

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

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
Stag's Ridge LLC,)
) Docket No. CWA-07-2019-0266
Respondent)
) CONSENT AGREEMENT/
) FINAL ORDER
)
)
Proceedings under Section 309(g) of the)
Clean Water Act, 33 U.S.C. § 1319(g))
_____)

The U.S. Environmental Protection Agency Region 7 ("EPA"), and Stag's Ridge LLC ("Respondent") have agreed to a settlement of the alleged violations set forth in this Consent Agreement and Final Order ("CA/FO"). Thus, this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of 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 ("Consolidated Rules").

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g)(2)(B) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(B), and in accordance with the Consolidated Rules.

2. This CA/FO alleges that Respondent discharged pollutants into waters of the United States in violation of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

Parties

3. 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, EPA Region 7, who in turn has delegated the authority under Section 309(g) to the Director of the Enforcement and Compliance Assurance Division of EPA Region 7 (collectively referred to as the "Complainant").

4. Respondent is Stag's Ridge LLC. Respondent owns a commercial/residential construction site located just northwest of the intersection of K-7 Highway and West Spruce Street in Olathe, Kansas.

Statutory and Regulatory Framework

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants, unless such discharge is in compliance with, *inter alia*, Section 402 of the CWA, 33 U.S.C. § 1342, which provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System ("NPDES") permit.

6. 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.

7. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters," in part, as the "waters of the United States." In turn, "waters of the United States" has been defined to include, *inter alia*, all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, and tributaries to such waters. 40 C.F.R. § 122.2.

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 comply with 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, 33 U.S.C. § 1342(p), EPA promulgated regulations at 40 C.F.R. § 122.26 that set forth the NPDES permit requirements for stormwater discharges.

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 "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.

12. The Kansas Department of Health and Environment ("KDHE") is the state agency with the authority to administer the federal NPDES program in Kansas pursuant to Section 402 of the CWA. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

13. KDHE NPDES General Permit No. KSR100000 ("Permit") dated July 14, 2017 was effective August 1, 2017; the Permit will expire on July 31, 2022.

14. A person seeking coverage under the Permit is required to submit a Notice of Intent ("NOI") to KDHE.

15. The Permit governs stormwater discharges associated with industrial activity, including clearing, grading and excavation. The principal requirement of the Permit is for the owner to develop and implement a Stormwater Pollution Prevention Plan ("SWPPP"). The SWPPP must identify potential sources of pollution which may reasonably be expected to affect the quality of the stormwater discharge from the construction activities, and describe and ensure the implementation of best management practices ("BMPs") that will be used to reduce the pollutants in storm water discharge associated with industrial activity for construction activities at the construction site and to assure compliance with the terms and conditions of the Permit.

FACTUAL ALLEGATIONS

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

17. At all times relevant to this action, Respondent was the owner of a commercial/residential construction site ("Site"), comprised of approximately 22 acres, which is located just northwest of the intersection of K-7 Highway and West Spruce Street in Olathe, Kansas.

18. At all times relevant to this action, KAT Excavation, Inc. ("KAT Excavation") was the operator of the Site and an agent of Respondent. KAT Excavation was Respondent's general contractor and was responsible for implementing the construction project at the Site, including grading, excavation, performance of improvements, hiring of subcontractors, management of the project, and implementation and management of the SWPPP.

19. At the time of the EPA inspection, described below, KAT Excavation had cleared and graded approximately 15 acres of the construction project at the Site.

20. Stormwater, snow melt, surface drainage, and runoff water leave the Site and discharge through various drainage pathways to an unnamed tributary to Little Cedar Creek and Little Cedar Creek.

21. The Site has "stormwater discharges associated with industrial activity" as defined by 40 C.F.R. § 122.26(b)(14), is a "point source" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), and discharges into an unnamed tributary to Little Cedar Creek and Little Cedar Creek, both "waters of the United States," as defined by 40 C.F.R. § 232.2.

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

23. The discharge of pollutants associated with the construction at the Site, an industrial activity 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.

24. On January 24, 2019, Respondent submitted an NOI to KDHE seeking coverage under the Permit, and on February 22, 2019, KDHE authorized the coverage under permit number KSR114479. This Permit governs stormwater discharges that are associated with industrial activity at the Site.

25. On May 14, 2019, EPA personnel, under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), performed a Construction Stormwater Compliance Evaluation ("Inspection") to determine compliance with the Permit and the CWA.

