

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

IN THE MATTER OF:)
)
) Docket No. CWA-07-2017-0450
)
WATERFORD VENTURES, LLC)
)
)
)
Respondent) COMPLAINT AND
) CONSENT AGREEMENT/
) FINAL ORDER
)
Proceedings under Section 309(g) of the)
Clean Water Act, 33 U.S.C. § 1319(g))
_____)

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g), and in accordance with the 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.
2. Complainant, the United States Environmental Protection Agency, Region 7 (“EPA”) and Respondent, Waterford Ventures, LLC (“Respondent”), have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
3. This Complaint and Consent Agreement/Final Order serves as notice that the EPA has reason to believe that the Respondent has violated Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and regulations promulgated thereunder.

Parties

4. The authority to take action under Sections 309(g) of the CWA, 33 U.S.C. §§ 1319(g), is vested in the Administrator of the EPA. The Administrator has delegated these authorities to the Regional Administrator, EPA, Region 7, who in turn has delegated the authority under Section 309(g) to the Director of the Water, Wetlands and Pesticides Division of EPA, Region 7.

5 Respondent is a limited liability company authorized to conduct business under the laws of Iowa. Respondent's primary activities at the Facility are the clearing, grading, and excavation of land for construction.

Statutory and Regulatory Framework

6. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA, provides that pollutants may be discharged in accordance with the terms of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to that Section.

7. The CWA prohibits the "discharge" of "pollutants" from a "point source" into a "navigable water" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

Stormwater

8. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of stormwater. Section 402(p) of the CWA requires, in part, that a discharge of stormwater associated with an industrial activity must conform to the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

9. Pursuant to Section 402(p) of the CWA, the EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

10. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

11. 40 C.F.R. § 122.26(b)(14)(x) defines "stormwater discharge associated with industrial activity," in part, as discharges from construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area, or the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.

12. The Iowa Department of Natural Resources (“IDNR”) is the state agency with the authority to administer the federal NPDES program in Iowa pursuant to Section 402 of the CWA. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

13. The IDNR has issued General Permit No. 2 which is a multi-sector permit that authorizes stormwater discharges associated with construction activity. The current 5-year permit for this General Permit has an effective date of October 1, 2012, and an expiration date of October 1, 2017.

Factual Allegations

14. Respondent is and was at all times relevant to this action the owner and/or operator of a facility known as Waterford Pointe Subdivision, located at the intersection of Waterford Road and NW 142 Street, Urbandale, Iowa 50322 (“Facility”). Construction activities occurred at the Facility beginning around October 2016, including clearing, grading and excavation activities on approximately 80 acres.

15. Stormwater, snow melt, surface drainage and runoff water leave Respondent’s Facility and discharge into an unnamed tributary, ultimately discharging into Walnut Creek.

16. The runoff and drainage from Respondent’s Facility is “stormwater” as defined by 40 C.F.R. § 122.26(b)(13). Stormwater from the Facility contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

17. The Facility has “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14)(x), and is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

18. Walnut Creek and its unnamed tributary, as identified in Paragraph 15, above, are “navigable waters” as defined by Section 502(7) of the CWA, 33 U.S.C § 1362(7).

19. Stormwater runoff from Respondent’s industrial activity results in the addition of pollutants from a point source to a water of the U.S., and thus is the “discharge of a pollutant” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

20. Respondent’s discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(x), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

21. At all times relevant to this action, Respondent’s facility has been subject to the referenced General Permit No. 2. After receipt of a Notice of Intent (“NOI”) from Respondent, dated on or about April 27, 2016, IDNR issued Authorization No. 28786 – 28525 on July 18, 2016. The Authorization is valid until July 18, 2019.

