

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

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REGION 8

FILED
EPA REGION VIII
INDIANAPOLIS IN

IN THE MATTER OF:

Sampson Construction Co., Inc.
Lincoln, Nebraska 68502

Respondent.

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Docket No. CWA-08-2011-0041

COMBINED COMPLAINT AND
CONSENT AGREEMENT

Complainant, United States Environmental Protection Agency, Region 8 (EPA or Complainant), and Respondent, Sampson Construction Co., 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 (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 pursuant to 40 C.F.R. § 22.18(b)(2) and (3).
2. EPA has jurisdiction over this matter pursuant to section 309(g) of the Clean Water Act (Act or CWA), 33 U.S.C. § 1319(g).
3. For the purposes of this settlement only, Respondent admits the jurisdictional allegations contained herein and neither admits nor denies EPA's specific factual allegations or legal conclusions contained herein.

4. Respondent waives its rights to a hearing before any tribunal to contest any issue of law or fact set forth in this Consent Agreement, including in any proceeding to enforce this Consent Agreement.
5. Complainant asserts that settlement of this matter is in the public interest, and Complainant 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 potentially complicated litigation between the parties.
6. Upon incorporation into a final order by the EPA Regional Judicial Officer (Final Order), this Consent Agreement applies to and is binding upon Complainant and upon Respondent, and Respondent's officers, directors, agents, successors and assigns. Any change in ownership of, or corporate organization, structure or status of, Respondent including, but not limited to, any transfer of assets, or real or personal property shall not alter Respondent's responsibilities under this Consent Agreement, unless EPA, Respondent and the transferee agree in writing to allow the transferee to assume such responsibilities.
7. Respondent shall notify EPA at the address specified below thirty (30) days prior to any transfer described in or contemplated under the paragraph immediately above.
8. This Consent Agreement contains all civil penalty settlement terms agreed to by the parties.

II. GENERAL ALLEGATIONS

9. Section 301(a) of the Act prohibits the discharge of pollutants into navigable waters of the United States, unless it is in compliance with a permit issued pursuant to the Act. 33 U.S.C. § 1311(a).

10. Section 402 of the Act establishes the National Pollutant Discharge Elimination System (NPDES) program, which is administered by EPA or a state with an approved permit program. The NPDES program authorizes the permitting authority to issue permits allowing discharges into navigable waters, subject to specific terms and conditions. 33 U.S.C. § 1342.
11. The State of South Dakota implements a NPDES permit program that is approved by EPA. South Dakota may issue permits authorizing certain discharges into navigable waters.
12. A discharge of storm water associated with an industrial activity to navigable waters must comply with the requirements of a NPDES permit. 33 U.S.C. § 1342(p)(3)(A).
13. 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.
14. Storm water discharges associated with construction activity are included in the definition of industrial activity subject to permitting requirements. 40 C.F.R. § 122.26(b)(14)(x).
15. Each person who intends to discharge 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).
16. Respondent is a corporation, incorporated in the State of Nebraska and doing business in the State of South Dakota.
17. Respondent is a "person" within the meaning of section 502(5) of the Act and therefore, subject to the requirements of the Act and regulations. 33 U.S.C. § 1362(5).
18. Respondent has been engaged in construction activities at a facility located at Ellsworth Air Force Base (AFB), near Rapid City, SD (facility).

19. The Ellsworth AFB lakes system discharges through unnamed tributaries, which flow to Box Elder Creek, which flows into the Cheyenne River, a “traditionally navigable water” as defined by the United States Army Corps of Engineers. The Cheyenne River empties into Lake Oahe, which flows into the Missouri River, which flows southeast and along the northeast border between South Dakota and Nebraska and into Missouri.

20. The Missouri River is an interstate, “navigable-in-fact” waterway. The tributaries of Box Elder Creek 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”, subsection (e).

21. Respondent engaged in construction activities at the facility 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).

22. Storm water runoff associated with Respondent's construction activities at the facility is “storm water discharge associated with industrial activity” as defined at 40 C.F.R. § 122(b)(14)(x).

23. On October 14, 2008, respondent submitted a notice of intent application for a general South Dakota Department of Environment and Natural Resources (SDDENR) NPDES permit for storm water discharges associated with its construction activities at the facility.

24. SDDENR issued a general NPDES permit authorization for storm water discharges associated with construction activities, number SDR10E051, effective October 20, 2008 (permit). The permit sets forth storm water management requirements for Respondent's construction activities at the facility.

25. The permit requires, among other things, that Respondent develop and implement a storm water pollution prevention plan (SWPPP) that contains specific elements, conduct regular specified storm water inspections, and implement best management practices (BMPs) at the Facility. BMPs include structural controls (such as storm drain inlet protection) and management practices (such as minimizing any off-site pollutant discharges).