26. During the Inspection or shortly thereafter, the EPA inspector reviewed and obtained copies of documents related to the Permit, including without limitation, the Site's SWPPP dated October 17, 2018 and Site inspection and self-monitoring records. The EPA inspector also toured the Site and photographed various stormwater-related areas.

27. During the Inspection, the EPA inspector observed and documented significant amounts of sediment in the unnamed tributary to Little Cedar Creek and Little Cedar Creek that could be traced back to the Site.

28. On May 15, 2019, KAT Excavation provided a written response to some of the issues identified during the Inspection. On May 24, 2019, EPA issued Respondent and KAT Excavation a Notice of Potential Violation ("NOPV") citing, *inter alia*, inadequate sediment control along the bank of an unnamed tributary to Little Cedar Creek, construction entrances full of sediment, a portable toilet placed on top of a stormwater inlet, dewatering occurring without a sediment control device, and rock check dams in need of maintenance. On May 24 and May 30, 2019, a representative for Respondent responded to the NOPV.

29. On June 20, 2019, EPA issued Respondent and KAT Excavation a Notice of Findings of Violation and Order for Compliance.

FINDINGS OF VIOLATION

Count 1

Failure to Ensure that Discharges do not Contribute to an Excursion of Kansas Surface Water Quality Standards

30. Paragraphs 1 through 29 are re-alleged and incorporated herein by reference.

31. Part 3, Paragraph 4 of the Permit, What This Permit or the Rainfall Erosivity Waiver Does Not Cover, states that the Permit does not authorize construction activities that result in the discharge of stormwater runoff which violates the Kansas Surface Water Quality Standards.

32. During the Inspection referenced above, the EPA inspector observed discharges of stormwater from the Site into the unnamed tributary to Little Cedar Creek, resulting in observed increases of turbidity in both the unnamed tributary and Little Cedar Creek, which demonstrates a violation of Kansas Surface Water Quality Standards.

33. Respondent's alleged failure to ensure that discharges from the Site do not contribute to an excursion of water quality standards is a violation of the conditions and limitations of the Permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Count 2

Failure to Maintain a Copy of the KDHE-Authorized Notice of Intent and Stormwater Pollution Prevention Plan at the Construction Site

34. Paragraphs 1 through 33 are re-alleged and incorporated herein by reference.

35. Part 5 of the Permit, Starting Construction Activity, states that a copy of the authorized NOI and the project-specific SWPPP, including the erosion and sediment control plan for the specific project, shall be readily available at the Site.

36. During the EPA Inspection referenced above, the inspector requested that KAT Excavation provide a copy of the NOI and the Site's SWPPP. Copies of the NOI and the SWPPP were not maintained on Site.

37. Respondent's alleged failure to keep copies of the NOI and the SWPPP on Site is a violation of the conditions and limitations of the Permit, and as such, is 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 (alternatively, Failure to Fully Implement the Provisions of the SWPPP)

38. Paragraphs 1 through 37 are re-alleged and incorporated herein by reference.

39. Part 7 of the Permit, SWPPP Requirements and Guidelines, states the permittee shall fully implement the provisions of the SWPPP required as a condition of the Permit throughout the term of the construction project.

40. Part 7 of the Permit further states that the permittee shall select, install, utilize, operate and maintain effective BMPs.

41. Part 7.1 of the Permit, General SWPPP Requirements, states the permittee shall ensure the BMPs and/or pollution controls are properly installed and maintained at the locations and relative timeframes specified in the SWPPP.

42. Part 7.2.5 of the Permit, Temporary and Permanent Non-Structural BMPs, requires the permittee to avoid clearing and grubbing within 50 feet of a defined drainage course if feasible. If changes to the defined drainage course are to occur as part of the project plan, they should be completed as soon as possible once the work has been initiated. Area impacted by the course changes is to be re-vegetated or stabilized to minimize the length of time the area is exposed.

43. Part 7.2.3(1) of the Permit, Detailed SWPPP Requirements, requires the permittee to design, install, and maintain BMPs that control stormwater volume and velocity in order to minimize pollutant discharges.

44. Part 7.2.3(3) of the Permit, Detailed SWPPP Requirements, requires the permittee to design, install, and maintain BMPs that minimize the amount of soil exposed during construction activity.

45. Part 7.2.3(4) of the Permit, Detailed SWPPP Requirements, requires the permittee minimize the disturbance of steep slopes of forty percent or greater.

46. Part 7.2.3(5) of the Permit, Detailed SWPPP Requirements, requires the permittee to design, install, and maintain BMPs that minimize sediment discharges from the Site.

