

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:)
)
Riverfront Apartments, LLC)
748 W. Heritage Park Blvd., Ste. 203)
Layton, Utah 84041)
)
)
)
Respondent.)

Docket No. **CWA-08-2017-0024**

**COMBINED COMPLAINT AND
CONSENT AGREEMENT**

The U.S. Environmental Protection Agency, Region 8 (EPA), and Riverfront Apartments, LLC (Respondent), by their undersigned representatives, hereby consent and agree as follows:

I. AUTHORITY

1. 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. This Combined Complaint and Consent Agreement (CCCA) 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 is 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) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(1)(A).

II. PARTIES BOUND

3. This CCCA, upon incorporation into a Final Order, applies to and is binding upon the EPA and upon Respondent. Each signatory to this CCCA certifies that they are authorized to execute and legally bind the party they represent to this CCCA.

III. STATEMENT OF THE PARTIES

4. For the purposes of this settlement only, Respondent admits the jurisdictional allegations contained herein and neither admits nor denies the EPA's specific factual allegations and legal conclusions.
5. With respect to this settlement only, Respondent waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CCCA, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701 – 706.
6. The EPA asserts that settlement of this matter is in the public interest, and the EPA and Respondent agree that entry of this CCCA 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. The parties reserve any and all rights and defenses they may have against any person or entity not a party to this CCCA.
8. This CCCA, upon incorporation into a Final Order and full satisfaction by the parties, shall be a complete and full resolution of the Respondent's liability for federal civil penalties for the violations alleged below.

IV. GENERAL ALLEGATIONS

9. In order to restore and maintain the integrity of the nation's waters, section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person into waters of the United States, unless authorized by certain other provisions of the CWA, including section 402 of the CWA, 33 U.S.C. § 1342.
10. Section 402 of the CWA, 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.
11. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), establishes a program under which a NPDES permit may be issued to authorize discharges of stormwater discharges associated with industrial activities.
12. The regulations further defining requirements for NPDES permits for stormwater discharges associated with industrial activity are found at 40 C.F.R. part 122.
13. Any discharge from construction activity that disturbs at least five acres constitutes a stormwater discharge associated with industrial activity. 40 C.F.R. § 122.26(b)(14)(x).
14. Dischargers of stormwater 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).
15. The Utah Department of Environmental Quality (UDEQ) was approved by the EPA to administer the NPDES program on July 7, 1987. 52 Fed. Reg. 27578-2757, July 22, 1987. A permit issued by UDEQ under Utah's EPA-approved NPDES program is known as an UPDES permit. The EPA maintains concurrent enforcement authority, with delegated states, for violations of the CWA or of any permit condition or limitation implementing the CWA. 33 U.S.C. § 1342(i).
16. Effective July 1, 2014, the UDEQ issued an NPDES general permit (UPDES Permit No. UTRC00000, referenced as the Permit) authorizing discharges of stormwater associated with construction activities including small construction activity, 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 (NOI) for coverage to the UDEQ.
17. An "owner" under the Permit is defined as "the party that owns/leases the land on which the construction activities occur and has ultimate control over the project and the destiny of a project. The owner has control over construction plans and specifications, including the ability to make modifications at the highest level, to those plans and specifications. Permit, Part 1.1.1.

18. An “operator” under the Permit is defined as “the party (usually the general contractor) that has day-to-day operational control over those activities at a project that are necessary to ensure compliance with the permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the permit).” Permit, Part 1.1.1.
19. A “permittee” under the Permit is defined as “the owner and/or operator named in the NOI for the project.” Permit, Appendix A.
20. The Permit requires, among other things, that dischargers develop and implement an adequate stormwater pollution prevention plan (SWPPP), conduct regular stormwater inspections, and implement and maintain best management practices (BMPs) to prevent or reduce pollution. BMPs include, but are not necessarily limited to, structural controls (e.g., storm drain inlet protection) and management practices (e.g., dedicated concrete washout areas and street sweeping).

V. EPA’S SPECIFIC ALLEGATIONS

21. Respondent is a limited liability corporation organized under the laws of the State of Utah and authorized to do business in the State of Utah. Respondent’s principal office is located in Layton, Utah. Michael R. Christensen is the Manager for Respondent.
22. Respondent is a “person” within the meaning of section 502(5) of the CWA and is therefore, subject to the requirements of the CWA and its implementing regulations. 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
23. Respondent was, at all times relevant to this CCCA, engaged in construction activities at an apartment complex known as Riverfront Apartments Phase 1B located at 825 West Fine Drive, South Salt Lake, Utah (the Site, also referred to generally in the Permit as the “project”). Respondent was engaged in an “industrial activity” as defined at 40 C.F.R. § 122.26(b)(14).
24. The Site encompassed approximately eight (8) acres
25. The NOI filed for the Site listed Respondent as the “owner,” and Respondent and was covered under the Permit tracking number UTR373631 between January 21, 2016, and January 21, 2017. The NOI listed Rim Rock Construction as the “operator.”
26. Stormwater runoff, snow melt runoff, surface runoff, and/or drainage water left the Site and flowed into the Jordan River. The runoff and drainage from the Site are “stormwater” as defined by EPA regulations. 40 C.F.R. § 122.26(b)(13).
27. The Jordan River is a navigable water of the United States as defined in section 502(7) of the CWA, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.
28. Stormwater contains “pollutants” as defined by section 502(6) of the CWA, 33 U.S.C. § 1362(6).
29. Each stormwater discharge from the Site is a discharge from a “point source” as defined by section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.