22. Respondent has operated under the Permit at all times relevant to this Order.
23. On or about May 9-10 2017, the EPA performed an Industrial Stormwater Compliance Evaluation Inspection (“Inspection”) of Respondent’s facility under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent’s compliance with its Permit and the CWA.
24. During the Inspection, the EPA inspector reviewed Respondent’s records related to the Permit and observed the facility and the receiving stream to which stormwater is discharged.
25. At the conclusion of the Inspection, the EPA inspector issued to Respondent a Notice of Potential Violation identifying potential violations of Respondent’s Permit, specifically for unauthorized discharge of a pollutant and failure to maintain Best Management Practices (“BMPs”).
26. On or about May 17, 2017, Respondent responded to the Notice of Potential Violation. Based on the information Respondent provided, it appears that the violations were corrected following the inspection.

FINDINGS OF VIOLATION

Count I: Unauthorized Discharge of a Pollutant

27. The allegations stated in Paragraphs 1 through 26 above are re-alleged and incorporated herein by reference.
28. On or about May 9, 2017, the EPA inspector documented Respondent discharging sediment-laden stormwater contained in a retention basin directly into the unnamed tributary with a pump. The sediment-laden stormwater eventually discharged into Walnut Creek after heavy rains later that evening.
29. During the Inspection, the inspector also observed violations of the terms of the permit and determined that Respondent was noncompliant with the conditions of the NPDES permit.
30. Respondent’s failure to comply with the terms and conditions of the NPDES permit while discharging stormwater containing pollutants into the unnamed tributary of Walnut Creek constitutes an unauthorized discharge.
31. Unauthorized discharges are violations of Respondent's NPDES permit and Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 131 l(a), 1342(p).

Count II: Failure to Install Best Management Practices

32. The allegations stated in Paragraphs 1 through 31 above are herein incorporated.

33. Section IV.D.4.B of Respondent's permit requires that any new pollutant sources identified in site inspections must be included in the Storm Water Pollution Prevention Plan ("SWPPP"), and any modifications that stem from the additional pollutant sources must provide for implementation within seven days.

34. During Waterford Venture's January 10, 2017 site inspection, the Waterford inspector observed and required, among other things, the installation of stabilization BMPs for a stockpile that was identified as a potential pollutant source. During the EPA May 9-10 inspection, the inspector noted that the stockpile still needed stabilization BMPs installed.

35. Based on observations and information collected during the EPA Inspection and records review, the Facility failed to install stabilization BMPs at a stockpile after the facility inspections identified it as potential pollutant source within seven days of identification.

36. Respondent's failure to install BMPs as required by the Permit is a violation of the terms and conditions of its Permit, and is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulations.

Count III: Failure to Maintain Best Management Practices

37. The allegations stated in Paragraphs 1 through 36 above are herein incorporated by reference.

38. Section VI.M. of Respondent's Permit requires that control measures be properly operated and maintained at all times.

39. Section 2.A.1 of Respondent's SWPPP provides a list of BMPs for the Facility. The SWPPP describes that, among other things, *"silt fence, temporary silt basins, earthen dikes, and ditch checks will be installed along concentrated drainageways to control flow velocity and encourage sediment deposition."*

40. Based on observations and information collected during the EPA Inspection, the Facility failed to maintain BMPs at each of the outfalls as described in the SWPPP. The EPA inspector observed improperly maintained silt fences surrounding retention basins, and unrepared and un-reinstalled silt fence ditch checks.

41. Respondent's failure to maintain BMPs as required by the Permit and Respondent's SWPPP is a violation of the terms and conditions of its Permit, and is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulations.

Count IV: Inadequate SWPPP

42. The allegations stated in Paragraphs 1 through 41 above are herein incorporated by reference.

43. Section IV.D.7.B of Respondent's Permit requires that its SWPPP be certified by all contractors and subcontractors working on the permitted construction activities.

44. At the time of the EPA Inspection, Respondent's SWPPP did not contain certifications from its contractors and subcontractors working on the permitted construction activities.

45. Respondent's failure to include contractor and subcontractor certifications as required by the Permit and Respondent's SWPPP is a violation of the terms and conditions of its Permit, and is a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulations.

CONSENT AGREEMENT

46. Respondent and the EPA agree to the terms of this Consent Agreement/Final Order.

47. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest the EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement/Final Order.