47. Part 7.2.3(6) of the Permit, Detailed SWPPP Requirements, requires the permittee to design, install, and maintain BMPs that provide and maintain natural buffers around waters of the United States.

48. Part 7.2.3(10) of the Permit, Detailed SWPPP Requirements, requires the permittee to control discharges from sediment or soil stockpiles.

49. Part 7.2.3(12) of the Permit, Detailed SWPPP Requirements, requires the permittee to design, install, and maintain BMPs that minimize off-site tracking of soils by utilizing wheel washing facilities or an appropriately designed construction entrance and exit.

50. During the EPA Inspection referenced above, the inspector observed that:

- a. The construction entrance/exit was full of sediment. The facility had trackout that was present on the roadway and appeared to be there for more than one day;
- b. Respondent's general contractor, KAT Excavation, or its subcontractor had placed a portable toilet on top of a stormwater inlet;
- c. The rock ditch checks observed during the Inspection needed maintenance;
- d. The conveyance ditches for the middle and eastern soil stockpiles did not feature any stormwater BMPs to settle and reduce sediment entering the unnamed tributary to Little Cedar Creek;
- e. KAT Excavation or its subcontractor had not installed the silt fence around the soil stockpiles as specified in the SWPPP;

- f. KAT Excavation or its subcontractor had stripped the majority of the vegetative buffer around the unnamed tributary. No BMPs were installed to protect the slopes and banks abutting the unnamed tributary; and
- g. KAT Excavation or its subcontractor had not completed silt fence installation along the western boundary of the Site at the time of the Inspection.

51. The failures to comply with the terms and conditions of the Permit resulted in observed impacts to Little Cedar Creek and its tributary.

52. Respondent's alleged failure to properly install, operate, and/or maintain BMPs at the Site or, in the alternative, failure to fully implement the SWPPP, is a violation conditions and limitations of the of the Permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Count 4

Failure to Develop an Adequate SWPPP

53. Paragraphs 1 through 52 are re-alleged and incorporated herein by reference.

54. Part 7 of the Permit, SWPPP Requirements and Guidelines, states that before initiating construction activities the permittee shall develop a SWPPP that is specific to the construction activities that are employed at the site authorized by the NPDES Permit.

55. Part 7.2.2 of the Permit, Description of BMPs, states that the SWPPP shall include a description of BMPs, including what site conditions must be met before removal of the BMP if it is not permanent.

56. During the EPA Inspection referenced above, in addition to the deficiencies listed in Paragraph 50, the inspector noted that the SWPPP did not provide information specific to the Site and was not complete. The inspector noted:

- a. The site map did not specifically list the streams, surface water bodies, or any other waters that will be receiving stormwater runoff from the Site;
- b. The SWPPP did not have a map available which showed site locations of BMPs installed at the site during the inspection;
- c. The SWPPP included multiple prompts to add information that had not been filled in;
- d. The SWPPP failed to identify what site conditions must be met before BMPs may be removed;
- e. The SWPPP did not identify the steep slopes present at the site and did not specify BMPs to protect them; and
- f. The SWPPP did not include BMPs to address sanity sewer manhole de-watering.

57. The failures to comply with the terms and conditions of the Permit resulted in observed impacts to Little Cedar Creek and its tributary.

58. Respondent's alleged failure to develop an adequate SWPPP is a violation of the conditions and limitations of the Permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Count 5

Failure to Update and Amend the SWPPP

59. Paragraphs 1 through 58 are re-alleged and incorporated herein by reference.

60. Part 7.3.2 of the Permit, Amendment of the SWPPP, requires that the permittee shall modify or amend the SWPPP, at a minimum, whenever there is a change in design, operation, or maintenance of BMPs, pollution controls, or pollution prevention measures, and whenever the SWPPP is determined to be ineffective in significantly minimizing or controlling erosion and sedimentation, such as excessive site erosion, excessive sediment leaving the Site, or excessive sediment deposits in drainage channels, streams, or lakes.

61. During the EPA Inspection referenced above, in addition to the deficiencies set forth in Paragraphs 50 and 56, the inspector observed that the one-phase construction sequence described in the SWPPP did not adequately describe site conditions. The Site was both stockpiling and performing sanitary sewer connections prior to completing stormwater connections and installing the box culvert in the ravine to provide access to the site and building the planned commercial buildings.

