

2016 JUL -7 PM 3: 39

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8
FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:)
)
)
Veit and Company, Inc.,) COMBINED COMPLAINT AND
) CONSENT AGREEMENT
)
) Docket No. **CWA-08-2016-0008**
Respondent.)

The United States Environmental Protection Agency, Region 8 (EPA) and Veit and Company, Inc. (Respondent), by their undersigned representatives, hereby consent and agree as follows:

AUTHORITY

1. This Combined Complaint and Consent Agreement (Agreement) is issued under the authority of section 309(g) of the Clean Water Act (Act), 33 U.S.C. § 1319(g).

STATEMENTS OF THE PARTIES

2. With this Agreement, the parties intend to commence and conclude this matter simultaneously, as authorized by 40 C.F.R. §§ 22.13(b) and 28.18(b)(2) and (3).
3. Solely for the purposes of this proceeding, the Respondent admits the jurisdictional allegations contained in paragraphs 4 and 5 of this Agreement. The Respondent consents to the assessment of the civil penalty referenced below, waives any right to a hearing before any tribunal or to contest any statement of law or fact in this Agreement, and waives any right to appeal any final order approving this Agreement (Final Order). The Respondent does not admit or deny any matter the EPA has alleged in paragraphs 6 through 46 of this Agreement.

JURISDICTIONAL ALLEGATIONS

4. This Agreement is issued pursuant to section 309(g) of the Act, 33 U.S.C. §1319(g). Section 309(g) of the Act authorizes the EPA to assess civil administrative penalties for violations of, among other things, section 301 of the Act, 33 U.S.C. § 1311.

5. 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, a copy of which has been provided to the Respondent.

THE EPA'S ALLEGATIONS

The following allegations apply to all times relevant to this action and to each part of this Agreement.

6. Respondent Veit and Company, Inc. (Veit) is a Minnesota corporation.
7. The Respondent is a "person" as defined by section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.
8. Respondent has engaged in construction, including but not limited to renovation and/or remodeling, at the Longfellow Elementary School at 600 16th Street NW, Minot, North Dakota, 58703 (the Site).
9. Construction activities began at the Site in June of 2012 and continued until late 2013. These construction activities will be referenced as the Construction Project.
10. The Site includes approximately six acres.
11. At least four acres at the Site were disturbed by the Construction Project.
12. The Respondent has had day-to-day responsibility for the Construction Project.
13. Storm water runoff, snow melt runoff, surface runoff, and drainage have flowed from the Site into the municipal separate storm sewer system (MS4) of the City of Minot, North Dakota and the Souris River, during the Construction Project.
14. The storm water runoff, snow melt runoff, surface runoff, and drainage referenced in paragraph 13, above, constitute "storm water" as defined by 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 City of Minot's MS4 flows into the Souris River approximately one-third of a mile from the Site.
17. The Souris River is a navigable-in-fact water. It also flows between the United States and Canada.

18. The Souris River is a “navigable water” as defined by section 502(7) of the Act, 33 U.S.C. § 1562(7), and a “water of the United States” as defined by 40 C.F.R. § 122.2.
19. Each discharge of storm water from the Site is a “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.
20. Each discharge of a pollutant from the Site is a discharge from a “point source” as that term is defined by section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.
21. 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.
22. 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.
23. 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.
24. The term “storm water discharge associated with industrial activity” includes, but is not limited to, any discharge from construction activity that disturbs at least five acres or that disturbs a piece of land that is less than five acres but is part of a larger common plan of development ultimately disturbing over five acres. 40 C.F.R. § 122.26(b)(14)(x).
25. Each person discharging storm water associated with industrial activity must seek and obtain authorization to do so under an individual or a general NPDES permit. 40 C.F.R. § 122.26(c); sections 301(a) and 402(p) of the Act, 33 U.S.C. §§ 1311(a) and 1342(p).
26. The North Dakota Department of Health (NDDH) was approved by the EPA to administer the NPDES program on June 13, 1975. 40 Fed. Reg. 28663, July 8, 1975. A permit issued by the NDDH under its EPA-approved NPDES program is known as an NDPDES permit.
27. Effective October 12, 2009, the NDDH issued a general permit (NDPDES Permit No. NDR10-0000, referenced as the Permit) authorizing discharges of storm water associated with construction activities, if done in compliance with its terms and conditions. The Permit expired on September 30, 2014. It has been administratively extended.

28. As specified in more detail in the Permit, storm water dischargers may apply for coverage under the Permit by submitting a notice of intent for coverage to the NDDH.
29. On July 19, 2013, EPA and NDDH inspectors conducted a storm water inspection at the Site.
30. At the time of the inspection referenced in paragraph 29, above, neither the Respondent nor any agent of the Respondent had sought or obtained authorization from the NDDH to discharge storm water from the Site under either the Permit or any individual NDPDES storm water discharge permit.
31. During the July 19, 2013, inspection of the Site, EPA and NDDH inspectors observed excessive soil and sedimentation in the curb and gutter on all sides of the Site, with sediment in some areas being approximately 2.5 inches deep.
32. During the July 19, 2013, inspection of the Site, EPA and NDDH inspectors observed, among other things, that
 - (a) none of the inlets draining to the City of Minot's MS4 was protected,
 - (b) the Site had no vehicle track-out pad and sediment was being tracked out into the street,
 - (c) best management practices (BMPs) for controlling sediment and storm water discharges from the Site were missing or inadequate, and
 - (d) no storm water pollution protection (SWPP) plan was available at the Site.
33. After the July 19, 2013, inspection, a representative of Kraus-Anderson Construction, Inc. (Kraus), as agent for the Respondent, submitted a notice of intent (NOI) to the NDDH seeking authorization to discharge under the Permit. The NDDH received the NOI on August 5, 2013.
34. Effective August 12, 2013, discharges of storm water from the Site were authorized by the Permit, subject to the Permit's terms and conditions applying to large construction activity. The Permit ID number for the Site was NDR105972.
35. From June of 2012, when the Respondent began the Construction Project, until August 12, 2013, when the Permit first authorized discharges of storm water from the Site, the Minot International Airport, which is approximately two miles northeast of the Site, recorded rainfall of over half an inch on at least 13 separate days.

