

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

IN THE MATTER OF )

SMITH & COMPANY LANDFARM )  
ADVANCE, MISSOURI )

Respondent )

Proceedings under Section 309(a)(3) )  
of the Clean Water Act, )  
33 U.S.C. § 1319(a)(3) )

FINDINGS OF VIOLATION/  
ORDER FOR COMPLIANCE

Docket No. CWA-07-2009-0084

**I. PRELIMINARY STATEMENT**

1. The following FINDINGS OF VIOLATION and ORDER FOR COMPLIANCE ("Order") are made and issued pursuant to the authority of Section 309(a)(3) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a)(3). This authority has been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator, EPA Region VII and further delegated to the Director of the Water, Wetlands, and Pesticides Division, EPA Region VII.

2. Respondent is Smith and Company Landfarm, a company registered under the laws of Missouri and authorized to conduct business in the State of Missouri.

**II. 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, 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 "waters of the United States", as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362 and 40 CFR § 230.3(s).

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, requires, in part, that a discharge of storm water associated with an industrial activity must conform to the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

6. Pursuant to Section 402(p) of the CWA, 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)(vi) defines "storm water discharge associated with industrial activity," in part, as "the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant." A facility classified as Standard Industrial Classification 55 is considered to be engaging in "industrial activity" for purposes of paragraph 40 C.F.R. § 122.26 (b)(14)(ii).

9. The Missouri Department of Natural Resources ("MDNR") is the state agency with authority to administer the federal NPDES program in Missouri pursuant to Section 402 of the CWA. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

### **III. FINDINGS OF FACT**

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

11. At all times relevant to this action, Respondent was the owner and/or operator of an industrial facility engaged in treating soils contaminated with petroleum hydrocarbons known as Smith and Company Landfarm located at County Road 236, Advance, Missouri, 63901 with a SIC code of 5541.

12. Storm water, snow melt, surface drainage and runoff water leaves Respondent's facility and flows into an unnamed tributary of Wolf Creek. The runoff and drainage from Respondent's facility is "storm water" as defined by 40 C.F.R. § 122.26(b)(13).

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

14. 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).

15. Respondent discharges pollutants into “waters of the United States” as defined by 40 CFR § 230.3(s).

16. Storm water runoff from Respondent’s treatment cell and stormwater detention basin result in the addition of pollutants from a point source to waters of the United States, and thus is the “discharge of a pollutant” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

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

18. MDNR granted NPDES Permit No. MO-0132837 (“Permit”) to Respondent, effective June 29, 2007 through June 28, 2012, for discharges from its facility to the unnamed tributary of Wolf Creek, which is a “water of the United States” as defined by 40 CFR § 122.2.

19. On May 20-21, 2008, EPA performed an inspection of Smith and Company Landfarm facility at County Road 236 in Advance, Stoddard County, Missouri, under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a). The inspection included a facility walk-through inspection and a check of the self-monitoring records.

#### **IV. FINDINGS OF VIOLATION**

20. The facts stated in paragraphs 10 through 19 above are herein incorporated.

#### **Count I – Permit Limit Exceedance**

21. Part A, Effluent Limitations and Monitoring Requirements of the Permit, sets limits for Total Suspended Solids (“TSS”) of 30 milligrams per liter for a monthly average and 50 milligrams per liter for a daily maximum. A sample collected on December 12, 2007 documented a result of 122 milligrams per liter which exceeds the daily maximum. The monthly average for December 2007 was 38.83 milligrams per liter which exceeds the monthly average limit.

22. Part A, Effluent Limitations and Monitoring Requirements of the Permit limits pH to the range of 6.5-9.0 standard pH units. A pH sample analyzed on March 31, 2008 and reported with the March 2008 DMR reports a pH value of 4.26 standard units in violation of the permit limit.

### **Count II – Failure to Sample and Inspect**

23. Part A, Effluent Limitations and Monitoring Requirements of the Permit, requires monthly and quarterly monitoring for outfalls 002 and 003. The permit requires a monthly grab sample reporting depth to groundwater in feet and a quarterly sample for Methyl Tertiary Butyl Ether (“MTBE”) and Total Petroleum Hydrocarbons (“TPH”). A sample was not taken and no results were reported for the third and fourth quarters of 2007.

