

5. 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 storm water. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires, in part, that a discharge of storm water associated with an industrial activity must conform with the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

6. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations setting forth the NPDES permit requirements for storm water discharges at 40 C.F.R. § 122.26.

7. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) requires dischargers of storm water associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated storm water general permit.

8. 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 (5) acres of total land area which are not part of a larger common plan of development or sale.

9. The Missouri Department of Natural Resources (“MDNR”) is the state agency with the authority to administer the federal NPDES program in Missouri pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with delegated states for violations of the CWA.

10. The MDNR issued a General Permit for the discharge of storm water under the NPDES, Permit No. MO-R101-R108. This General Permit became effective on February 8, 2002, and expires on February 7, 2007. The General Permit governs stormwater discharges associated with construction or land disturbance activity (e.g., clearing, grubbing, excavating, grading, and other activity that results in the destruction of the root zone).

Factual Background

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

12. At all times relevant to this action, Respondent was the owner and/or operator of a construction site known as Creekmooor Subdivision (“Site”) located near 155th Street and North Madison Street in Raymore, Missouri. Construction activities occurred at the Site including clearing, grading and excavation which disturbed five (5) or more acres of total land area or which disturbed less than five (5) acres of total land area that was part of a larger common plan of development or sale.

13. Storm water, snow melt, surface drainage, and runoff water leaves Respondent's facility and goes into Lumpkins Fork and unnamed tributaries of Lumpkins Fork. The runoff and drainage from Respondent's facility is "storm water" as defined by 40 C.F.R. § 122.26(b)(13).

14. Storm water contains "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

15. The Site has "storm water 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).

16. Respondent discharged pollutants into Lumpkins Fork and unnamed tributaries of Lumpkins Fork. The unnamed tributaries and Lumpkins Fork are "navigable waters" as defined by CWA Section 502, 33 U.S.C § 1362.

17. Storm water runoff from Respondent's construction 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).

18. 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.

19. Respondent applied for and was issued NPDES permit coverage under the General Permit described in paragraph 10 above. MDNR assigned Respondent permit number MO-R107089, which was issued on February 4, 2005.

20. On February 1, 2006, through February 6, 2006, EPA inspectors performed an inspection of the Site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The purpose of the inspection was to evaluate the treatment and disposal of storm water at the site in accordance with the CWA.

Findings of Violation

Count 1

Failure to Install Appropriate Best Management Practices

21. The facts stated in paragraphs 11 through 20 above are herein incorporated.

22. Part 8(e) of the Requirements and Guidelines section of Respondent's permit states that storm water runoff from disturbed areas which leave the site boundary shall pass through an

appropriate impediment to sediment movement, such as a sedimentation basin, sediment trap, silt fence, etc., prior to leaving the land disturbance site.

23. The EPA inspection referenced in paragraph 20 above, revealed that Respondent did not install appropriate impediments to sediment movement for storm water to pass through prior to leaving the construction site via storm drains.

24. The EPA inspection referenced in paragraph 20 above, revealed that there was not a sedimentation basin for each drainage area with ten (10) or more acres for storm water to pass through prior to leaving the construction site.

25. The EPA inspection referenced in paragraph 20 above, revealed that on the majority of the site, there was no silt fencing for storm water to pass through prior to leaving the construction site.

26. Part 8(d) of the Requirements and Guidelines section of Respondent's permit states that where soil disturbing activities cease in an area for more than 14 days, the disturbed areas shall be protected from erosion by stabilizing the area.

27. The inspection referenced in paragraph 20 above, revealed that Respondent failed to stabilize areas where soil disturbing activity had ceased for more than 14 days.

28. Respondent's failure to install appropriate impediments to sediment movement is a violation of Respondent's General Permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. § 1311(a) and § 1342(p).

Count 2

Failure to Perform and Document Site Inspections

29. The facts stated in paragraphs 11 through 20 above are herein incorporated.

30. Part 10 of the Requirements and Guidelines section of Respondent's permit requires that documented inspections be performed at a minimum of once per week on disturbed areas which have not been finally stabilized. In addition, it requires that any deficiencies be noted in a report and corrected within seven calendar days of the inspection. The report is to be kept at a site which is readily available from the permitted site until final stabilization is achieved.

31. The EPA inspection referenced in paragraph 20 above, revealed that Respondent did not perform documented site inspections at a minimum of once per week, note deficiencies in a report, correct the deficiencies within seven calendar days of the inspection, and keep the report at a site which is readily available from the permitted site.

32. Part 10 of the Requirements and Guidelines section of Respondent's permit requires that documented inspections be performed within a reasonable time period (not to exceed 72 hours) following heavy rains.

33. The EPA inspection referenced in paragraph 20 above, revealed that Respondent did not perform documented inspections in response to heavy rain events.

34. Respondent's failure to perform and document site inspections is a violation of Respondent's General Permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. § 1311(a) and § 1342(p).

Count 3

Failure to Maintain Best Management Practices

35. The facts stated in paragraphs 11 through 20 above are herein incorporated.

36. Part 11 of the Requirements and Guidelines section of Respondent's permit requires that the Respondent shall at all times maintain all pollution control measures and systems in good order to achieve compliance with the terms of the General Permit.

37. The EPA inspection referenced in paragraph 20 above, revealed that Respondent had not adequately maintained silt fencing.

38. The EPA inspection referenced in paragraph 20 above, revealed that Respondent had not adequately maintained storm drain inlet protection mechanisms.

39. Respondent's failure to properly maintain its pollution control measures is a violation of Respondent's General Permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. § 1311(a) and § 1342(p).