30. Each stormwater discharge from the Site is a “discharge of a pollutant” as defined by section 502(12) of the CWA, 33 U.S.C. § 1362(12), and 40 C.F.R. § 122.2.

VI. DESCRIPTION OF ALLEGED VIOLATIONS

31. On July 14, 2016, EPA inspectors conducted a stormwater inspection at the Site to determine compliance with the CWA, the Permit and EPA regulations (Inspection).
32. Part 1.5 of the Permit requires permittees post notice of coverage that is visible from a public access point, including the UPDES Permit tracking number, operator contact name and phone number for obtaining information on the Permit, the stormwater pollution prevention plan (SWPPP) and/or the project.
33. At the time of the Inspection, there was no visible sign containing the Permit tracking number and/or operator contact information.
34. Part 7.3 of the Permit requires permittees to maintain a current copy of the project SWPPP.
35. At the time of the Inspection, there was no SWPPP available for review.
36. Part 7.4.1 of the Permit requires the permittee to update the SWPPP and site map to reflect current conditions at the Site.
37. Part 7.2 of the Permit requires permittees to include certain information in their SWPPP, including but not limited to, the maximum area to be disturbed at one time, final and temporary stabilization practices, training records, a copy of the NOI, a copy of the Permit, and the commencement and duration of earth disturbing activities.
38. The SWPPP covering the Site until June 30, 2016, did not include the following information: maximum area to be disturbed at one time, stabilization practices, training records, a copy of the NOI or Permit, and the commencement and duration of earth disturbing activities. In addition, the SWPPP for the Site was not updated to reflect the changing site conditions.
39. Part 7.2.5 of the Permit requires the permittee to include certain items on the site map in the SWPPP showing features that include, but are not limited to, the approximate slopes before and after major grading activities, location of structures and other impervious surfaces upon completion of construction and the location of stormwater control measures.
40. The site map in the SWPPP did not show approximate slopes before and after grading, location of impervious surfaces upon completion of construction, the location of stormwater control measures, and was not updated to reflect conditions at the Site.
41. Part 2.1.2.c of the Permit sets forth requirements for track-out controls, including the restriction of vehicle use to properly designated exit points, the use of stabilization techniques at all exits onto paved roads to ensure sediment removal prior to vehicle exit, and the removal of deposited sediment before it accumulates significantly beyond the immediate vicinity of the project.

42. At the time of the Inspection, the EPA inspectors observed no vehicle track-out controls resulting in numerous areas of deposited sediment onto paved roads. The self-inspections for the Site indicated many instances of vehicle track-out at the Site.
43. Part 2.1.1.d of the Permit requires, among other things, that for problems discovered during inspections, replacement, repairs or maintenance must be done immediately following the inspection or in a timely manner as identified in the SWPPP.
44. Part 2.3.2 of the Permit requires the permittee to install pollution prevention controls and replace, repair, or maintain pollution prevention controls in effective operating condition.
45. Part 2.1.2.b of the Permit requires the permittee to install perimeter controls along areas of the site that will receive storm water from areas earth disturbing activities are occurring.
46. Part 2.1.2.h of the Permit requires the permittee to install inlet protection on storm drain inlets the permittee has access to and that carry storm water flow from disturbed areas of the site to surface water.
47. During the Inspection, the EPA inspectors observed the following: sediment packed in numerous stormwater inlets, an inlet with no inlet protection, inlets in which the inlet protection was broken, and areas with no perimeter controls resulting in sediment being tracked off of the Site. The self-inspections for the Site also indicated issues with perimeter controls and vehicles driving over the controls resulting in sediment leaving the Site.
48. Part 2.3.3.c.v of the Permit requires the permittee to provide waste containers of sufficient size and number to contain construction and domestic waste, clean-up and dispose of waste in designated waste containers, and immediately clean up waste if containers overflow.
49. During the Inspection, the EPA inspectors observed overflowing dumpsters with trash and debris laying on the ground nearby and other areas of the Site with trash and debris on the ground. The self-inspections for the Site also indicated many instances where waste clean-up was needed.
50. Part 2.3.3.d of the Permit requires the permittee to provide an effective means of eliminating the discharge of water from concrete washout by directing all washout to a leak-proof container or leak-proof pit that is designed so that no overflows can occur due to inadequate sizing or precipitation.
51. During the Inspection, the EPA inspectors observed that the concrete washout container overflowed and there was concrete washout on the ground.
52. Part 5.4.1 of the Permit requires the permittee to make an entry in a report/log or other device for monitoring corrective action following the discovery of a stormwater or pollution control problem, including the condition identified (e.g., BMPs not installed, installed incorrectly, and need repair) and the date and time the condition was identified and how identified.
53. Part 5.4.2 of the Permit also requires that within seven calendar days of discovery the stormwater or pollution control problem, the permittee must make an entry in a corrective action report/log or other device describing follow up actions and whether modification to the SWPPP is required.

