

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2015 JUL 13 AM 11:48

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)

Geo. R. Pierce, Inc.)
P.O. Box 80707)
Billings, MT 59108-0707,)

Respondent.)
_____)

COMBINED COMPLAINT AND
CONSENT AGREEMENT

Docket No. CWA-08-2015-0021

The Complainant, the United States Environmental Protection Agency, Region 8 (EPA or Complainant), and the Respondent, Geo. R. Pierce, Inc., (Respondent), by their undersigned representatives, hereby consent and agree as follows:

I. PRELIMINARY STATEMENT

1. This matter is subject to 40 C.F.R. Part 22. This Combined Complaint and Consent Agreement (Agreement) 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 22.18(b)(2) and (3).
2. The EPA has jurisdiction over this matter pursuant to sections 309(g)(1)(A) and (g)(2)(A) of the Clean Water Act (Act or CWA), 33 U.S.C. §§ 1319(g)(1)(A) and (g)(2)(A).
3. For the purposes of this settlement only, the Respondent admits the jurisdictional allegations contained herein and neither admits nor denies the specific legal or factual allegations.
4. The Respondent waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in this Agreement, and waives any right to appeal any final order approving this Agreement.
5. The Complainant asserts that settlement of this matter is in the public interest, and the Complainant and the Respondent agree that entry of this Agreement and its incorporation into a final

order without further litigation and without adjudication of any issue of fact or law will avoid prolonged and potentially complicated litigation between the parties.

6. Upon integration into a final order by the EPA Regional Judicial Officer, this Agreement applies to and is binding upon the Complainant and upon the Respondent, and the Respondent's officers, directors, agents, successors and assigns.

7. This Agreement contains all civil penalty settlement terms agreed to by the parties.

II. GENERAL ALLEGATIONS

8. In order to restore and maintain the integrity of the Nation's waters, section 301(a) of the Act prohibits the discharge of any pollutant by any person into navigable waters, unless it is in compliance with a permit issued pursuant to the Act. 33 U.S.C. § 1311(a).

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, upon receiving authorization from the EPA, states may issue permits allowing discharges into navigable waters, subject to specific terms and conditions.

10. Section 402(p)(3)(A) of the Act, 33 U.S.C. § 1342(p)(3)(A), requires a NPDES permit for storm water discharges associated with an industrial activity to navigable waters.

11. The regulations further defining requirements for NPDES permits for storm water discharges associated with industrial activity are found at 40 C.F.R. Part 122.

12. Storm water discharges associated with industrial activity subject to permitting requirements include discharges associated with construction activity that disturbs at least five acres of total land area. 40 C.F.R. § 122.26(b)(14)(x).

13. Dischargers of storm water associated with industrial 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).
14. The Respondent is and was at all relevant times a corporation, established in the State of Montana, and doing business in the State of North Dakota.
15. Respondent is a “person” within the meaning of section 502(5) of the Act and therefore, subject to the requirements of the Act and its implementing regulations. 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
16. Respondent owns and has been engaged in construction activities at a site known as the Blackwood Subdivision in Williston, North Dakota (Site).
17. The Site encompasses approximately 130 acres of total land area, approximately 57 acres of which have been disturbed.
18. Storm water runoff, snow melt runoff, surface runoff, and/or drainage water have left the Site and have flowed into a wetland area connected to the Little Muddy River. The runoff and drainage from the Site are “storm water” as defined by EPA regulations. 40 C.F.R. § 122.26(b)(13).
19. The Little Muddy River and its connected wetlands are “navigable waters” and “waters of the United States,” as defined by the Act and EPA regulations. 33 U.S.C. § 1362(7); 40 C.F.R. § 122.2, definition of “Waters of the United States”.
20. Respondent engaged in construction activities at the Site at all times relevant to this action and Respondent, therefore, is or was engaged in an “industrial activity” as defined at 40 C.F.R. § 122.26(b)(14).

21. Storm water contains “pollutants” as defined by section 502(6) of the Act, 33 U.S.C. § 1362(6).
22. 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.
23. Each storm water discharge from the Site is “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.
24. The North Dakota Department of Health (NDDH) is the state agency authorized to administer the federal NPDES program in North Dakota. The EPA maintains concurrent enforcement authority with delegated states for violations of the Act or of any permit condition or limitation implementing the Act. 33 U.S.C. § 1342(i).
25. The NDDH issued a general permit for the discharge of storm water under the NPDES, Permit No. NDR10-0000 (the NDDH General Permit). The NDDH General Permit became effective October 12, 2009, expired September 30, 2014, remained effective under an administrative extension past the expiration date with all conditions remaining in effect until a new permit was issued, and was then re-issued with an effective date of April 1, 2015. *See* North Dakota Department of Health Storm Water Construction, at <http://www.ndhealth.gov/WQ/Storm/Construction/ConstructionHome.htm>. The NDDH General Permit can authorize storm water discharges associated with construction or land disturbance activity (e.g., clearing, grubbing, excavating, grading, and other activity that results in the destruction of the root zone), if done in compliance with its terms and conditions. Dischargers may apply for authorization to discharge under the NDDH General Permit by submitting a notice of intent (NOI) for coverage to NDDH.

26. Respondent submitted an NOI for coverage at the Site under the NDDH General Permit, which NDDH received August 3, 2012. Respondent's authorization to discharge from the Site under the NDDH General Permit became effective August 10, 2012.

