

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
Starostka-Lewis, LLC) Docket No. CWA-07-2021-0038
)
Respondent)
)
Proceedings under) COMPLAINT AND
Section 309(g) of the Clean Water Act,) CONSENT AGREEMENT/
33 U.S.C. § 1319(g)) FINAL ORDER
)
_____)

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 United States Environmental Protection Agency’s (“EPA’s”) 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 (“Consolidated Rules of Practice”).

2. Complainant, the United States Environmental Protection Agency Region 7 (“EPA” or “Complainant”) and Respondent, Starostka-Lewis, LLC (hereafter, “Starostka-Lewis” or “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 Respondent violated its National Pollutant Discharge Elimination System (“NPDES”) permit for stormwater discharges associated with industrial activity, issued under the authority of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. § 122.26.

Parties

4. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of the EPA. The Administrator has delegated this authority to the Regional Administrator of EPA Region 7, who in turn has delegated the authority to the Director of the Enforcement and Compliance Assurance Division of EPA Region 7 (collectively referred to as the “Complainant”).

5. Respondent is the owner and/or operator of a residential subdivision development named Dominion at Stevens Creek, located southeast of Lincoln, Nebraska. Respondent is and was, at all times relevant to this matter, a limited liability company organized under the laws of, and authorized to do business in, the state of Nebraska.

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 an NPDES permit issued pursuant to that Section.

7. 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 with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

8. 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.

9. 40 C.F.R. § 122.26(b)(14)(x) defines “storm water discharge associated with industrial activity,” in part, as construction activity including clearing, grading, and excavation, except operations that result in the disturbance of less than five acres of total land area which are part of a larger common plan of development or sale.

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

11. The Nebraska Department of Environment and Energy (“NDEE”) is the state agency with the authority to administer the federal NPDES program in Nebraska pursuant to Section 402 of the CWA. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

12. The NDEE issued and implemented an NPDES General Permit (No. NER160000) for stormwater discharges associated with construction activity (“GP” or “Permit”). The most recent 5-year permit has an effective date of November 1, 2016, and an expiration date of October 31, 2021, with previous 5-year permits having been issued in 2001, 2006, 2011.

13. Any individual seeking coverage under the GP is required to submit a Notice of Intent (“NOI”) to the NDEE in accordance with the requirements of Part II. of the permit. Respondent submitted NOIs to NDEE to obtain authorization under the GP.

14. Pursuant to Section 402(p)(6) of the CWA, 33 U.S.C. § 1342(p)(6), EPA promulgated regulations (“Phase II stormwater regulations”) in 40 C.F.R. Part 122 setting forth the additional categories of stormwater discharges to be permitted and the requirements of the Phase II municipal separate storm sewer system (“MS4”) program.

15. 40 C.F.R. § 122.26(b)(8) defines “municipal separate storm sewer” as a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains).

16. 40 C.F.R. § 122.26(a)(3) requires that operators of large and medium municipal separate storm sewer systems, such as the city of Lincoln, and regulated pursuant to 40 C.F.R. § 122.32, are required to obtain a NPDES permit for discharges composed entirely of stormwater (“MS4 permit”).

EPA’s General Allegations

17. Respondent is a “person,” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

18. Respondent is, and at all times relevant to this action, was the owner and operator of a residential construction site (“Site”) known as “The Dominion at Stevens Creek.” The Site is a development of approximately 144.77 acres, located north of O Street and west of 112th Street in Lincoln, Nebraska.

19. At the time of the EPA inspection, described below, Respondent had cleared and graded most of the site, and was conducting construction activities on several phases of the project consisting of approximately 142.37 acres. The Site drains through various unnamed ephemeral ditches and at least one tributary that all eventually lead to Stevens Creek or Waterford Lake.

20. Stormwater, snow melt, surface drainage, and runoff water leave Respondent’s Site and discharge from a sedimentation basin into Waterford Lake, and from ditches into Stevens Creek. Additionally, stormwater from the Site flows and discharges into street drains and storm sewers that discharge and are covered by an MS4 permit issued to the City of Lincoln, Nebraska.

