

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
	)	Docket No. CWA-07-2007-0022
Cedar Development, L.L.C.	)	
Re: Blackhawk Hills Addition Subdivision	)	
	)	
	)	CONSENT AGREEMENT
Eldridge, Iowa 58722	)	AND FINAL ORDER
	)	
Respondent	)	
	)	
Proceedings under Section 309(g) of the	)	
Clean Water Act, 33 U.S.C. § 1319(g)	)	
	)	
	)	

The United States Environmental Protection Agency (EPA), Region VII (Complainant) and S.B.K, L.C., (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) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**A. FINDINGS OF VIOLATIONS**

**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 Consent Agreement and Final Order 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 VII, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA, Region VII (Complainant).

4. Respondent is Cedar Development, L.L.C., (Cedar Development), a company registered under the laws of Iowa and authorized to conduct business in the State of Iowa.

### **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) 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.

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 Iowa Department of Natural Resources (IDNR) is the state agency with the authority to administer the federal NPDES program in Iowa 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. IDNR issued an NPDES General Permit No. 2 for the discharge of storm water associated with construction activities (General Permit). The General Permit became effective on October 1, 2002, and expires on October 1, 2007. The General Permit governs storm water discharges associated with industrial activity for construction activity. Part IV of the General Permit specifies the requirements for Storm Water Pollution Prevention Plans (SWPPP) to control storm water discharges and states that a Facility must implement the requirements of the SWPPP as a condition of the permit. Part IV(A)(1) of the General Permit requires that the SWPPP be completed prior to the submittal of an Notice of Intent (NOI) to be covered under the Permit. Part IV of the General Permit also requires a permittee to comply with all conditions of the permit, and imposes a duty to mitigate any discharge in violation of the permit.

### **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 residential subdivision construction site known as the Blackhawk Hills Addition, which is located near Blackhawk Trail and Scott Park Road, in Eldridge, Iowa (the Site). 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.

15. Storm water, snow melt, surface drainage and runoff water leaves Respondent’s facility and goes into Crow Creek, a perennial stream, which is a tributary of the Mississippi River. 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). At least six (6) separate rain events greater than or equal to 0.5 inches of precipitation occurred from September 2005, through the date of the EPA inspection on April 21, 2006.

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 from the Blackhawk Hills Addition Site into "navigable waters" as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

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. In approximately August 2004, Respondent submitted a Notice of Intent (NOI) for coverage under IDNR's General Permit. The IDNR issued Respondent authorization under the General Permit on August 27, 2004, with authorization provided through August 27, 2008 (hereafter "Respondent's Permit").

22. On or about April 21, 2006, EPA performed an inspection of the Site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). At the time of the inspection approximately 23 acres were disturbed for development of the Blackhawk Hills Addition. Following EPA's inspection, EPA issued Respondent a Notice of Violation (NOV) for various violations of Respondent's permit observed during the inspection.

**Count 1  
(Failure to Implement and/or Maintain Erosion Control Structures)**

23. The facts stated in paragraphs A.13 through A.22, above, are hereby incorporated by reference.

24. Part 3 of Respondent's SWPPP requires that each control structure be maintained in an operable condition through the life of the project until final stabilization has been achieved.

25. At the time of EPA's inspection, sediment controls were not maintained at the Site, including silt fences which were full and overtopped with sediment, and silt fence-straw bale combinations which were filled and overtopped with sediment, resulting in observable discharges of sediment into Crow Creek.

26. Respondent's failure implement and/or to maintain appropriate erosion controls is a

violation of Part IV(D)(2) of the Respondent's Permit, and 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/or Document Site Inspections)**

27. The facts stated in paragraphs A.13 through A.26, above, are hereby incorporated by reference.

28. Part IV(D)(4) of the Respondent's Permit requires that qualified personnel inspect disturbed areas of the construction site that have not been finally stabilized at least once every seven calendar days and within 24 hours of the end of a storm with precipitation of 0.5 inches or greater.

29. Part IV(D)(4)(C) of the Respondent's Permit requires that the Respondent record and retain a report summarizing the scope of the inspection, names(s) and qualifications of personnel making the inspection, the date(s) of inspections, any major observations relating to the implementation of the storm water pollution prevention plan, and actions taken based on the results of the inspection. Such reports must be retained for at least three (3) years, or until the project terminates.

30. EPA's inspector reviewed available Site records and found that the date of the first inspection report was April 25, 2005, although site disturbance began in approximately September 2004. For the period between September 2004, and April 25, 2005, Respondent failed to conduct and/or document any inspections (for approximately the first eight (8) months of disturbance at the Site). Further, EPA's inspector found that for this period, there was no documentation showing that inspections were properly conducted within 24 hours after a storm event with 0.5 inches or more of precipitation.

