from Construction Activities (the Permit), available at <https://www.epa.gov/system/files/documents/2022-01/2022-cgp-final-permit.pdf> (last visited May 28, 2024), authorizing discharges of storm water associated with construction activities, if done in compliance with its terms and conditions. The Permit covers discharges in areas where the EPA is the NPDES permitting authority, including Indian lands in the State of Montana. Dischargers may apply for authorization to discharge under the Permit by submitting a notice of intent for coverage to the EPA.
15. The EPA's storm water control program and the Permit are designed to prevent or reduce the potential for storm water runoff to wash harmful pollutants from construction sites into local surface waters.

FINDINGS

The following findings apply at all times relevant to this matter, unless otherwise stated.

16. The Site is located on the Flathead Indian Reservation.
17. Traditional Homes is a Montana limited liability company.
18. Traditional Homes is a "person" as defined by section 502(5) of the Act, 33 U.S.C. § 1362(5).
19. MH Pablo is a Montana limited liability company.
20. MH Pablo is a "person" as defined by section 502(5) of the Act, 33 U.S.C. § 1362(5).
21. MH Pablo owns the Site.
22. Traditional Homes is the operator or developer of the Site.
23. Since at least late 2022, Respondents have engaged in construction activity disturbing approximately 2.5 acres of the Site.

24. Neither Respondent has applied for, or obtained, authorization under the Permit for discharges of storm water from the Site.
25. On multiple occasions since September of 2022, Respondents have discharged pollutants in storm water from the Site into the Polson B Canal.
26. On multiple occasions since September of 2022, Respondents have discharged pollutants in storm water from the Site into Flathead Lake.
27. The Polson B Canal typically flows at least from mid to late May through mid to late September.
28. The Polson B Canal is a relatively permanent tributary of Flathead Lake.
29. Flathead Lake is a traditional navigable water.
30. The Polson B canal is a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7).
31. Flathead Lake is a “navigable water” as defined in section 502(7) of the Act, 33 U.S.C. § 1362(7).
32. Respondents have discharged pollutants in storm water from the Site into navigable waters without a Clean Water Act permit, in violation of sections 301(a) and 402(p) of the Act, 33 U.S.C. §§ 1311(a) and 402(p).

ORDER

Based on the foregoing findings and pursuant to section 309(a) of the Act, 33 U.S.C. § 1319(a), it is hereby ORDERED that:

33. No later than 10 days after the effective date of this Order (see Paragraph 44, below), Respondents shall submit to the EPA written notice of their intent to comply with the requirements of this Order.
34. Effective immediately upon Respondents’ receipt of this Order, Respondents shall cease all discharges of pollutants, including storm water, from the Site.

Notwithstanding the preceding sentence, however, Respondents will be considered in compliance with this Order if, within 10 days of receipt of this Order, the

Respondents submit a complete application to the EPA for authorization to discharge storm water from the Site, either under an individual discharge permit or the Permit referenced in paragraph 14, above. Concurrently with their application, Respondents shall provide the individual referenced in paragraph 36, below, with a copy of the application. Upon obtaining coverage under any storm water discharge permit issued by the EPA, Respondents shall comply with all requirements of that permit.

35. The time periods in this Order are calendar days unless otherwise specified. If any due date specified in this Order falls on a weekend or federal holiday, the relevant deadline shall be the first business day following that date.
36. All notices and reports required by the Order to be given to the EPA shall be sent via email to the following recipient. If email is not a feasible manner of providing any notification, Respondents shall contact the following individual by telephone to make alternative arrangements.

Lisa-kay Prideaux
Prideaux.Lisakay@epa.gov
(406) 457-5022

37. Any failure to comply with the requirements of this Order shall constitute a violation of this Order and may subject Respondents to penalties as provided under section 309 of the Act, 33 U.S.C. § 1319.
38. This Order is not a permit and does not constitute a waiver or modification of the terms and conditions of any permit.
39. This Order does not constitute a waiver or election by the EPA to forego any civil or criminal action to seek penalties, fines, or other relief as it may deem appropriate under the Act. Section 309(d) of the Act, 33 U.S.C. § 1319(d), authorizes civil penalties of up to \$\$66,712 (as adjusted for inflation by 40 C.F.R. part 19) per day for each violation of the Act. Section 309(c) of the Act, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the Act.

40. Compliance with the terms and conditions of this Order shall not be construed to relieve Respondents of their obligation to comply with any applicable federal, state, or local law or regulation.
41. This Order constitutes final agency action. Respondents may seek federal judicial review of this Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, states the scope of such review.
42. This Order shall be effective immediately upon receipt by Respondents (see Certificate of Service, below).

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

Date: _____

By: _____

Suzanne J. Bohan, Director
Enforcement and Compliance Assurance Division
Region 8, U.S. EPA
1595 Wynkoop Street
Denver, Colorado 80202
(303) 312-6925

CERTIFICATE OF SERVICE

I certify that the foregoing Administrative Order for Compliance was sent or delivered on this day as follows by email to R8_Hearing_Clerk@epa.gov and to the following:

Hans Lund, Registered Agent
Traditional Homes, LLC
36332 Fulkerson Lane
Polson, MT 59860
Certified Mail No. _____

and

Mark Bretz, Registered Agent
MH Pablo, LLC
4800 Grant Creek Road
Missoula, MT 59808
Certified Mail No. _____

By: _____ Date: _____