62. The significance of sediment migration and impacts on the receiving streams require an amendment of the SWPPP and the installation of more robust BMPs to meet the requirements of the Permit.

63. Respondent's alleged failure to update and amend the SWPPP is a violation of the conditions and limitations of the Permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Count 6

Failure to Take Appropriate Corrective Actions Following Deficiencies Identified During Self-Inspections

64. Paragraphs 1 through 63 are re-alleged and incorporated herein by reference.

65. Part 7.2.10 of the Permit requires that the permittee shall ensure the entire Site is inspected on a regular schedule (not to exceed every 14 days), and by the end of the next day following a rain event which results in a rainfall total of 0.5 inches or greater. The Permit further requires that a report of each regularly scheduled inspection and required rain event inspection

shall be documented and any deficiencies in the operation and maintenance, effectiveness, adequacy or coverage extent of all installed BMPs shall be noted in the inspection report and corrected within seven days unless infeasible.

66. The EPA inspector reviewed several months of inspection reports generated by Respondent and KAT Excavation and noted that the inspections called for two corrective actions which were not corrected within seven days of Respondent's subcontractor's inspections:

- a. The portable toilet was placed on top of a stormwater inlet, and Respondent's subcontractor's inspection reports identified that issue on both April 30, 2019 and May 14, 2019. The portable toilet was not moved until May 14, 2019, following the EPA Inspection; and
- b. Respondent's subcontractor's inspection reports dated April 30, 2019, May 3, 2019, May 8, 2019, and May 14, 2019 identified the need to maintain the construction entrance. The construction entrance was not maintained until May 14, 2019, following the EPA Inspection.

67. Respondent's alleged failure to take appropriate corrective actions following deficiencies identified during self-inspections is a violation of the conditions and limitations of the Permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a), 1342(p).

Penalty

68. As alleged in the preceding Counts 1 through 6, and pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), as adjusted pursuant to 40 C.F.R. § 19.4, Respondents are liable for civil penalties of up to \$21,933 per day for each day during which the violation continues, up to a maximum of \$274,159.

CONSENT AGREEMENT

69. Respondent admits the jurisdictional allegations of this CA/FO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

70. Respondent neither admits nor denies the factual allegations contained in this CA/FO.

71. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying this Consent Agreement.

72. Respondent and Complainant each agree to bear their own costs and attorney's fees.

73. Nothing contained in this CA/FO shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

74. Respondent certifies that it is fully authorized to enter the terms and conditions of this CA/FO and to execute and legally bind Respondent to it.

75. This CA/FO shall apply to and be binding upon Respondent, its agents, successors, and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for it with respect to matters included herein comply with the terms of this CA/FO.

76. Respondent certifies by the signing of this CA/FO that Respondent is in compliance with Kansas General Permit No. KSR 114479, and Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342, and all applicable regulations.

Supplemental Environmental Project ("SEP")

77. Respondent shall expend a minimum of \$53,696 ("Total SEP Expenditure") in approvable costs to place a perpetual conservation easement on approximately 8.15 acres of property comprising portions of the Site and surrounding Stag's Ridge property as shown on Exhibit A ("Conservation Easement Property"). Approvable costs shall only include costs directly related to actual costs in implementing the SEP, management of the conservation easement by a third party, and the value of the Conservation Easement Property placed under perpetual easement pursuant to the requirements of this CA/FO.

78. Respondent shall place the Conservation Easement Property under a perpetual conservation easement. Respondent agrees that within thirty (30) days of the effective date of this Order, Respondent shall submit a draft conservation easement that shall include: (1) a legal description and map of the proposed Conservation Easement Property; (2) the draft language of the conservation easement to be placed on the Conservation Easement Property; and (3) the name, contact information, and qualifications of the proposed conservation easement trustee. EPA will review the information submitted and approve the draft conservation easement or provide Respondent written comments within thirty (30) days of receipt. If requested by Respondent, EPA will provide Respondent an opportunity to discuss the written comments. Respondent shall resubmit the draft conservation easement in a form that responds to EPA's comments within thirty (30) days after receipt of EPA's written comments. The draft conservation easement shall become a final conservation easement upon approval by EPA. Respondent shall complete the SEP consistent with the approved schedule included in the final conservation easement, but in no event later than nine (9) months from the effective date of this CA/FO.

79. Upon recordation of the conservation easement with the appropriate recorder of deeds, Respondent shall submit a SEP Completion Report to EPA.