24. Part C, Special Conditions of the Permit, paragraph 6 states that “only soils contaminated with gasoline, diesel fuel, fuel oil, kerosene, or aviation fuel, and having a TPH concentration of 10,000 ppm dry weight or less, may be placed in a treatment cell under the permit.” During the May 2008 inspection, the EPA requested documentation from the Respondent in order to determine that the soils met these requirements, but as of this date no such information has been provided to EPA. Failure to provide the requested information is a violation of Part 1, Section B.8 of the Standard Conditions of the Permit.

25. Part C, Special Conditions of the Permit, paragraph 15, requires that the facility be inspected once per week by the permittee and a brief written report prepared per the conditions specified in the permit. The EPA inspector documented that Respondent’s inspection records for September 3, 2007, and January 21 and April 21, 2008 were missing, in violation of the permit.

26. Part D, Schedule of Compliance of the Permit, requires that within ninety days of the issuance of the permit on June 27, 2007 the permittee was to conduct and submit to the Southeast Regional Office of the Missouri Department of Natural Resources, a groundwater study of the landfarm site per the conditions specified in the permit. The study was not completed until March 2008.

### **Count II – Improper Sampling Procedures**

27. The Standard Conditions of the Permit, Part 1, Section A.4 requires that test procedures for the analysis of pollutants shall be in accordance with the Missouri Clean Water Commission Effluent Regulation 10 CSR 20-7015. 10 CSR 20-7015 in turn requires that the sampling procedures be in accordance with methods set out in 40 CFR 136. 40 CFR 136.3 states that the allowable holding time for Settleable Residue is 48 hours. The inspectors review of Respondent’s January 2008 monitoring report revealed that the holding time for Settleable Residue was exceeded. This was due to the Respondent not mailing the samples in a timely manner so that the commercial carrier held them over the weekend. This is a violation of the permit.

28. Federal regulations at 40 C.F.R. Part 136.3, state that Whole Effluent Toxicity (“WET”) samples must be cooled to less than or equal to six degrees Celcius during the compositing period. During the inspection the Respondent indicated that the WET sample was

not iced. Furthermore, the Respondent indicated that the samples were collected in a single five gallon bucket during low flow. The definition of "composite sample" in the Missouri Clean Water Regulation is "a combination of individual samples collected over a period of time." Failure to perform the WET sampling according to the appropriate procedures is a violation of the Permit.

29. Part C, Special Conditions of the Permit, paragraph 12(f) requires that, "The retention basin provides for settling of suspended material, and adequate retention time to allow for testing water and treatment as needed to meet permit effluent limitations before discharging." During the May 2008 inspection, the EPA inspector was told that samples are collected during a discharge event from the retention basin and not before a discharge, as required by the permit. This is a violation of the permit.

### **Count III – Operation and Maintenance**

30. Part C, Special Conditions of the Permit, paragraph 9 requires that the, "Permittee must provide sediment and erosion control to the entire facility, including any remediated soils that are placed on site. . ." During the inspection it was observed that the remediated soils stockpiled near the treatment cell were not protected from erosion. The EPA inspector further observed that some areas of the treatment facility had little or no vegetation. The failure to install and/or maintain sediment and erosion controls is a violation of the permit.

31. Part C, Special Conditions of the Permit, paragraph 12(b) states, "The treatment cell floor shall be surrounded by a two foot berm to contain contaminated soils and exclude water runoff." During the inspection it was observed that a two foot berm was not provided at the northeast section of the land-farm cell which appeared to allow stormwater runoff. Failure to provide a two foot berm around the entire cell floor is a violation of the permit.

32. Part C, Special Conditions of the Permit, paragraph 13 states, "Stockpiled soils shall be placed on 12 mil or greater plastic unless soil is under roof and not exposed to stormwater. The permittee shall enact whatever steps are necessary to prevent the plastic from being blown off by normal weather. In the event of severe weather, permittee shall inspect the cover and correct and damage (within) two days." During the inspection it was observed that some of the contaminated soils were not properly covered due to a torn and wind blown cover. This is a violation of the permit.