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

22. Stormwater from the Site contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

23. Stevens Creek is classified as a perennial stream per United States Geological Survey topographic maps. Stevens Creek is a tributary to Salt Creek, which is a tributary to the

Platte River, which is a tributary to the Missouri River, a traditionally navigable water. Waterford Lake is an eighty-acre lake that discharges to Stevens Creek. In approximately 2009, Waterford Lake was created as part of one of eleven lakes built as part the Lower Platte South Natural Resources District's Stevens Creek Flood Control Project. Stevens Creek and Waterford Lake are each navigable waters of the United States within the meaning of 40 C.F.R. § 112.2 and Section 502(7) of the Act, 33 U.S.C. § 1362(7).

24. Stormwater runoff from Respondent's construction activity at the Site results in the addition of pollutants from a point source to navigable waters, and thus is the "discharge of a pollutant" as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

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

Respondent's permit authorizations under the GP

26. As required by Part III.1.A of the GP, a Stormwater Pollution Prevention Plan ("SWPPP"), which includes at least the minimum requirements set forth in the Permit, must be completed and maintained on site before the NOI is submitted to the NDEE, and executed concurrently with operations at the facility.

27. Respondent submitted NOIs for authorizations under the GP for construction stormwater discharges associated with the different phases of the construction project, that were each approved by NDEE and the city of Lincoln, Nebraska ("Respondent's GP authorizations). Each of the NOIs filed by Respondent state that stormwater from the Site discharges to a tributary of Stevens Creek and Waterford Lake. These authorizations under the GP govern Respondent's stormwater discharges are associated with the ongoing construction activity at the Dominion at Stevens Creek Site, including clearing, grading and excavation, as follows:

- a. By NOI approved June 5, 2018, authorization CSW-201802746 for the "Stevens Creek Addition";
- b. By NOI approved May 14, 2019, authorization CSW-201903663 for the "2nd Addition";
- c. By NOI approved on May 22, 2019, authorization CSW-201903655 for the "1st Addition Temp Grading";
- d. By NOI approved June 4, 2019, authorization CSW-201903705 for the "Stevens Creek Phase II Mass Grading"; and
- e. By NOI approved on June 21, 2019, authorization CSW-201903803 for the "3rd Addition."

28. Pursuant to Part III of the GP, Respondent developed and implemented SWPPP for each phase of construction at the Site. Respondent's SWPPPs identified potential sources of pollution that were expected to affect the quality of the stormwater discharge from Respondent's construction activities, and described the implementation of the best management practices

(“BMPs”) that would be used to reduce the pollutants in stormwater discharge associated with industrial activity for construction activities at the Site, and to assure compliance with the terms and conditions of the GP. Part III.A.4 of the GP requires that “the Permittee must implement the SWPPP and modifications to the SWPPP from commencement of construction activity until final stabilization is complete.”

29. Part III.E.2 of the GP requires that Respondent minimize pollutants, including sediment, in stormwater discharges from the Site. Part III.F.7 of the GP states: “When sediment escapes the construction site boundaries, the offsite accumulations must be removed promptly to minimize the disturbance. In addition, the erosion controls for that portion of the project must be reviewed for adequacy of design and/or implementation to prevent reoccurrence with updates or modifications to the SWPPP as appropriate.”

30. Part III.J.1 of the GP requires Respondent perform site inspections at least once every fourteen (14) calendar days, and within 24 hours of the end of a storm even of one-half (0.5) inches or greater. Part III.J.2 states that inspection frequency may be reduced to at least once every month if the entire site is temporarily stabilized, or runoff is unlikely due to winter. These requirements are also incorporated in Parts I.F and V of Respondent’s SWPPPs.

31. Part III.C.5.d of the GP requires “Where sediment has been tracked-out from your site onto the surface of off-site streets, other paved areas, and sidewalks, the deposited sediment must be removed by the end of the same work day in which the track-out occurs or by the end of the next work day if track-out occurs on a non-work day.” These requirements are also incorporated in Part V.C of Respondent’s SWPPPs, which also states “Sediment shall NOT be washed into storm sewer systems.”

