

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2014 OCT 21 AM 11:42

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
RED DOOR HOMES OF BISMARCK) COMBINED COMPLAINT AND
3100 North 14th St.) CONSENT AGREEMENT
Bismarck, North Dakota 58503)
)
) Docket No. CWA-08-2015-0003
)

Complainant, the United States Environmental Protection Agency, Region 8 (EPA) and Respondent, Red Door Homes of Bismarck (Respondent), by their undersigned representatives, hereby consent and agree as follows:

I. STATUTORY AUTHORITY

1. This matter is subject to 40 C.F.R. Part 22. This Combined Complaint and Consent Agreement (Consent 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 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) and (2)(A) of the Clean Water Act (Act), 33 U.S.C. § 1319(g)(1)(A) and (2)(A).

II. PARTIES BOUND

3. The Consent Agreement, 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. The signatories to this Consent Agreement certify that they are authorized to execute and legally bind the party they represent to this Consent Agreement.

III. STATEMENT OF THE PARTIES

4. For the purposes of this settlement only, Respondent admits the jurisdictional allegations; however, Respondent neither admits nor denies the specific factual allegations contained herein and makes no admission of any violation of law in entering into this Consent Agreement.

5. In any proceeding to enforce this Consent Agreement, Respondent waives its right to a hearing before any tribunal to contest any issue of law or fact set forth in this Consent Agreement. Respondent further waives its right to appeal the Final Order in this matter.

6. The EPA asserts that settlement of this matter is in the public interest, and the EPA and Respondent agree that entry of this Consent 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 complicated litigation between the parties.

7. This Consent Agreement contains all settlement terms relating to civil penalties agreed to by the parties.

IV. GENERAL ALLEGATIONS

8. Respondent was at all times relevant a limited liability company incorporated in the state of North Dakota. Respondent maintains its business offices at 3100 N. 14th St. Suite 1, Bismarck, North Dakota 58503-0793.

9. Respondent is and was at all relevant times a "person" within the meaning of section 502(5) of the Act, 33 U.S.C. § 1362(5).

10. At all relevant times, Respondent was the owner and developer of the Bridgeview Bay Development (Bridgeview Bay) and Lakewood Commercial Park 2nd Addition Development (Lakewood Commercial Park) located in Mandan, North Dakota.

11. The Missouri River runs adjacent to Bridgeview Bay and Lakewood Commercial Park. The Missouri River is a traditionally navigable water and a “water of the United States” within the meaning of 33 C.F.R. § 328.3(a) and therefore a “navigable water” within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7).

V. SPECIFIC ALLEGATIONS

Bridgeview Bay

12. Respondent filed a notice of intent (NOI) with the North Dakota Department of Health (NDDH) on May 30, 2013, to obtain authorization under the state general permit to discharge storm water associated with construction activity at Bridgeview Bay.

13. Respondent completed a storm water pollution prevention plan (SWPPP) for Bridgeview Bay on July 18, 2013.

14. Respondent failed to comply with the following terms of its permit, issued pursuant to section 402 of the Act, 33 U.S.C. § 1342:

a. The requirement that copies of the NOI, coverage letter from the NDDH, SWPPP, site inspection records, and the general permit be kept on the site of the construction activity or with an individual responsible for overseeing implementation of the SWPPP;

b. The requirement that the following be incorporated into the SWPPP: i) the name of the receiving water, ii) the name of the person responsible for overseeing implementation of the SWPPP, iii) description of the erosion control measures to be implemented, and iv) how precipitation would be measured;

c. The requirement that best management practices (BMPs) be installed within 200 linear feet of a surface water; and

d. The requirement that erosion and sediment control measures be kept in effective operating condition.

15. Respondent has since come into compliance with its permit.

Lakewood Commercial Park

16. On or about August 15, 2013, sediment was discharged into the Missouri River as a result of Respondent's construction activities taking place at Lakewood Commercial Park.

17. At the time of the discharge, Respondent had not filed a Notice of Intent (NOI) with the North Dakota Department of Health (NDDH).

