UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2015 JUL 16 PM 2:07

FILED
EPA REGION VIII
HEARING CLERK

In the Matter of:	)	
	)	Docket No. CWA-08-2015-0022
Panther Development Investments, LLC	)	
6401 Congress Avenue, Suite 250	)	
Boca Raton, Florida 33487,	)	**COMBINED COMPLAINT AND**
	)	**CONSENT AGREEMENT**
Respondent.	)	

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

I. AUTHORITY

1. This proceeding is subject to 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 (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 is executed pursuant to 40 C.F.R. § 22.18(b)(2) and (3).

2. 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 Consent Agreement, upon incorporation into a Final Order, applies to and is binding upon EPA and upon Respondent, and Respondent's officers, directors, agents, successors and assigns. Each signatory to this Consent Agreement certifies 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 contained herein and neither admits nor denies EPA's specific factual allegations and legal conclusions contained herein.

5. 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 Consent Agreement, including any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701 – 706.

6. EPA asserts that settlement of this matter is in the public interest, and 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, 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

8. 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.

9. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a National Pollutant Discharge Elimination System (NPDES) program, under which EPA (and states with authorization from EPA) may permit discharges of pollutants into navigable waters, subject to specific terms and conditions.

10. Section 402(p)(3)(A) of the CWA, 33 U.S.C. § 1342(p)(3)(A), requires a NPDES permit for storm water discharges associated with industrial activities.

11. Storm water discharges associated with industrial activity subject to permitting requirements include discharges associated with construction activity that disturbs at least five acres of total land area. 40 C.F.R. § 122.26(b)(14)(x).

12. Dischargers of 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).

13. EPA directly implements the NPDES program in Indian country.

14. Effective February 16, 2012, EPA issued a general permit, NPDES Permit No. NDR12-000I (Permit), authorizing discharges of storm water associated with construction activities in Indian country in North Dakota, if done in compliance with the terms and conditions of the Permit. Dischargers may apply for authorization to discharge under the Permit by submitting a notice of intent (NOI) for coverage to EPA. The Permit has been in effect at all times relevant to this action.

15. Part 1.4 of the Permit states, "[t]o be covered under this Permit, you must submit to EPA a complete and accurate NOI prior to commencing construction activities. The NOI certifies to EPA that you are eligible for coverage according to Part 1.1 and 1.2, and provides information on your construction operation and discharge."

16. Part 7.1.1 of the Permit states, "[a]ll operators associated with a construction project to be covered under this Permit must develop a [storm water pollution prevention plan] SWPPP. You are required to develop your site's SWPPP prior to submitting your NOI. At a minimum, your SWPPP must include the information required in Part 7.2 and as specified in other parts of the Permit. You must also update the SWPPP as required in Part 7.4."

V. SPECIFIC ALLEGATIONS

17. Respondent is a corporation organized under the laws of the State of Florida and authorized to do business in the State of North Dakota. Respondent's principal office is located in Boca Raton, Florida.

18. Respondent is a "person" as that term is defined in section 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

19. Respondent was engaged in the construction of the Black Eagle Estates and White Oaks Park construction sites (the Sites) in Mandaree, North Dakota, within the boundaries of the Fort Berthold Reservation.

20. Construction activities (which includes but is not limited to clearing, grading, and excavating) began at the Black Eagle Estates site on or around August 1, 2013.

21. The Black Eagle Estates site encompasses approximately 25.25 acres.

22. According to precipitation data recorded approximately 16 miles from the Sites at the Keene 3 S, North Dakota weather station, the National Oceanic and Atmospheric Administration (NOAA) website identified thirty-three precipitation events that occurred between August 1, 2013, and January 1, 2015, during which at least 0.25 inches of rain fell.

23. Construction activities (which includes but is not limited to clearing, grading, and excavating) began at the White Oaks Park site on April 1, 2014.

24. The White Oaks Park site encompasses approximately 5.5 acres.

25. According to precipitation data recorded approximately 16 miles from the Sites at the Keene 3 S, North Dakota weather station, the National Oceanic and Atmospheric Administration (NOAA) website identified twenty-four precipitation events that occurred between April 1, 2014, and January 1, 2015, during which at least 0.25 inches of rain fell.

26. Respondent engaged in construction activities at the Sites at all times relevant to this action and, therefore, is or was engaged in an "industrial activity" as defined at 40 C.F.R. § 122.26(b)(14).