32. Part III.J.6 of the GP requires that inspection reports must document weather information for the period since the last inspection, including approximate rainfall amount and whether any discharges occurred, locations of BMPs that need to be maintained, failed to operate as designed or proved inadequate, and where additional BMPs are needed, and corrective action that required changes to the SWPPP and dates the changes were inspected. These requirements are also incorporated in Parts I.F and V of Respondent’s SWPPPs.

33. Part III.C.2 of the GP requires that a SWPPP describe “all temporary construction stormwater management practices for the site that retain/detain flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the construction site.” Part III.F.8 of the GP requires that all temporary control measures be properly selected, installed, and maintained. The Respondent’s SWPPPs contain descriptions of the Site’s temporary controls and BMPs.

34. Part III.F.8.b of the GP requires, as to temporary construction control BMPs, “[i]f periodic inspections or other information indicates a control has been installed incorrectly or if the control implemented as planned is ineffective, the operator must either correct the deficiencies of the existing control or modify that portion of the SWPPP plan and implement effective controls as soon as practicable.” Further, Part III.F.8.c of the GP requires that corrective action be completed within seven (7) days or before the next storm event, whichever is

practicable. These requirements to take corrective action to address deficiencies found during inspection are also incorporated in Parts I.F and V of Respondent's SWPPPs.

35. Part III.C.4.a. of the GP requires that a SWPPP describe, and permittees implement, controls to prevent prohibited discharges from "wastewater from washout of concrete, unless managed by an appropriate control implemented according to industry standards." The Respondent's SWPPP contains this requirement. Furthermore, Part III.E.5.a. of the GP requires the "design, installation, implementation, and maintenance of effective pollution prevention measures (that) at a minimum minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters." The Respondent's SWPPPs contain these requirements in Parts III.F.7 and 8.

36. Part III.C.6. of the GP requires a SWPPP to describe "construction materials, products and waste materials expected to be stored at the construction site or supporting areas," including "controls and storage practices to minimize exposure of the materials to stormwater and storm water runoff." The Respondent's SWPPPs contain this requirement at Part III.

Inspections of the Site

37. On July 17, 2019, EPA personnel, under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), inspected the Site to determine Respondent's compliance with its NPDES permit and the CWA (the "EPA Inspection"). During the EPA Inspection, the inspector reviewed and obtained copies of documents related to Respondent's authorization under the GP, including without limitation, the Site's SWPPP and self-inspection reports, toured the Site, and photographed various stormwater-related areas.

38. At the conclusion of the EPA Inspection, the inspector issued Respondent a Notice of Potential Violation ("NOPV") describing that sediment and erosion controls were ineffective or lacking and sediment deposition was observed in the receiving stream and scarring was observed in one sediment basin outlet.

39. On or about July 23, 2019, Respondent emailed a response to the NOPV documenting that some, but not all, of the control deficiencies identified during EPA's inspection had been addressed by Respondent following the EPA Inspection, and that the remaining BMP issues would be addressed within seven days.

40. The city of Lincoln also inspected the Site multiple times after EPA's Inspection (including July 26, 2019; September 6, 2019; October 22, 2019; December 6, 2019; June 9, 2020; September 18, 2020, and on October 12, 2020 (re-inspection)). After these inspections, the City issued "notices to comply" to Respondent that documented continued violations of both the GP and the City's MS4 permit.

41. Since the initiation of the construction project, Respondent has also conducted inspections of the Site, as required by Sections III.J of the GP and Respondent's SWPPPs, that describe current site conditions and identify issues that require corrective action, including the

same violations identified by the City's multiple inspections. The inspection reports submitted by Respondent document that Respondent has repeatedly failed to timely take the required corrective actions to address the violations identified by either the City's inspections, or Respondent's own inspections, in violation of Part of III.F.8.b the GP and the SWPPPs.

42. On December 11, 2020, in response to a citizen complaint, the NDEE inspected the Site and, again, documented violations of the GP. On January 7, 2021, NDEE issued Respondent a "Notice of Non-compliance" that documented violations of Parts III.E and F of the GP.

