

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

06 JUN -7 AM 9:02
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
)
Grain Valley R-5 School District)
31606 NE Pink Hill Road, P.O Box 304)
Grain Valley, Missouri 64029)
)
Respondent)
)
Proceedings under Section 309(g) of the)
Clean Water Act, 33 U.S.C. § 1319(g))
_____)

Docket No. CWA-07-2006-0077

COMPLAINT AND
CONSENT AGREEMENT /
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 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.

2. This Complaint serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Sections 301 and 402 of the CWA, 33 U.S.C. § 1311 and § 1342, and regulations promulgated thereunder.

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 EPA. The Administrator has delegated this authority to the Regional Administrator, EPA Region 7, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA Region 7 (Complainant).

4. Respondent is the Grain Valley R-5 School District, a school district fully accredited by the Missouri Department of Elementary and Secondary Education.

Statutory and Regulatory Framework

5. 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, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

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 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.

8. 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.

9. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require 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.

10. 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.

11. 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.

12. The MDNR issued a NPDES General Permit for the discharge of storm water associated with construction activities, Permit No. MO-R106803 (the Permit). The permit became effective on February 8, 2002 and expires on February 7, 2007. The permit governs storm water 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

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

14. At all times relevant to this action, Respondent was the owner and/or operator of a construction site known as Grain Valley Elementary School located at Dillingham Road and Duncan Road in Grain Valley, Missouri (the Site). Construction activities occurred at the Site including clearing, grading and excavation which disturbed five (5) or more acres of total land area.

15. Storm water, snow melt, surface drainage and runoff water leaves Respondent’s facility and goes into the Swiney Branch of Sni-A-Bar Creek. The runoff and drainage from Respondent’s facility is “storm water” as defined by 40 C.F.R. § 122.26(b)(13).

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

17. Respondent’s storm water runoff is the “discharge of a pollutant” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

18. The Site was a “point source” which caused the “discharge of pollutants” as defined by CWA Section 502, 33 U.S.C. § 1362.

19. Respondent discharged pollutants into the Swiney Branch of Sni-A-Bar Creek. The Swiney Branch of Sni-A-Bar Creek is a “navigable water” as defined by CWA Section 502, 33 U.S.C. § 1362.

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

21. Respondent applied for and was issued NPDES permit coverage under the General Permit described in paragraph 12 above. MDNR assigned Respondent Permit No. MO-R106803 which was issued on October 1, 2004.

22. On March 21, 2005, EPA 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 Properly Install and/or Maintain Appropriate Best Management Practices

23. The facts stated in paragraphs 13 through 22 above are herein incorporated.

24. Part 7 of the Requirements and Guidelines section of the Permit requires the Permittee to select, install, use, operate and maintain Best Management Practices (BMPs) in order to reduce the amount of sediment and other pollutants in storm water discharges associated with any land disturbance activities and ensure compliance with the terms and conditions of the Permit.

Installation of Sediment Traps and Silt Fences

25. Part 8e of the Requirements and Guidelines section of the Permit requires that the Permittee ensure that BMPs are properly installed at the locations and relative times specified in the Storm Water Pollution Prevention Plan (SWPPP). Furthermore, storm water discharges from disturbed areas which leave the site, shall pass through an appropriate impediment to sediment movement, such as a sedimentation basin, sediment traps, silt fences, etc., prior to leaving the construction site.

26. The inspection referenced in paragraph 22 above revealed that Respondent did not have a sediment trap in place covering part of the area occupied by a ravine in the southeast corner of the south parking lot of Respondent's property. According to Respondent's SWPPP, this sediment trap was supposed to be in place at the time of the inspection.

27. The inspection referenced in paragraph 22 above revealed that there were many instances of poorly maintained or improperly installed silt fences throughout Respondent's property, especially near the south edge.

Unprotected Storm Drain Inlets

28. The inspection referenced in paragraph 22 above revealed that Respondent did not install appropriate impediments to sediment movement for storm water to pass through prior to leaving the construction site. Specifically, Respondent had left several storm water area drains and curb drain inlets either unprotected or inadequately protected with improperly installed straw bales. This resulted in runoff entering into these inlets without passing through an appropriate impediment.

29. Respondent's failure to properly install and maintain appropriate impediments to sediment movement is a violation of Parts 7 and 8 of the Requirements and Guidelines section 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).

30. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), it is proposed that a civil penalty be assessed against Respondent, the amount of which is consolidated as set forth in paragraph 52 below.

Count 2 – Failure to Maintain Pollution Control and Stabilization Measures

31. The facts stated in paragraphs 13 through 30 above are herein incorporated.

32. Part 7 of the Requirements and Guidelines section of the Permit requires the Permittee to select, install, use, operate and maintain Best Management Practices (BMPs) in order to reduce the amount of sediment and other pollutants in storm water discharges associated with any land disturbance activities and ensure compliance with the terms and conditions of the Permit.

33. Part 11 of the Requirements and Guidelines section of the Permit requires the Permittee at all times to maintain pollution control measures and systems in good order to achieve compliance with the terms of the Permit.

34. Part 8f of the Requirements and Guidelines section of the Permit requires that the time period be minimized for disturbed areas to be without vegetative cover, to the extent practical. Examples of non-structural BMPs that the Permittee should consider using include, but are not limited to, protection of existing vegetation for use as buffer strips (especially along drainage courses), mulching, sodding, temporary seeding, final seeding, geotextiles, stabilization of disturbed areas, stabilized site entrances and exits, and other appropriate BMPs.