54. At the time of the Inspection, and based on information received from the Site operator dated November 15, 2016, most corrective action monitoring and/or repairs were not logged for the Site between approximately January 28, 2016, through July 13, 2016.
55. As set forth in paragraphs 33, 35, 38, 40, 42, 47, 49, 51, and 54 above, Respondent failed to comply with the conditions of the Permit in violation of 33 U.S.C. § 1342 of the CWA.

VII. CIVIL PENALTY

56. Pursuant to section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319 (g)(2)(A), and after consideration of the facts of this case as they related to the factors set forth in section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), the EPA has determined that a civil penalty of forty-eight thousand dollars (\$48,000) is appropriate to settle this matter.
57. Respondent consents and agrees to pay a civil penalty in the amount of forty-eight thousand dollars (\$48,000) in the manner described below:
- a. Payment shall be in a single payment of \$48,000, 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 case name and docket number, be in the amount stated in the preceding paragraph, and be payable to the "Environmental Protection Agency." The payment shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. EPA 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-C2-GL
St. Louis, Missouri 63101

If remitted by wire transfer:

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

If remitted online with a debit card or credit card: No user name, password, or account number is necessary for this option. Online payment can be accessed via WWW.PAY.GOV, entering SFO 1.1 in the form search box on the left side of the screen, opening the form, and following the directions on the screen.

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

Laurel Dygowski
U.S. Environmental Protection Agency (8ENF-W-NP)
1595 Wynkoop Street
Denver, Colorado 80202-1129

and

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

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

58. 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).
59. 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.

60. Respondent agrees that the penalty shall never be claimed as a federal or other tax deduction or credit.

VIII. PUBLIC NOTICE

61. As required by section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45, the EPA will provide public notice and a reasonable opportunity to comment on the penalty that Respondent has agreed to pay in this matter. The EPA may modify or withdraw its consent to this CCCA if comments received disclose facts or considerations which indicate that this CCCA is inappropriate, improper, or inadequate.
62. If comments received during the public comment period do not require modification or withdrawal by the EPA from this CCCA, the parties agree to submit this CCCA to the Regional Judicial Officer for Region 8 following the close of the public comment period specified in 40 C.F.R. § 22.45, with a request that it be incorporated into a final order.

IX. GENERAL PROVISIONS

63. Nothing in this CCCA shall relieve Respondent of the duty to comply with the CWA and any regulation, order, or permit issued pursuant to the CWA.
64. Any failure by Respondent to comply with this CCCA shall constitute a breach of this CCCA and may result in referral of the matter to the U.S. Department of Justice for enforcement of this CCCA and such other relief as may be appropriate.
65. Nothing in this CCCA 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 Respondent to comply with this CCCA.
66. The parties agree to submit this CCCA to the Regional Judicial Officer, with a request that it be incorporated into a Final Order.
67. Each party shall bear its own costs and attorney's fees in connection with this matter.

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

Date: _____

By: _____
James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice

Date: _____

By: _____
Stephanie DeJong, Unit Chief
Water Technical Enforcement Unit
Office of Enforcement, Compliance,
and Environmental Justice

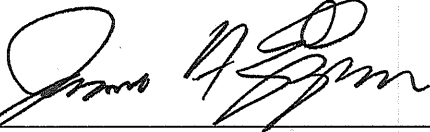
Riverfront Apartments, LLC
Respondent:

Date: SEPT. 19, 2017

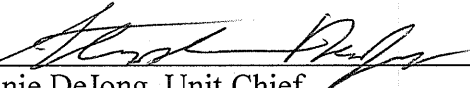
By: 
Michael R. Christensen, Manager

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

Date: 9/21/17

By: 
James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice

Date: 9/20/17

By: 
Stephanie DeJong, Unit Chief
Water Technical Enforcement Unit
Office of Enforcement, Compliance,
and Environmental Justice

**Riverfront Apartments, LLC
Respondent**

Date: _____

By: _____
Michael R. Christensen, Manager