

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
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)

Valley Hills Development Co.)
29300 E. Pink Hill Road)
Grain Valley, Missouri 64029)

Respondent)

Proceedings under Section 309(a) of the)
Clean Water Act, 33 U.S.C. § 1319(a))

) Docket No. CWA-07-2006-0100

) 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").

2. Respondent is Valley Hills Development Co., a company incorporated under the laws of Missouri and authorized to conduct business in the State of Missouri.

Statutory and Regulatory Framework

3. 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.

4. 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.

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 a NPDES permit issued pursuant to Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

6. Pursuant to 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-R104367 (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

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 an approximately 29.3 acre residential construction site known as Valley Hills 4th Plat, located just west of the intersection of Highway 40 and Kirby Road on the west side of Grain Valley, Missouri ("Site"). Construction activities occurred at the Site including clearing, grading and excavation which disturbed five (5) or more acres of total land area.

13. Storm water, surface drainage, and runoff water leaves Respondent's facility and goes into an unnamed tributary of Sni-A-Bar creek, one and one-half miles southeast of the Site. 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. Respondent's storm water runoff is a "discharge of a pollutant" as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

16. Respondent's facility is a "point source" which caused the "discharge of pollutants" as defined by Section 502 of the CWA, 33 U.S.C. § 1362.

17. The unnamed tributary of Sni-A-Bar Creek and Sni-A-Bar Creek are each "navigable waters" as defined by Section 502 of the CWA, 33 U.S.C. § 1362.

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 for storm water discharges from the Site under the General Permit described in paragraph 10 above. Respondent was issued the permit on April 19, 2002.

20. On March 31, 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 Respondent's compliance with Sections 301 and 402 of the CWA.

FINDINGS OF VIOLATION

Count I

FAILURE TO INSTALL APPROPRIATE BEST MANAGEMENT PRACTICES

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

22. Part 7. of Requirements and Guidelines section of Respondent's Permit requires Respondent to implement sediment and erosion control practices that are effective in minimizing erosion and sediment release from the Site from storm water discharges associated with the land

disturbance activities. These practices are to be contained in a Storm Water Pollution Prevention Plan (SWPPP) that addresses the information and practices contained in Part 8. of the Requirements and Guidelines of Respondent's Permit.

23. 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 construction site.

24. At the time of the EPA inspection referenced in paragraph 20 above, the EPA inspector observed the presence of sediment in the unnamed tributary to Sni-A-Bar Creek. The sediment migration into the tributary indicates that Respondent did not implement proper erosion controls to minimize erosion and sediment release from storm water discharges associated with Respondent's land disturbance activities.

A. Failure to Install Sedimentation Basin

25. Part 8.h. of the Requirements and Guidelines section Permit requires use of sedimentation basin for each drainage area with 10 or more acres disturbed at one time. In addition, Respondent's SWPPP calls for construction of a sediment basin at the common drainage location of the construction site to be installed prior to clearing or grading other portions of the Site.

26. At the time of the EPA inspection referenced in paragraph 20 above, the EPA inspector observed the absence of sedimentation basins at Respondent's facility.

B. Failure to Install Sediment Fencing

27. Respondent's SWPPP specifies that sediment fencing will be installed at the site to intercept and detain small amounts of sediment from disturbed areas in order to prevent sediment from leaving the site.

28. At the time of the EPA inspection referenced in paragraph 20 above, the EPA inspector observed the complete absence of sediment fencing at Respondent's facility.

C. Failure to Install Stabilized Construction Site Entrances/Exits

29. Part 7. of the Requirements and Guidelines section of Respondent's Permit requires the facility to fully implement the provisions of the SWPPP required as a condition of the general permit throughout the term of the land disturbance project. Respondent's SWPPP states stabilized construction entrances are to be installed prior to clearing or grading other portions of the Site. In addition, the SWPPP states the purpose of the stabilized construction entrance is to help reduce vehicle tracking of sediments.

30. At the time of the EPA inspection referenced in paragraph 20 above, the EPA inspector observed the absence of stabilized construction entrances/exits. The inspector further observed heavy trackout from two construction entrances at the Site onto the public right-of-way.

D. Petroleum Waste Storage

31. Part 6. of the Requirements and Guidelines section of Respondent's Permit requires petroleum waste products, among other contaminants, to be stored so that the material is not exposed to storm water. In addition, Part 6. requires sufficient practices of spill prevention, control, and/or management to prevent spills from entering a water of the state. Part 8.i. of the Requirements and Guidelines section of Respondent's Permit requires Respondent's SWPPP to address Additional Site Management BMPs, including the installation of containment berms and use of drip pans at petroleum product and liquid storage tanks and containers. Additionally, Respondent's SWPPP states that petroleum products will be stored in tightly sealed containers that are clearly labeled.