18. Respondent discharged a pollutant into a water of the United States without a permit from Lakewood Commercial Park, in violation of section 301(a) of the Act, 33 U.S.C. § 1311(a).

19. After being notified of the discharge, Respondent submitted an NOI to the NDDH on August 15, 2013.

VII. CIVIL PENALTY

20. 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 Class I civil penalty of \$7,000.00 is appropriate to settle this matter, to be paid within thirty (30) days of receipt of the Consent Agreement and signed Final Order issued by the Regional Judicial Officer.

21. Respondent consents and agrees to the assessment and payment of the civil penalty cited in the foregoing paragraph for settlement purposes.

22. Respondent shall pay the agreed upon civil penalty by one of the following methods:

a. **Payment by cashier's or certified check:**

A cashier's or certified check, including the name and docket number of this case, for \$7,000.00, payable to "Treasurer, United States of America," to:

Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Overnight Mail:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

b. **Wire Transfer:**

Wire transfers should be directed to the Federal Reserve Bank of New York with the following information:

ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency".

c. **On Line Payment:**

This option is available through the Department of the Treasury.

www.pay.gov

Enter sfo 1.1 in the search field.

Open form and complete the required fields.

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

Michael Boeglin
U.S. Environmental Protection Agency (8ENF-W)
1595 Wynkoop Street
Denver, CO 80202-1129

and

Tina Artemis
Regional Hearing Clerk
U.S. Environmental Protection Agency (8RC)
1595 Wynkoop Street
Denver, CO 80202-1129

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

23. In the event 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 (i.e., on the first late day, 30 days of interest will have accrued).

24. In addition, a handling charge of fifteen dollars (\$15.00) shall be assessed the 31st day from the due date of the payment, and for each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 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.

25. The penalty specified in paragraph 20, above, represents civil penalties assessed by the EPA and Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

VIII. OTHER TERMS AND CONDITIONS

26. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of the agreement and may result in referral of the matter to the Department of Justice for enforcement of this Consent Agreement and for such other relief as may be appropriate.
27. Nothing in this Consent agreement shall be construed as a waiver by the EPA of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondent's failure to perform pursuant to the terms of this Consent Agreement.
28. This Consent Agreement shall be subject to a public comment period of not less than forty (40) days pursuant to section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45. The EPA may modify or withdraw its consent to this Consent Agreement if comments received disclose facts or considerations which indicate that the Consent Agreement is inappropriate, improper or inadequate.
29. If comments received during the public comment period do not require modification or withdrawal by the EPA from this Consent Agreement, the parties agree to submit this Consent Agreement to the Regional Judicial Officer following closure of the public comment period specified in 40 C.F.R. § 22.45 and the period for state consultation specified in 40 C.F.R. § 22.38(b), with a request that it be incorporated into a Final Order.
30. This Consent Agreement, upon incorporation into a Final Order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the civil penalty owed for violations alleged in this Consent Agreement. This Consent Agreement resolves Respondent's liability for federal civil penalties under section 309(d) and (g) of the Act, 33 U.S.C. § 1319(d) and (g), for the violations alleged in this Consent Agreement. This Consent Agreement shall not in any case

affect the EPA's right to pursue criminal sanctions for any violations of law whether or not alleged in this Consent Agreement.

31. Each party shall bear its own costs and attorneys' fees in connection with all issues associated with this Consent Agreement.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8
Complainant

Date: 10/21/2014



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

Date: 10/20/2014



James H. Eppers,
Regulatory Enforcement Unit
Legal Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

RED DOOR HOMES OF BISMARCK
Respondent

Date: 10/2/14



Arthur W. Goldammer
Chief Executive Officer
Red Door Homes of Bismarck

U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 8
1595 Wynkoop Street, Denver, CO 80202-1129

**PUBLIC NOTICE OF PROPOSED ADMINISTRATIVE PENALTY ASSESSMENT AND
OPPORTUNITY TO COMMENT ON CLEAN WATER ACT CONSENT AGREEMENT**

Purpose of Public Notice

The purpose of this notice is to announce the United States Environmental Protection Agency's (EPA's) intention to enter into a Combined Complaint and Consent Agreement with:

**Red Door Homes of Bismarck
3100 North 14th Street
Bismarck, North Dakota 58503**

for alleged violations of the Clean Water Act (CWA) on the Missouri River in Mandan, North Dakota, and to give the public the opportunity to comment on the proposed consent agreement.