VI. DESCRIPTION OF ALLEGED VIOLATIONS

27. On August 28, 2014, inspectors from EPA conducted a NPDES storm water inspection of the Sites.

28. At the time of the inspection, Respondent had not sought or obtained authorization from EPA to discharge storm water from the Sites under the Permit, under any other applicable general permit or under any individual permit.

29. Respondent did not have authorization from EPA to discharge storm water from the Sites under any permit from the start of the initial land disturbance on August 1, 2013, for Black Eagle Estates and on April 1, 2014, for White Oaks Park, to and including December 31, 2014, the day before the NOI became effective on January 1, 2015. *See* Part 1.4.2 of the Permit.

30. During the inspection, the inspectors observed evidence of previous storm water sediment discharges such as: sediment accumulation offsite in drainage ways and the lack of installation and maintenance of best management practices (BMPs) for storm water flows to the storm water drain inlets.

31. Storm water runoff, snow melt runoff and/or drainage water have left the Sites and have flowed to Boggy Creek.

32. Boggy Creek flows to Lake Sakakawea, which is a navigable-in-fact waterway.

33. The runoff and drainage from the Sites is "storm water" as defined by 40 C.F.R. § 122.26(b)(13).

34. Storm water may contain "pollutants" as defined by section 502(6) of the CWA, 33 U.S.C. § 1362(6).

35. The storm water discharge from the Sites 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.

36. The storm water discharge from the Sites is a discharge from a "point source" as that term is defined in section 502(14) of the CWA, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.

37. Lake Sakakawea is a "navigable water" as defined by section 502(7) of the CWA, 33 U.S.C. § 1362(7), and a "water of the United States" as defined by 40 C.F.R. § 122.2.

COUNT 1

38. Respondent discharged storm water into waters of the United States from the Black Eagle Estates site to Lake Sakakawea via Boggy Creek without authorization by any permit issued under the CWA from August 1, 2013, through January 1, 2015.

39. Respondent's discharge without permit authorization constitutes a violation of sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§1311(a) and 1342(p), for each day in which a discharge occurred.

COUNT 2

40. Respondent discharged storm water into waters of the United States from the White Oaks Park site to Lake Sakakawea via Boggy Creek without authorization by any permit issued under the CWA from April 1, 2014, through January 1, 2015.

41. Respondent's discharge without permit authorization constitutes a violation of sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§1311(a) and 1342(p), for each day in which a discharge occurred.

VII. CIVIL PENALTY

42. Pursuant to 33 U.S.C. § 1319(g)(2)(B), and after consideration of the facts of this case as they relate to the factors set forth in 33 U.S.C. § 1319(g)(3), EPA has determined that a civil penalty of thirty six thousand and seventy-six dollars and seventy-nine cents ($36,076.79) is appropriate to settle this matter.

43. Respondent consents and agrees to the assessment and payment of the civil penalty in the amount of $36,076.79, for settlement purposes, in the manner described below:

    a. Payment shall be in six installments. The first installment is due no later than 30 calendar days from the date of the Final Order issued by the Regional Judicial Officer. The remaining installments are due 30, 60, 90, 120, and 150 days, respectively, after the due date for the first installment. The first five installments shall be in the amount of $6,017.76 each. The last installment shall be in the amount of $5,987.99. (The amount of $76.79 constitutes interest on an agreed-upon settlement of $36,000.)

    b. If the due date for any payment falls on a weekend or federal holiday, then the due date is the next business day. The date a 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.

    c. The payment shall be made by remitting a cashier's or certified check or making a wire transfer or on-line 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 sent as follows:

       If remitted by regular U.S. mail:

       U.S. Environmental Protection Agency
       P.O. Box 979077
       St. Louis, Missouri 63197-9000

If remitted by any overnight commercial carrier:

U.S. Bank
Government Lockbox No. 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101

Contact: Craig Steffen, 513-487-2091, steffen.craig@epa.gov

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
Beneficiary: US 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: REX (Remittance Express): 866-234-5681

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:

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

and

Tina Artemis
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.

44. In the event of default in the payment of any of the said installments or said interest when due as herein provided, EPA may, without notice or demand, declare the entire penalty sum then unpaid immediately due and payable.

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

VIII. PUBLIC NOTICE

46. As required by section 309(g)(4)(A) of the CWA, 33 U.S.C. §1319(g)(4)(A), prior to requesting that the Regional Judicial Officer issue a Final Order incorporating this Agreement and assessed penalty, EPA will provide the public notice of and reasonable opportunity to comment on the penalty agreed to herein.