27. The NDDH General Permit requires, among other things, that Respondent develop and implement an adequate storm water pollution prevention plan (SWPP plan), conduct regular storm water site inspections, and implement best management practices (BMPs). BMPs include structural controls (such as storm drain inlet protection) and management practices (such as minimizing any off-site pollutant discharges).

28. An authorized EPA employee entered the Site with the consent of Respondent on August 5, 2013, to inspect it for compliance with the Act, NDDH General Permit, and regulations (Inspection).

III. DESCRIPTION OF VIOLATIONS

29. At the time of the Inspection, Respondent had not developed or updated an adequate SWPP plan, implemented or maintained BMPs to meet the NDDH General Permit requirements, documented storm water site inspections, and did not have required documents at the Site.

30. Part II.C of the 2009 – 2015 NDDH General Permit required the development of a SWPP plan and specified items that must be included in the SWPP plan. Among those items are the location of storm water discharges, the identification and location of the wetland area that would receive storm water discharges, a description of the types of construction activities, a proposed timetable for those activities, and a signature of the responsible official at the site. Paragraph II.C.7.c of the 2009 – 2015 NDDH General Permit stated that “[t]he permittee shall amend the SWPP plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential

for the discharge of pollutants to waters of the state. The plan shall also be amended if the plan is found to be ineffective in controlling pollutants present in [storm water].”

31. Respondent failed to develop an adequate SWPP plan for the Site with the information identified in Paragraph 30 and failed to update the SWPP plan for the Site with updated time phases for stabilization activity, the removal of construction entrance sedimentation controls, addition of a rock check dam, the current location of the equipment staging area, and the absence of the west storm water retention pond.

32. Paragraph II.C.6 and Part III.A of the 2009 – 2015 NDDH General Permit set forth the requirements for conducting storm water site inspections, including frequency, scope, and recording of results.

33. As of the date of the Inspection, Respondent had failed to document and retain storm water self-inspections at the Site as required by the 2009 – 2015 NDDH General Permit.

34. Paragraph II.C.3 of the 2009 – 2015 NDDH General Permit sets forth general requirements for minimum components of storm water BMPs, including the requirement that such controls conform to the guidelines provided in Appendix 1 of the 2009 – 2015 NDDH General Permit unless justification for the deviation is documented in the SWPP plan. Appendix 1 provides guidelines for designing, implementing, and maintaining erosion and sediment controls, including requirements for timely repair, replacement, or supplementation of nonfunctional BMPs.

35. On the date of the Inspection, Respondent had failed to properly and fully implement and maintain storm water BMPs at the Site as required by the 2009 – 2015 NDDH General Permit.

36. Respondent’s failures described above constitute violations of the NDDH General Permit.

IV. CIVIL PENALTY

37. Pursuant to section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), and after consideration of the facts of this case as they relate to the factors set forth in section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), the EPA has determined that a civil penalty of twenty five thousand dollars (\$25,000.00) is appropriate to settle this matter.

38. The Respondent consents and agrees to pay a civil penalty in the amount of twenty five thousand dollars (\$25,000.00) in the manner described below:

- a. Payment shall be in a single payment of \$25,000, 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 name and docket number of this case, be in the amount stated in the preceding paragraph, and be payable to "Treasurer, United States of America". The payment shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. Environmental Protection Agency / 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 / Government Lockbox No. 979077
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101
Contact: Craig Steffen, 513-487-2091 or steffen.craig@epa.gov

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City with the following information:

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

Contacts: John Schmid (202-874-7026) and REX (Remittance Express)
1-866-234-5681

If remitted on-line with a debit card or credit card:

There is now an On-Line Payment Option available through the Department of Treasury.
This payment option can be accessed from the information below:

WWW.PAY.GOV
Enter sfo 1.1 in the form search field on the left side of the screen.
Open the form and follow directions on the screen to complete required fields.

For additional information on making payments to the EPA: Please see
<http://www.2.epa.gov/financial/makepayment>.

- c. At the time of payment, a copy of the check (or notification of other type of payment)
shall also be sent to:

Michael Boeglin (8ENF-W-NP)
U.S. EPA Region 8

1595 Wynkoop Street
Denver, Colorado 80202-1129

and

Tina Artemis, Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

- d. 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).
- e. 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.
- f. The Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

39. Nothing in this Agreement shall relieve the Respondent of the duty to comply with the Act and any regulation, order, or permit issued pursuant to the Act.

40. Any failure by the Respondent to comply with this Agreement shall constitute a breach of this Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Agreement and such other relief as may be appropriate.

41. Nothing in this Agreement 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 the Respondent to comply with this Agreement.

42. The undersigned representative of the Respondent certifies that he/she is fully authorized to enter into the terms and conditions of this Agreement and to bind the Respondent to the terms and conditions of this Agreement.

43. The parties agree to submit this Agreement to the Regional Judicial Officer, with a request that it be incorporated into a Final Order following provision of public notice pursuant to section 309(g)(4) of the Act, 33 U.S.C. § 1319(g)(4) and 40 C.F.R. § 22.45.

44. Each party shall bear its own costs and attorney's fees in connection with this matter.

45. This Agreement, upon incorporation into a Final Order and full satisfaction by the parties, shall resolve the Respondent's liability for federal civil penalties for the violations alleged in this Agreement.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant

Date: July 13, 2015

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

GEO. R. PIERCE, INC.,
Respondent

Date: 7/2/15

By: G. Ron Pierce Pres.
[Name and title to be inserted]

G. Ron Pierce, Pres.