Process Information

Under the CWA, EPA is authorized to issue orders assessing civil penalties for violations of the CWA. 33 U.S.C. § 1319(g). EPA may issue such an order after the commencement of an administrative penalty proceeding. As required by law, EPA is hereby providing public notice of the proposed consent agreement. 33 U.S.C. § 1319(g)(4)(A) and 40 C.F.R. § 22.45(b).

Administrative enforcement proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. part 22. The procedures through which the public may submit written comment on a proposed consent agreement and participate in a proceeding are set forth in 40 C.F.R. § 22.45. The proposed consent agreement has been 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 executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3). The deadline for submitting public comment on a proposed consent agreement is forty (40) days after the date of public notice.

Case Summary.

The case against Red Door Homes of Bismarck (Respondent), Docket No. **CWA-08-2015-0003**, was filed on October 21, 2014. The complaint that initiated this case was combined with a consent agreement for a penalty of \$7,000 for discharges of storm water pollutants to the Missouri River from Respondent's construction operations at Bridgeview Bay and Lakewood Commercial Park Second Addition in Mandan, North Dakota. The discharges were in violation of the storm water discharge permit issued to Respondent by the State of North Dakota. The discharges occurred in August 2013 and were discovered during an EPA inspection on August 15, 2013. The Respondent had failed to install and maintain best management practices, failed to meet permit requirements for a Storm Water Pollution Prevention Plan, and failed to conduct inspections of storm water management at its construction operations. The Missouri River is, and was at all relevant times, a water of the United States.

Further Information and Comments

Persons wishing to receive a copy of any documents filed in these proceedings, comment upon the proposed consent agreement, or otherwise participate in any of the proceedings should contact the Regional Hearing Clerk, Tina Artemis, U.S. Environmental Protection Agency, Region 8 (8RC), 1595 Wynkoop Street, Denver, Colorado 80202-1129, telephone: 303.312.6765. Written comments on this proposed consent agreement must be directed to the Regional Hearing Clerk by the deadline set forth above in this public notice. For technical

questions, contact Michael Boeglin, Technical Enforcement Program, at boeglin.michael@epa.gov, the same EPA address above, or 303.312.6250. Persons with legal questions may contact Linda Kato, Legal Enforcement Program, at kato.linda@epa.gov, or 303.312.6852.

The case docket for this proceeding is located in the EPA - Region 8 office identified above and the file will be open for public inspection during normal business hours. Written comments submitted by the public are available as part of the case docket, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, no final order assessing a penalty in these proceedings will be issued prior to **40 calendar days after publication of this notice.**

October 21, 2014

Date of Publication

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **COMBINED COMPLAINT, CONSENT AGREEMENT**, in the matter of **RED DOOR HOMES OF BISMARCK; DOCKET NO.: CWA-08-2015-0003**, was filed with the Regional Hearing Clerk on October 21, 2014; **THE FINAL ORDER** was filed on December 4, 2014.

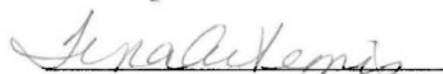
Further, the undersigned certifies that a true and correct copy of the document was delivered to Linda Kato, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail, domestic return receipt on December 4, 2014, to:

Arthur W. Goldammer
Chief Executive Officer
3100 North 14th Street
Bismarck, ND 58503

And emailed to:

Kim White
U. S. Environmental Protection Agency
Cincinnati Finance Center
26 W. Martin Luther King Drive (MS-0002)
Cincinnati, Ohio 45268

December 4, 2014



Tina Artemis
Paralegal/Regional Hearing Clerk