31. Respondent's failure to properly conduct and/or document site inspections and/or to retain required inspection reports is a violation of Part IV(D) of Respondent's Permit, and is a violation of Sections 301(a) and 402(p) of the CWA, 33 U.S.C. § 1311(a) and § 1342(p).

**Relief**

32. Based on the foregoing Findings of Violation, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA, Region VII hereby proposes to issue a Final Order assessing an administrative penalty against the SBK, L.C., for the violations cited above, in the amount of \$30,000.

**B. CONSENT AGREEMENT**

1. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of this Consent Agreement and Final Order.
2. Respondent admits the jurisdictional allegations of this 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 this Consent Agreement and Final Order.
3. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this Consent Agreement and Final Order.
4. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal this Consent Agreement and Final Order.
5. Respondent and Complainant agree to conciliate the matters set forth in this Consent Agreement and Final Order without the necessity of a formal hearing and agree to each bear its own costs and attorney's fees incurred as a result of this action.
6. This Consent Agreement and Final Order addresses all civil and administrative claims for the CWA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.
7. Nothing contained in this Consent Agreement and Final Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.
8. The undersigned representative of the Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind the Respondent to the terms contained herein.
9. Cedar Development, L.L.C., certifies, that as of the date that it executes this Consent Agreement and Final Order, it is in compliance at the Blackhawk Hills Addition Site with the requirements of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.
10. The effect of settlement described in Paragraph B.6, above, is conditional upon the accuracy of the Respondent's representations to EPA as memorialized in Paragraph B.9, above, of this Consent Agreement and Final Order.
11. Respondent agrees that, in settlement of the claims alleged in this Consent Agreement and Final Order, Respondent shall pay a penalty of \$30,000, as set forth in Paragraph C.1 of the Final Order.
12. Respondent understands that 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 applicable statutory rate.

**C. FINAL ORDER**

**Payment Procedures**

Pursuant to the authority of Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and according to terms of this Consent Agreement and Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a total mitigated civil penalty of Thirty Thousand Dollars (\$30,000) within thirty (30) days of the effective date of this Consent Agreement and Final Order.

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 VII  
P.O. Box 371099M  
Pittsburgh, Pennsylvania 15251.

The payment shall identify the Respondent by name and docket number (CWA-07-2007-0022). Copies of the check shall be mailed to:

Howard C. Bunch  
Sr. Assistant Regional Counsel  
U.S. Environmental Protection Agency - Region VII  
901 North 5th Street  
Kansas City, Kansas 66101

and

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

3. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

#### **Parties Bound**

4. This Consent Agreement and 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 and Final Order.

#### **General Provisions**

5. Notwithstanding any other provision of this Consent Agreement and Final Order, EPA reserves the right to enforce the terms of this Consent Agreement and Final Order 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.

6. Complainant reserves the right to take enforcement action against Respondent for any past or future violations of the CWA and its implementing regulations and to enforce the terms and conditions of this Consent Agreement and Final Order.


7. This Order shall be entered and become effective after the conclusion of the period of 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. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

8. Respondent and Complainant shall each bear their respective costs and attorney's fees.




9. The headings in this Consent Agreement and Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement and Final Order.

**For the Respondent Cedar Development, L.L.C.:**

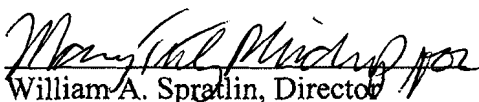
  
Printed Name: Scott Andersen  
Title: Manager

\_\_\_\_\_  
Date

**For the Complainant:**  
The United States Environmental Protection Agency

  
Howard C. Bunch  
Sr. Assistant Regional Counsel

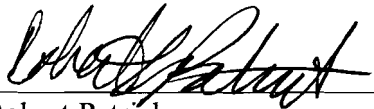
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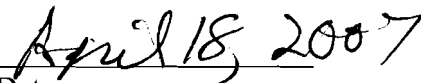
  
William A. Spratlin, Director  
Water, Wetlands and Pesticides Division

2/26/07  
Date

*In the matter of  
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IT IS SO ORDERED. This Final Order shall become effective immediately.

  
\_\_\_\_\_  
Robert Patrick  
Regional Judicial Officer

  
\_\_\_\_\_  
Date

IN THE MATTER OF Cedar Development, L.L.C., Respondent  
Docket No. CWA-07-2007-0022

CERTIFICATE OF SERVICE

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

Copy hand delivered to  
Attorney for Complainant:

Howard C. Bunch  
Senior Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101


Copy by Certified Mail Return Receipt to:

Matt Adams, Esq.  
Moyer and Bergman, P.L.C.  
2720 First Avenue NE  
Cedar Rapids, Iowa 52402

and

Scott Andersen, Registered Agent  
Cedar Development, L.L.C.  
1295 Jordan Village, Suite 2  
North Liberty, Iowa 52317

Dated: 4/19/07

  
Kathy Robinson  
Hearing Clerk, Region 7