- a. The SEP Completion Report shall contain the following:

- i. A copy of the conservation easement entered into with the conservation easement trustee and copies of any supporting agreements or contracts entered into with the conservation easement trustee;
- ii. Itemized costs incurred by Respondent. Costs incurred include the actual costs incurred by Respondent in implementing the SEP, management of the conservation easement by a third party, and the value of any land placed under perpetual easement; and
- iii. The following certification signed by Respondent or its authorized representative:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

- b. The SEP Completion Report and all other submittals regarding the SEP shall be sent to:

Delia Garcia, Ph.D.
ECAD/WB/IS
U.S. Environmental Protection Agency
Region 7
11201 Renner Boulevard
Lenexa, KS 66219

- c. Respondent agrees that failure to submit the SEP Completion Report required by subsections a. and b. above shall be deemed a violation of this CA/FO and Respondent shall become liable for stipulated penalties described below.

80. Upon receipt of the notice of completion, EPA will evaluate the cost documentation provided by Respondent and make a determination as to the sum of the approvable costs incurred by the Respondent. This determination shall be within the sole discretion of the EPA, but approved costs shall only include costs directly related to the third-party conservation easement and the value of any land placed under perpetual easement. Upon satisfactory completion of the SEP, EPA will provide Respondent with written notification that the SEP has been completed.

81. Respondent certifies that, as of the date of this CA/FO, it is not a party to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondent further certifies that, to the best of its knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily

ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

82. Respondent certifies that, as of the date of this CA/FO, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant, or as injunctive relief in any other enforcement action or in compliance with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

83. EPA and its authorized representatives shall have access to the Conservation Easement Property at all reasonable times to monitor Respondent's implementation of the SEP. Nothing herein shall be construed to limit EPA's access authority under the CWA or any other law.

84. In the event Respondent fails to satisfactorily complete the SEP within nine (9) months from the effective date of this CA/FO, Respondent shall pay a stipulated penalty not to exceed \$26,848. In the event the Respondent satisfactorily completes the SEP but fails to spend at least 90% of the amount required for Total SEP Expenditures, Respondent shall pay a stipulated penalty not to exceed \$26,848 that shall be based upon a pro-rata share of the costs incurred to implement the SEP in relation to the portion of the penalty mitigated by the SEP (i.e., \$26,848 multiplied by the percentage of unexpended costs in relation to the Total SEP Expenditures).

85. Failure to timely submit the SEP Completion Report shall be deemed failure to satisfactorily complete the SEP.

86. The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be within the sole discretion of the EPA.

87. Respondent shall pay any stipulated penalties within thirty (30) days after the date of receipt of a written demand from EPA for payment. The payment shall be in accordance with the provisions of Paragraphs 89 and 90.

Penalty Payment

88. Respondent agrees that, in settlement of the claims alleged in this CA/FO, Respondent shall pay a SEP-mitigated civil penalty of **Six Thousand Eight Hundred and Thirty-Four Dollars (\$6,834)** 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 thirty (30) days after the effective date of this CA/FO as set forth below.

89. The payment of penalties must reference docket number "CWA-07-2019-0266"

and the name of the case. Payment shall be made by cashier or certified check made payable to "United States Treasury." Payment must be remitted to:

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

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

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

and

Cathie Chiccine
U.S. Environmental Protection Agency Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

91. Respondent agrees that no portion of the civil penalty, approvable SEP costs, or interest paid by Respondent pursuant to the requirements of this CA/FO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

92. 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

93. Respondent's completion of the SEP and payment of the entire civil penalty pursuant to this CA/FO 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.

94. The effect of settlement described above is conditional upon the accuracy of the Respondents' representations to EPA, as memorialized in Paragraph 76 of this CA/FO.

95. Nothing contained in this CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

96. Notwithstanding any other provision of this CA/FO, EPA reserves the right to enforce the terms of this CA/FO 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.

97. With respect to matters not addressed in this CA/FO, 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

98. The Parties acknowledge that this CA/FO 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.

99. Pursuant to 40 C.F.R. § 22.31(b), this CA/FO shall be effective after signature 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 CA/FO.

100. The state of Kansas 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).

101. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

102. Respondent and Complainant agree that this CA/FO may be signed in part and counterpart.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

David Cozad
Director
Enforcement and Compliance Assurance Division

Date

Catherine R.M. Chiccine
Assistant Regional Counsel

Date

RESPONDENT:

For Stag's Ridge LLC:

Kevin Tubbesing, Managing Member



Name/Title

Signature

6 December 2019

Date

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.

Respondents are 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