Count 4

Failure to Properly Implement SWPPP

40. The facts stated in paragraphs 11 through 20 above are herein incorporated.

41. Part 7 of the Requirements and Guidelines section of Respondent's permit requires that Respondent fully implement the provisions of the SWPPP throughout the term of the land disturbance project.

42. The EPA inspection referenced in paragraph 20 above, revealed that Respondent failed to properly implement several elements of the SWPPP. Specifically, Respondent failed to

properly implement SWPPP provisions pertaining to phased grading, conducting site inspections, stabilizing disturbed areas, implementation and maintenance of best management practices, and installation of temporary construction entrances.

43. Respondent's failure to implement the SWPPP is a violation of Respondent's General Permit, and as such, is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. § 1311(a) and § 1342(p).

Count 5

Failure to Develop an Adequate SWPPP

44. The facts stated in paragraphs 11 through 20 above are herein incorporated.

45. Part 7 of the Requirements and Guidelines section of Respondent's permit states that the purpose of the SWPPP is to ensure the adequate design of BMPs in order to reduce the amount of sediment and other pollutants in storm water discharges associated with land disturbance activities.

46. The EPA inspection referenced in paragraph 20 above, revealed that the SWPPP did not provide for adequate BMPs necessary to reduce the amount of sediment and other pollutants in storm water discharges associated with land disturbance activities.

47. Part 8 of the Requirements and Guidelines section of Respondent's permit requires in part that the storm water pollution prevention plan ("SWPPP") include, *inter alia*, the following items:

- 8(i) Additional Site Management BMPs: The SWPPP shall address other BMPs, as required by site activities, to prevent contamination of storm water runoff.
- 8(j) Permanent Stormwater Management: The SWPPP shall include a description of the measures that will be installed during land disturbance to control pollutants in storm water discharges that will occur after land disturbance activity has been completed.

48. The EPA inspection referenced in paragraph 20 above, revealed that the SWPPP did not address the requirements contained in paragraphs 8(i) and 8(j) of Respondent's permit.

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

Order For Compliance

50. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to the authority of Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), Respondent is hereby ORDERED to take the actions described in paragraphs 51 through 53.

51. Within thirty (30) days of the effective date of this Order, Respondent shall take whatever corrective action is necessary to correct the deficiencies and eliminate and prevent recurrence of the violations cited above, and to come into compliance with all of the applicable requirements of the permit.

52. Within thirty (30) days of the effective date of this Order, the Respondent shall submit a written report detailing the specific actions taken to correct the violations cited herein and explaining why such actions are anticipated to be sufficient to prevent recurrence of these or similar violations.

53. In the event that Respondent believes complete correction of the violations cited herein is not possible within thirty (30) days of the effective date of this Order, the Respondent shall, within those thirty (30) days, submit a comprehensive written plan for the elimination of the cited violations. Such plan shall describe in detail the specific corrective actions to be taken and why such actions are sufficient to correct the violations. The plan shall include a detailed schedule for the elimination of the violations within the shortest possible time, as well as measures to prevent these or similar violations from recurring.

Submissions

54. All documents required to be submitted to EPA by this Order, shall be submitted by mail to:

Mr. Nicholas Peak
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region VII
901 North Fifth Street
Kansas City, Kansas 66101.

55. A copy of documents required to be submitted to MDNR by this Order, shall be submitted by mail to:

Mr. Kevin Mohammadi, Chief
Enforcement Section
Water Pollution Control Program
Missouri Dept. of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102.

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

56. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from, initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

57. This Order does not constitute a waiver or a modification of any requirements of the Clean Water Act, 33 U.S.C. § 1251 et seq., all of which remain in full force and effect. The EPA retains the right to seek any and all remedies available under Sections 309 of the Act, 33 U.S.C. § 1319, for any violation cited in this Order. Issuance of this Order shall not be deemed an election by EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the Act for any violation whatsoever.

Access and Requests for Information

58. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect Respondent's facility, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Severability

59. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Effective Date

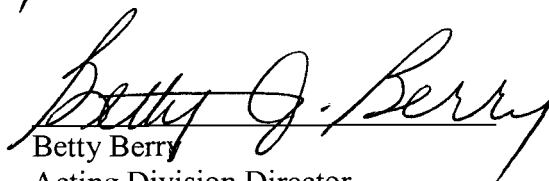
60. The terms of this Order shall be effective and enforceable against Respondent upon the date of its receipt of an executed copy of the Order.

*In the matter of
Cooper Land Development
Findings of Violation, Order for Compliance*

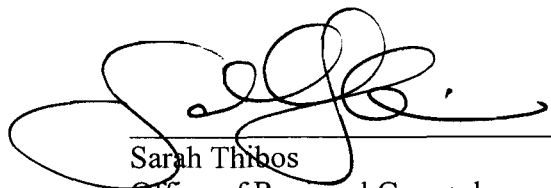
Termination

61. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the U.S. Environmental Protection Agency. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 15th day of February, 2006.



Betty Berry
Acting Division Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101



Sarah Thibos
Office of Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101

*In the matter of
Cooper Land Development
Findings of Violation, Order for Compliance*

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Administrative Order for Compliance to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by first class certified mail, return receipt requested, to:

C T Corporation System
Registered Agent for Cooper Land Development, Inc.
120 South Central Avenue
Clayton, Missouri 63105

and

Mr. Kevin Mohammadi, Chief
Enforcement Section
Water Pollution Control Program
Missouri Dept. of Natural Resources
P.O. Box 176
Jefferson City, Missouri 65102.

2/17/06
Date

LeDine G. Hatchett