35. The inspection referenced in paragraph 22 above revealed that Respondent did not properly maintain the construction entrances and exits at the property, as described in the facility's SWPPP.

36. The inspection referenced in paragraph 22 above revealed that Respondent did not have any rip rap stabilization or any other dissipation devices in place near the storm sewer outlet in the south central area of the property. As a result, on the date of the inspection there were indications of concrete washout and sediment flowing out of the storm sewer outlet and down a ravine into the Swiney Branch of Sni-A-Bar Creek.

37. Respondent's failure to properly maintain its pollution control measures is a violation of Parts 7 and 11 of the Requirements and Guidelines section 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).

38. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), it is proposed that a

civil penalty be assessed against Respondent, the amount of which is consolidated as set forth in paragraph 52 below.

Count 3 - Failure to Perform and Document Site Inspections

39. The facts stated in paragraphs 13 through 38 above are herein incorporated.

40. Part 10 of the Requirements and Guidelines section of the Permit requires that the Permittee conduct inspections of the land disturbance site at least once per week and within a reasonable time period (not to exceed 72 hours) following heavy rains. For disturbed areas that have not been finally stabilized, all installed BMPs and other pollution control measures shall be inspected for proper installation, operation and maintenance. Locations where stormwater leaves the site shall also be inspected for evidence of erosion or sediment deposition. Any deficiencies shall be noted in a weekly report of the inspection(s).

41. Furthermore, Part 10 of the Requirements and Guidelines section of the Permit requires that a log of each inspection be kept. The inspection report is to include the inspector's name, date of inspection, observations relative to the effectiveness of the BMPs, actions taken or necessary to correct deficiencies, and a listing of areas where land disturbance operations have permanently or temporarily stopped. The inspection report shall be signed by the Permittee or by the person performing the inspection if duly authorized to do so.

42. Part 10 of the Requirements and Guidelines section of the Permit also requires that any deficiencies noted in the inspection reports must be corrected within seven calendar days of the inspection.

43. The inspection referenced in paragraph 22 above revealed that Respondent did not perform or document any site inspections between October 1, 2004 and March 21, 2005.

44. Respondent's failure to perform and to properly document site inspections is a violation of Part 10 of the Requirements and Guidelines section 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).

45. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), it is proposed that a civil penalty be assessed against Respondent, the amount of which is consolidated as set forth in paragraph 52 below.

CONSENT AGREEMENT

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

47. Respondent neither admits nor denies the factual allegations or Findings of Violations contained in this Complaint and Consent Agreement and Final Order.

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

49. Respondent and Complainant each agree to bear their own costs and attorney's fees incurred as a result of this action.

50. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

51. Solely for the purpose of settling this matter and thereby avoiding the expense and uncertainties involved in a formal adjudication, Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of the civil penalty as set forth in the Final Order.

52. Respondent agrees to pay a mitigated civil penalty of \$29,218 as set forth in paragraph 1 of the Final Order.

53. The penalty payment made by Respondent pursuant to this Complaint and Consent Agreement and Final Order is payment of a civil penalty and shall not be deductible for purposes of federal, state, or local income taxes.

54. Each signatory to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Complaint and Consent Agreement and Final Order.

FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and based upon information contained in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Within thirty days of the effective date of this Final Order, Respondent shall pay a civil penalty of \$29,218.

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

U.S. Environmental Protection Agency Region 7
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251.

The payment shall identify the Respondent by name and docket number (CWA-07-2006-0077).
Copies of the check shall be mailed to:

Alex Chen
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101

and

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101.

3. Failure to pay any portion of the civil penalty on the date the same is due may result in the commencement of a civil action in Federal District Court to collect said penalty, along with interest thereon at the rate of five percent (5%) per annum. A late payment handling charge of Fifteen Dollars (\$15) will be imposed for payments received thirty (30) days after any date of payments; and an additional Fifteen Dollars (\$15) will be charged for each subsequent thirty (30) day period.

4. EPA reserves the right to enforce the terms of this Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

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

6. This Final Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

7. This executed Consent Agreement and Final Order shall be filed with the Regional

Hearing Clerk, U.S. Environmental Protection Agency Region 7, 901 North 5th Street, Kansas City, Kansas 66101.

For the Respondent:



Printed Name: Christopher A. Small
Title: Superintendent of Schools

4/3/06
Date

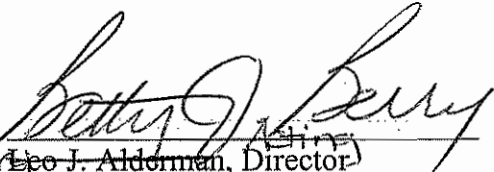
For the Complainant:

The United States Environmental Protection Agency



Alex Chen
Assistant Regional Counsel


June 2, 2006
Date



~~City J. Bar~~ Leo J. Alderman, Director
Water, Wetlands and Pesticides Division

06/02/06
Date

IT IS SO ORDERED.



Robert Patrick
Regional Judicial Officer

June 7, 2006
Date

IN THE MATTER OF Grain Valley R-5 School District, Respondent
Docket No. CWA-07-2006-0077

CERTIFICATE OF SERVICE

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

Copy hand delivered to
Attorney for Complainant:

Alex Chen
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Sam Packham
Director of Operations
Grain Valley R-5 School District
P.O. Box 304
Grain Valley, Missouri 64029

and

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

Dated: 6/7/06



Kathy Robinson
Regional Hearing Clerk