36. Storm water was discharged from the Site on at least 13 separate days from June of 2012 until August 12, 2013.
37. On February 13, 2015, Kraus submitted a request to the NDDH to terminate the Permit for the Site.
38. Had the Respondent obtained authorization to discharge storm water under the Permit in a timely manner, the Permit would have required the Respondent to implement best management practices to reduce sediment in its discharges for the duration of the Construction Project.
39. Had the Respondent obtained authorization to discharge storm water under the Permit in a timely manner, the Permit would have required the Respondent to inspect the Site at least once every 14 calendar days and within 24 hours after any storm event of greater than 0.50 inches of rain in any 24-hour period for the duration of the Construction Project.
40. Had the Respondent obtained authorization to discharge under the Permit in a timely manner, the Permit would have required the Respondent to complete a SWPP plan prior to beginning construction at the Site.
41. The SWPP plan required by the Permit included, among other things: the total area of soil disturbance, a proposed timetable of activities disturbing soils for major portions of the Site, a complete Site map, a description of good housekeeping and preventative maintenance practices, an identification of when each erosion and sediment control measure would be implemented, and a maintenance or clean-out interval for sediment controls.
42. Pursuant to section 309(g) of the Act, 33 U.S.C. § 1319(g), the EPA has consulted with NDDH regarding assessment of this administrative penalty by furnishing a copy of this Agreement and inviting comments.
43. Section 309(g) of the Act, 33 U.S.C. § 1319(g), authorizes the EPA to assess a civil administrative penalty for any violation of various provisions of the Act, including but not limited to section 301 of the Act, 33 U.S.C. § 1311, and for any violation of a condition or limitation of a permit issued under section 402 of the Act, 33 U.S.C. § 1342. For any violation occurring after January 12, 2009, the amount of the penalty that the EPA can assess is up to \$16,000 per day for each day during which a violation continues, with a maximum of \$177,500 (except for violations after December 6, 2013, where the maximum is \$187,500). These amounts have been adjusted for inflation by 40 C.F.R. part 19.

44. Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), requires the EPA to take into account the following factors in assessing a civil administrative penalty: the nature, circumstances, extent and gravity of the violation(s) and, with respect to the violator, ability to pay, any prior history of such violations, degree of culpability, any economic benefit or savings gained from the violation, and such other factors that justice may require.
45. The Respondent discharged storm water into waters of the United States from the Site on at least 13 separate days without authorization by any permit issued under the Act from June of 2012 to August 19, 2013.
46. Each day on which the Respondent discharged pollutants without permit authorization constitutes a violation of section 301(a) of the Act, 33 U.S.C. § 1311(a).

CIVIL PENALTY

47. The Respondent consents and agrees to pay a civil penalty in the amount of fifteen thousand dollars (\$15,000) in the manner described below:
 - a. Payment shall be in a single payment of \$15,000, 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 cashier's or certified check or making an electronic payment. The check or other payment shall designate the name and docket number of this case, be in the amount stated in part "a," above, and be payable to "Treasurer, United States of America." It 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
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City, using 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)
800-234-5681

If remitted on-line with a debit card, credit card, or bank account transfer: No user name, password, or account number is necessary for this option. On-line payment can be accessed via WWW.PAY.GOV, entering 1.1 in the form search box on the left side of the screen to access the EPA's Miscellaneous Payment Form, opening the form, following the directions on the screen and, after selecting "submit data," entering the relevant debit card, credit card, or bank account information.

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

Laurel Dygowski, Enforcement Officer
Water Enforcement Program (8ENF-W-NP)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

and

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

- c. 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).
 - d. In addition, 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, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
 - e. The Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.
48. Nothing in this Agreement shall relieve the Respondent of the duty to comply with the Act, its implementing regulations, and any permit issued pursuant to the Act.
49. Any failure by the Respondent to comply with any of the terms of this Agreement shall constitute a breach of this Agreement and may result in referral of the matter to the Department of Justice for enforcement of this Agreement and for such other relief as may be appropriate.

50. 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 meet any obligation under this Agreement.
51. The undersigned individual signing on behalf of the Respondent certifies that he or 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.
52. The parties submit this Agreement to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.
53. Each party shall bear its own costs and attorney's fees in this matter.
54. This Agreement, upon incorporation into a Final Order and full satisfaction by the parties, shall be a full settlement of the United States' claims for civil penalties against the Respondent for the specific violations alleged in this Agreement.

PUBLIC NOTICE

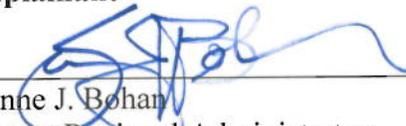
55. As required by section 309(g)(4) of the Act, 33 U.S.C. § 1319(g)(4), prior to requesting issuance of the Final Order, the EPA will provide public notice of this Agreement and a reasonable opportunity for the public to comment on the matter.

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

Date: _____

6/27/16

By: _____


Suzanne J. Bohan
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice
United States Environmental Protection Agency
Region 8
1595 Wynkoop Street (8-ENF)
Denver, Colorado 80202-1129

**VEIT AND COMPANY, INC.,
Respondent**

Date: 5-23-16

By: 
Greg Boelke, President
14000 Veit Place
Rogers, MN 55374