48. Respondent neither admits nor denies the factual allegations and legal conclusions asserted by the EPA in this Complaint and Consent Agreement/Final Order.

49. Respondent waives its right to contest any issue of fact or law set forth above, and its right to appeal this Consent Agreement/Final Order.

50. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees incurred as a result of this action.

51. The undersigned representative(s) of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it.

52. Respondent understands and agrees that this Consent Agreement/Final Order shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement/Final Order.

53. Respondent certifies by the signing of this Consent Agreement/Final Order that to the best of its knowledge, Respondent's Facility is in current compliance with NPDES General Permit No. 2, Permit Authorization No. 28786 – 28525, and Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and applicable regulations.

Penalty Payment

54. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of **Twenty-Three Thousand Three Hundred Fifty-Three Dollars (\$23,353)** pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), to be paid in full no later than 30 days after the effective date of this Consent Agreement/Final Order as set forth below.

55. The payment of penalties must reference docket number CWA-07-2017-0450 and be remitted using one of the payment methods specified in Appendix A to this Order.

56. Copies of the checks or verification of another payment method for the penalty payments remitted as directed by above, shall be mailed to:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and

Jonathan Meyer
Office of Regional Counsel
U.S. Environmental Protection Agency – Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

57. Respondent agrees that no portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondent as a deduction for federal, state or local income tax purposes.

58. Respondent understands that, pursuant to 40 C.F.R. § 13.18, interest on any late payment will be assessed at the annual interest rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs or interest.

Effect of Settlement and Reservation of Rights

59. Respondent's payment of the entire civil penalty pursuant to this Consent Agreement/Final Order resolves all civil and administrative claims pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for alleged violations identified in this Complaint and Consent Agreement/Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

60. The effect of settlement described above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in Paragraph 53 of this Consent Agreement/Final Order.

61. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

62. Notwithstanding any other provision of this Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

63. With respect to matters not addressed in this Consent Agreement/Final Order, the EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation, the right to seek injunctive relief, penalties and damages.

General Provisions

64. The Parties acknowledge that this Consent Agreement/Final Order is subject to the public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

65. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after entry by the authorized Regional official and upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

66. The state of Iowa has been provided an opportunity to consult with Complainant regarding this matter in accordance with the requirements of 40 C.F.R. § 22.38(b) and Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

67. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

68. Respondent and Complainant agree that this Consent Agreement/Final Order may be signed in part and counterpart.

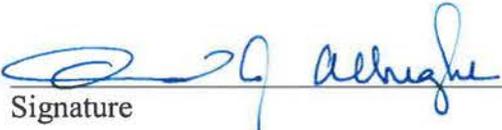
For the Complainant, United States Environmental Protection Agency, Region 7:

Date

Karen Flournoy
Director
Water, Wetlands and Pesticides Division

Jonathan W. Meyer
Office of Regional Counsel

For the Respondent, Waterford Ventures, LLC.:


Signature _____ Date 4/15/2018 _____

David J Albright
Name _____

manager
Title _____

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

The Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

Date

**APPENDIX A
PENALTY PAYMENT INFORMATION**

CHECK PAYMENTS:

US Environmental Protection Agency
Fines and Penalties - CFC
PO Box 979077
St. Louis, MO 63197-9000

WIRE TRANSFERS:

Wire transfers should be directed to the Federal Reserve Bank of New York

Federal Reserve Bank of New York

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"

OVERNIGHT MAIL:

U.S. Bank

1005 Convention Plaza

Mail Station SL-MO-C2GL

ATTN Box 979077

St. Louis, MO 63101

Contact: Natalie Pearson 314-418-4087

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank

808 17th Street, NW

Washington, DC 20074

Contact: Jesse White 301-887-6548

ABA = 051036706

Transaction Code 22 - checking

Environmental Protection Agency

Account 310006

CTX Format

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury.

This payment option can be accessed from the information below:

WWW.PAY.GOV

Enter "SFO 1.1" in the search field

Open form and complete required fields.