32. At the time of the EPA inspection referenced in paragraph 20 above, the EPA inspector observed that a half-full 55 gallon drum of used oil was open and not labeled as "used oil." In addition, the drum of used oil was not surrounded by a containment berm and was not located on a drip pan. Respondent failed to implement sufficient practices of spill prevention, control, and/or management to prevent spills from entering a water of the state.

33. Respondent's failure to install appropriate sediment, erosion, and storm water contaminant control practices as referenced in paragraphs 21 through 31 above is a violation of Respondent's Permit and as such, is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342.

Count II

FAILURE TO PERFORM AND DOCUMENT SITE INSPECTIONS

34. The facts state in paragraphs 11 through 20 above are herein incorporated.

35. Part 10. of the Requirements and Guidelines section of Respondent's Permit requires that regular 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. Respondent's SWPPP also sets forth an inspection schedule and recording requirements.

36. The EPA inspection referenced in paragraph 20 above revealed that Respondent did not perform site inspections at a minimum of once per week, note any deficiencies in a report, correct deficiencies within seven days of the inspection, and keep the report at a site which is readily available from the permitted site. Respondent failed to conduct and document site inspections from the date of site disturbance, October 2004, until the date of inspection.

37. Respondents failure to perform and document site inspections is a violation of Respondent's 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).

CONSENT AGREEMENT

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

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

40. Respondent explicitly waives its right to a hearing on any issue of fact or law set forth in the Complaint.

41. Respondent waives any right to contest the allegations in the above Complaint and its right to appeal the proposed Final Order accompanying this Complaint and Consent Agreement.

42. Respondent and Complainant shall pay their own costs and attorneys' fees incurred as a result of this action.

43. This Complaint and Consent Agreement/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.

44. 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.

45. Respondent agrees to pay a mitigated civil penalty of Thirty-one Thousand Five Hundred Dollars (\$31,500.00) within thirty (30) days of the effective date of the Complaint and Consent Agreement/Final Order (the date by which payment must be received shall hereafter be referred to as the "due date"). The effective date of the Final Order is the date on which it is signed by the Regional Judicial Officer, following Respondent's signature and the conclusion of the public comment period required under Section 309(g)(4)(A) of the CWA.

46. Payment of this civil penalty shall resolve all civil and administrative claims of the United States alleged in the above Complaint.

47. The penalty payment made by Respondent pursuant to this Complaint and Consent Agreement/Final Order is payment of a civil penalty and shall not be deductible for purposes of federal taxes.

48. 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/Final Order.

49. Respondent certifies by the signing of this Complaint and Consent Agreement/Final Order that it is in compliance at the Valley Hills 4th Plat site with the requirements of Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

50. The effect of settlement described in paragraph 46 above is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 49 above of this Complaint and Consent Agreement/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. Respondent shall pay a civil penalty Thirty-one Thousand Five Hundred Dollars (\$31,500.00). The payment shall identify the Respondent by name and docket number and shall be by certified or cashiers check made payable to "United States Treasury," and remitted to:

Mellon Bank
US EPA Region 7
PO Box 371099M
Pittsburgh, PA 15251

Copies of the check shall be mailed to:

Jonathan W. Meyer
Assistant Regional Counsel
U.S. Environmental Protection Agency
901 North 5th Street
Kansas City, Kansas 66101

and

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

2. Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the 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 and interest. 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.

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

4. With respect to matters not addressed in this Complaint and Consent Agreement/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 for punitive damages.

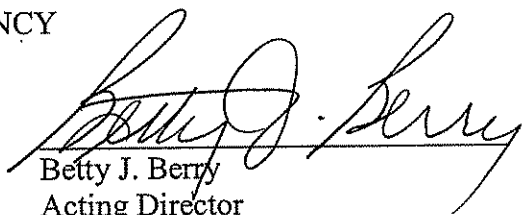
5. Compliance with the terms of this Consent Agreement/Final Order shall resolve the civil and administrative claims of the United States alleged in the above Complaint in this matter. This Final Order shall terminate after satisfaction by Respondent of the requirements of this Final Order.

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 Complaint and Consent Agreement/Final Order shall be filed with the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101.

COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY

04/04/06
Date



Betty J. Berry
Acting Director
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency
Region VII

4/4/06
Date


Jonathan W. Meyer
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII

RESPONDENT:
Valley Hills Development Co.

2-3-06
Date


Name: Jim Tharp
Title: President

IT IS SO ORDERED.

April 6, 2006
Date

Robert L. Patrick
Robert L. Patrick
Regional Judicial Officer

IN THE MATTER OF Valley Hills Development Co., Respondent
Docket No. CWA-07-2006-0100

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:

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

Copy by overnight Federal Express to:

Jessica E. Merrigan, Esq.
Lathrop & Gage
2345 Grand Blvd.
Suite 2800
Kansas City, Missouri 64108

4/6/06
Dated

Kathy Robinson
Kathy Robinson
Regional Hearing Clerk