EPA's Specific Allegations

Count 1:

Failure to minimize pollutants in stormwater, remove offsite sediment and review adequacy of controls

43. The paragraphs above are re-alleged and incorporated herein by reference.

44. Since the initiation of Respondent's construction project at the Site, there have been repeated documented significant sediment depositions in the drainageways or open channels draining to Stevens Creek or to the shore of Waterford Lake, in violation of Parts III.E.2 and III.F.7 of the GP and Respondent's SWPPPs.

45. Respondent's repeated failures to minimize pollutants in stormwater, and to promptly remove offsite sediment and review adequacy of controls, are each a violation of Parts III.E.2 and III.F.7 of the GP and Respondent's SWPPPs, and as such, are a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 2:

Failure to Document Adequate Inspections and Take Appropriate Corrective Action

46. The paragraphs above are re-alleged and incorporated herein by reference.

47. Since the initiation of Respondent's construction project at the Site, Respondent's inspection reports repeatedly failed to have the required content, and when deficiencies were noted in the inspection reports corrective actions were not taken in a timely manner, as required by Part III.J of the GP, including the following:

- a. Self-inspection reports did not include the required weather data and time for the day the inspections were performed nor rainfall events that happened prior to each inspection;
- b. Self-inspection events did not occur within twenty-four hours following a significant precipitation event;

- c. Self-inspections occurred at a frequency more than fourteen days apart. The permit requires self-inspections occur at a frequency not greater than fourteen days apart;
- d. Self-inspection reports identified BMPs in need of maintenance, including deficiencies that had been documented in previous self-inspection reports but remained unaddressed, and did not document any corrective actions; and
- e. Respondent's self-inspection of July 8, 2019, conducted immediately before the EPA Inspection, did not identify visible issues with sediment basin capacity nor did it identify scouring and sediment deposition issues at the basin's outfall and along the drainage pathway. At the time of EPA's Inspection, the basin was full of sediment and scouring had occurred in the drainage pathway.

48. Respondent's repeated failures to properly conduct inspections and/or to take appropriate and required corrective actions are violations of Parts III.J of the GP and Respondent's SWPPPs, and as such, are each a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

Count 3

Failure to Properly Install, Operate, and/or Maintain Best Management Practices and Failure to Fully Implement the Provisions of the SWPPP

49. The paragraphs above are re-alleged and incorporated herein by reference.

50. Since the initiation of Respondent's construction project at the Site, there have been repeated documented instances of areas of the Site that had missing or ineffective BMPs that were described in the SWPPPs, in violation of Part III of the GP and the SWPPPs, including the following:

- a. EPA's inspection documented approximately 129 linear feet controls were missing along east central perimeter;
- b. Drainage areas along the north border of the Site had no controls (3rd Addition and Phase II);
- c. Areas along the culvert leading to Waterford Lake lacked controls;
- d. Repeated instances of curb controls missing along newly constructed city streets, allowing sediment to wash into the street and storm sewers;
- e. Controls were removed along before stabilization was adequately established (including a 2-acre area during the EPA Inspection);
- f. No controls were in place between the NW perimeter of the 1st Addition and an adjacent construction project (215 feet); and
- g. A sedimentation basin described in the SWPPP as needed at the far northeast corner of the Phase II project, was not installed (30 acres drain to it, including the northern half of Phase II and portions of the 3rd Addition).

51. Since the initiation of Respondent's construction project at the Site, there have been repeated documented instances Respondent's failure to conduct required maintenance, in violation of Parts III.C.2, III.F.8.b and c of the GP and the SWPPPs, including the following:

- a. Undercut, overloaded or falling down silt fences;
- b. Washed out riprap erosion control for the sediment basin's outfall structure;
- c. The sediment basin was nearly full of sediment. The SWPPPs indicated sediment must be removed when capacity has been reduced to 64 cy/acre disturbed draining to the basin;
- d. No anti-vortex device was installed on sediment basin inlets;
- e. Gravel was observed discharging from the sediment basin's outfall; and
- f. Damaged perimeter controls, or controls improperly located upslope of areas to be protected.

52. Since the initiation of Respondent's construction project at the Site, there have been repeated documented instances of sediment deposition on city streets, and during the EPA inspection, a site representative stated that the Respondent does not always clean the streets every workday, in violation of Part III of the GP and Respondents SWPPPs.