26. Authorized EPA employees entered the facility with the consent of Respondent on May 11, 2010, to inspect it for compliance with the Act, permit and regulations (Inspection).

III. DESCRIPTION OF VIOLATIONS

27. On the date of the Inspection, Respondent's SWPPP did not contain all elements of a SWPPP required by the Permit, as more fully described in the Order for Compliance issued by EPA on March 8, 2011, Docket No. CWA-09-2011-0004 (Administrative Order).

28. As of the date of the Inspection, Respondent had not conducted facility storm water inspections at the frequency required by the Permit, as more fully described in the Administrative Order.

29. On the date of the Inspection, Respondent had failed to properly and fully implement BMP's at the facility as required by the Permit, as more fully described in the Administrative Order.

30. Respondent's failures described above constitute violations of the Permit and therefore, violations of section 402 of the Act, 33 U.S.C. § 1342.

IV. CIVIL PENALTY

31. Pursuant to section 309(g) of the Act, 33 U.S.C. § 1319(g), 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), EPA has determined that a civil penalty of sixteen thousand dollars (\$16,000.00) is appropriate to settle this matter.

32. Respondent consents and agrees to pay a civil penalty in the amount of sixteen thousand dollars (\$16,000.00) in the manner described below.

33. Payment by Respondent of the full penalty amount is due within thirty (30) calendar days of Respondent's receipt of the Final Order issued by the EPA Regional Judicial Officer adopting this consent agreement. If the due date for payment falls on a weekend or legal federal holiday, the due date is the next business day. Payment must be received by 11:00 am Eastern Time to be considered received that day.

34. Payment shall be made by one of the following methods.

Payment by cashier's or certified check. A cashier's or certified check, including the name and docket number of this case, for \$16,000.00, payable to "Treasurer, United States of America."

mailed 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

Payment by 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 Fedwire message should read "D 68010727 Environmental Protection Agency"

Payment Online: This option is available through the Department of Treasury, at www.pay.gov.

Enter sfo 1.1 in the search field. Open the form and complete the required fields.

35. A copy of the check or record of payment if made by other means shall be sent simultaneously with payment to:

Seth Draper
NPDES Enforcement Unit
Technical Enforcement Program (8ENF-W-NP)
U.S. EPA Region 8
1595 Wynkoop St.
Denver, CO 80202-1129

and

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

36. 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 (on the 1st late day, 30 days of interest will have accrued), 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.

37. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31st day from the due date of any 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.

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

V. OTHER TERMS AND CONDITIONS

39. Failure by Respondent to comply with any of the terms of this Consent Agreement shall constitute a breach of this Consent 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.

40. Nothing in this Consent Agreement shall be construed as a waiver by Complainant 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.

41. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to bind the parties to the terms and conditions of this Consent Agreement and to execute and legally bind that party to this Consent Agreement.

42. Upon execution by the parties, 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, EPA may modify or withdraw its consent to this Consent Agreement if comments received disclose facts or considerations indicating that the Consent Agreement is inappropriate, improper, or inadequate.

43. If comments received during the public comment period do not require modification or withdrawal by 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, with a request that it be incorporated into a final order.

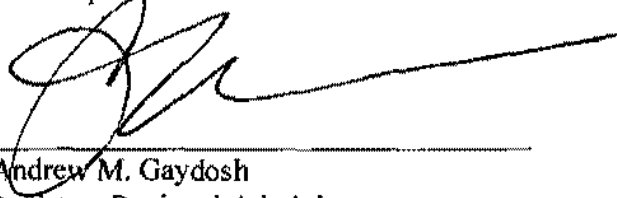
44. This Consent Agreement, upon incorporation into a final order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete, full and final settlement of the civil penalty owed for violations alleged in this Consent Agreement.

45. This Consent Agreement resolves Respondent's liability for Federal civil penalties under sections 309(d) and 309(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 EPA's right to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law whether or not alleged in this Consent Agreement. This Consent Agreement shall not affect Respondent's right to assert any defense in any action by EPA to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

46. 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: 9/30/11

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

SAMPSON CONSTRUCTION CO., INC.

Respondent.

Date: _____

Name:
Title:

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8
Complainant.

Date: _____

Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

SAMPSON CONSTRUCTION CO., INC.
Respondent.

Date: 9-28-11



Name: Craig Gies
Title: Secretary

IN THE MATTER OF: Sampson Construction Co., Inc.
DOCKET NUMBER: CWA-08-2011-0041

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the original of the Combined Complaint and Consent Agreement was hand-delivered to:

Region 8 Hearing Clerk
Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202

And that a true copy of the same was sent by certified mail, return receipt requested to:

Matthew Graff, Legal Counsel
Sampson Construction Co., Inc.
3730 South 14th Street
Lincoln, NE 68502

September 30 2011
Date

Judith M. McTernan
Judith M. McTernan