IX. GENERAL PROVISIONS

47. Nothing in this Consent Agreement shall relieve Respondent of the duty to comply with the CWA and any regulation, order, or permit issued pursuant to the CWA.

48. Any failure by Respondent to comply with this Consent Agreement shall constitute a breach of this Consent Agreement and may result in referral of the matter to the United States Department of Justice for enforcement of this Consent Agreement and such other relief as may be appropriate.

49. Nothing in this Consent Agreement shall be construed as a waiver by EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as any failure by Respondent to comply with this Consent Agreement.

50. The parties agree to submit this Consent Agreement to the Regional Judicial Officer with a request that it be incorporated into a Final Order following provision of public notice pursuant to section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4) and 40 C.F.R. § 22.45.

51. 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: 07/16/15 By: David Roche for JHE

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

Date: 07/16/15 By: _____

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

Panther Development Investments, LLC, Respondent.

Date: JUL 16 2015 By: _____

Alejandro Moreno, Manager
Panther Development Investments, LLC
6401 Congress Avenue, Suite 250
Boca Raton, Florida 33487

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION 8
1595 Wynkoop Street, Denver, CO 80202-1129

PUBLIC NOTICE AND OPPORTUNITY TO COMMENT ON CLEAN WATER ACT SETTLEMENT

Action: The EPA is providing notice of the opportunity to comment on a proposed Combined Complaint and Consent Agreement (Consent Agreement). The agreement relates to alleged storm water violations of the Clean Water Act (CWA) at the Black Eagle Estates and White Oaks Park located in Mandaree, North Dakota, which were constructed by Panther Development Investments, LLC (Panther). The corporate address of Panther is 6401 Congress Avenue, Suite 250, Boca Raton, Florida, 33487.

Summary: The EPA is authorized by section 309(g)(2) of the CWA, 33 U.S.C. § 1319(g)(2), and by 40 C.F.R. §§ 22.13(b) and 22.38, to issue an order assessing a civil administrative penalty for violations of certain CWA requirements, after providing (1) an opportunity for the person to be assessed the penalty (the Respondent) to request a hearing to contest the penalty, and (2) notification to the public of its rights to submit written comments and to participate in any hearing. The deadline for the public to submit comments is thirty (30) calendar days after issuance of this notice.

The EPA and Panther have agreed to enter into a Consent Agreement to resolve the EPA's alleged violations of section 301(a) of the CWA, described below. Panther has agreed to pay a civil penalty of $36,076.79 to resolve its civil penalty liability for these claims. Pursuant to section 309(g)(4) of the CWA, the EPA hereby notifies the public of the EPA's proposed penalty assessment.

EPA Docket Number: **CWA-08-2015-0022**

Alleged violations: (1) Panther has discharged storm water into waters of the United States from the Black Eagle Estates to Lake Sakakawea via Boggy Creek without authorization by any permit issued under the CWA from August 1, 2013, through January 1, 2015; and (2) Panther has discharged storm water into waters of the United States from White Oaks Park to Lake Sakakawea via Boggy Creek without authorization by any permit issued under the CWA from April 1, 2014, through January 1, 2015.

PUBLIC COMMENTS

Written comments on the Consent Agreement are encouraged and will be accepted at the address listed below for a period of thirty (30) days after the publication of this notice. Written comments submitted by the public as well as information submitted by the Respondent will be available for public review, subject to the provisions of law restricting the disclosure of confidential information. Any person submitting written comments has a right to participate in a hearing, if one is held. The Consent Agreement is available for review between 9:00 a.m. and 4:00 p.m. at the address listed below and on the internet at: http://yosemite.epa.gov/oa/rhc/epaadmin.nsf.

Please submit written comments to:

Tina Artemis (8RC)
Regional Hearing Clerk
U.S. EPA, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129.
Telephone: (303) 312-6765

FOR FURTHER INFORMATION: Persons wishing to receive a copy of the Consent Agreement or other documents in this proceeding (such as the regulations in 40 C.F.R. part 22, which establish procedures for the hearing), or to comment upon the proposed penalty assessment or upon any other aspect of the matter, should contact the Regional Hearing Clerk identified above. No action will be taken by the EPA to finalize a settlement in this matter until thirty (30) days after this public notice.