53. During the EPA Inspection, the Site mason's area was lacking stormwater controls as described in the site's SWPPP to prevent migration of stormwater pollutants from the immediate area, in violation of Part III.C.4.a. of the GP and the SWPPPs.

54. During the EPA Inspection, construction debris was scattered throughout the Site and within the off-site open channel MS4 that is adjacent to the north Site boundary, in violation of Part III.C.6. of the GP and the SWPPPs.

55. Respondent's repeated failures to properly install, operate, and/or maintain BMPs at the Site are violations of Part III of the GP and the SWPPPs, and as such, are each a violation of Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

CONSENT AGREEMENT

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

57. 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 the Consent Agreement/Final Order.

58. Respondent neither admits nor denies the factual allegations and legal conclusions contained in this Complaint and Consent Agreement/Final Order.

59. 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.

60. Respondent and Complainant each agree to resolve 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.

61. As required by Section 309(g)(3) of the CWA, 33 U.S.C § 1319(g)(3), the EPA has taken into account the nature, circumstances, extent and gravity of the alleged violations as well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors in determining the appropriate penalty settlement amount to resolve this action.

62. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondent to it. Respondent consents to receiving service at the following email address: mlewishomes@gmail.com, with a copy to be sent to counsel for Respondent at amckillip@clinewilliams.com.

63. 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.

64. Respondent certifies by signing this Consent Agreement/Final Order that it has taken actions to address the violations alleged above and is in compliance at the Site with the requirements of NDEE's general permit and Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and its applicable regulations.

Penalty Payment

65. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement/Final Order, Respondent shall pay a civil penalty of \$60,009, pursuant to the authority of Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), to be paid in full no later than thirty (30) days of the effective date of this Consent Agreement/Final Order as set forth below.

66. Respondent shall pay the penalty identified in Paragraph 65 by certified or cashier's check made payable to "Treasurer, United States of America," with a transmittal that identifies the case name, facility address, and docket number CWA-07-2021-0038 to:

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

or by alternate payment method described at <http://www.epa.gov/financial/makepayment>.

Respondent shall simultaneously send copies of the transmittal letter and the check, as directed above, to EPA Region 7, Regional Hearing Clerk, at R7_Hearing_Clerk_Filings@epa.gov and Howard Bunch, EPA Region 7, Attorney, at bunch.howard@epa.gov.

67. 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.

68. 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

69. Respondent's payment of the entire civil penalty resolves all civil and administrative claims pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for violations alleged 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.

70. The effect of settlement described above is conditional upon the accuracy of the Respondent's representations to the EPA, as memorialized in Paragraph 64 of this Consent Agreement/Final Order.

71. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

72. 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 collection action pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), and to seek penalties against Respondent or to seek any other remedy allowed by law.

73. 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

74. 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.

75. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective after entry of the Final Order and upon filing with the Regional Hearing Clerk, U.S. Environmental Protection Agency Region 7, 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.

76. The state of Nebraska 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).

77. 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.

78. 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

David Cozad
Director
Enforcement and Compliance Assurance Division

Howard Bunch
Assistant Regional Counsel
Office of Regional Counsel

For the Respondent, Starostka Lewis, LLC.:

7-1-2021
Date


Signature

MARK A Lewis
Name

Managing Partner
Title

mlewis@homes@gmail.com
Email Address

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

Karina Borromeo
Regional Judicial Officer

CERTIFICATE OF SERVICE

I certify a true and correct copy of the Complaint and Consent Agreement/Final Order was sent this day in the following manner to the addressees:

Copy by email to Respondent:

Mark Lewis, Developer
mlewishomes@gmail.com
Starostka-Lewis LLC
429 Industrial Lane
Grand Island, Nebraska 68803

Copy by email to Attorney for Complainant:

Howard Bunch
U.S. Environmental Protection Agency Region 7
bunch.howard@epa.gov

Copy by email to the Nebraska Department of Environment and Energy:

Mr. Reuel Andersen
Unit Chief
NPDES Permits and Compliance Unit
Water Quality Division
Nebraska Department of Environment and Energy
245 Fallbrook Boulevard
P.O. Box 98922
Lincoln, Nebraska 68509-8922

Date

Hearing Clerk, Region 7