33. Part C, Special Conditions of the Permit, paragraph 8 states that, "Soils will be managed in accordance with the Missouri Risk-Based Corrective Action for Underground Storage Tanks Technical Guidance Document. . . . As an alternative to determining soil type and land use, the permittee may instead remediate soils to comply with the Default Target Levels (DTLs). If soil will be remediated to DTLs, confirmation sampling is still required prior to removing the soil from the landfarm. In either case, the permittee shall submit sample analysis along with the proposed end use to the Water Protection Program for approval prior to

removal.” The DTL sets a maximum limit of 51.6 mg/kg-dry for the compound Total Petroleum Hydrocarbons-Gasoline Range Organics (“TPH-GRO”) C6-C10 for soils. During the EPA inspection it was noted that soil samples collected by Respondent on August 20, 2007 for soils being removed from the facility yielded a result of 64.6 mg/kg-dry for TPH-GRO C6-C10, thus exceeding the maximum DTL, and violating the Permit.

#### **Count IV – Failure to Apply for a Permit**

34. Part D, Schedule of Compliance, paragraph 2 of the permit states, “Within 180 days of issuance of this permit, submit notification to the Southeast Regional Office that the installation of any additional monitoring wells is complete. . . . If additional monitoring wells are installed the permittee must also submit an application for modification of this permit, to add sampling requirements for the new monitoring wells.” Additional groundwater monitoring wells were installed in May, 2008 but a permit application was not sent to MDNR in violation of the permit.

35. Standard Conditions for NPDES Permits, Part I General Conditions, Section B, Paragraph 1.b. states, “Any facility expansions, production increases, or process modifications which will result in new, different or increased discharges of pollutants shall be reported by submission of a new NPDES application at least sixty (60) days before each such change, or, if they will not violate the effluent limitations specified in the permit, by notice to the Department at least thirty (30) days before such changes.” During the EPA inspection it was noted that no permit application was submitted to MDNR to document the bag filter installation done in December 2007. This is a violation of the permit.

#### **Count V – Failure to Report**

36. Standard Conditions of the Permit, Part 1, Section B.2.a. of the Permit, states, “If, for any reason, the permittee does not comply with or will be unable to comply with any daily maximum effluent limitation specified in this permit, the permittee shall provide the department with the following information, in writing within five (5) days of becoming aware of such conditions. . . .” The Respondent could not provide a copy of its TSS permit limit exceedance notification to MDNR. The Respondent stated that notification was given to MDNR orally. This is a violation of the permit.

37. Respondent’s violations of its Permit, as described in Paragraphs 21-36 above, are violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and are violations of a permit issued pursuant to 402(p) of the CWA, 33 U.S.C. § 1342(p).

### **VI. ORDER FOR COMPLIANCE**

38. Based on the Findings of Fact and Findings of Violation set forth above, and pursuant to Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), Respondent is hereby

ORDERED to take the actions described below in paragraphs 38 through 44.

39. Within thirty (30) days of the Effective Date, as defined in Paragraph 50 herein, Respondent shall take all corrective action that is necessary to correct the deficiencies, eliminate and prevent recurrence of the violations cited in this Order and to come into compliance with all of the applicable requirements of its Permit.

40. Within 60 days of the Effective Date, Respondent shall prepare and submit to EPA with a copy to MDNR, a written report describing all actions taken to achieve and maintain compliance.

41. In the event that Respondent believes complete correction of the violations cited in this Order is not possible within thirty (30) days of the Effective Date, 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. 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.

a. If EPA, in consultation with MDNR, approves of the work plan, the work plan shall be implemented according to the schedule for implementation in the approved plan.

b. If EPA, in consultation with MDNR, disapproves the work plan with comments, Respondent shall address the comments and resubmit the work plan for review within thirty (30) days of receipt of EPA's disapproval.

c. Upon resubmission, EPA, in consultation with MDNR, in its sole discretion, may either approve the work plan, or if EPA determines that the work plan does not adequately address the comments provided by EPA, EPA may unilaterally modify the work plan, and will provide Respondent with a copy of the work plan as modified. Respondent shall implement the modified work plan according to the schedule contained therein.

42. On the 28<sup>th</sup> day of the month immediately following the Effective Date and on the 28<sup>th</sup> day of every 3<sup>rd</sup> month thereafter through 2012, Respondent shall submit to EPA with a copy to MDNR sampling and analysis information. Such information shall include all DMRs and any associated documents, including the sampling and analysis documentation of the influent and effluent, bench sheets, removal efficiency calculations, and letterhead data reports from the certified laboratory performing analyses. Respondent shall submit DMRs to MDNR with a copy to EPA on the same schedule.

### **Certification**

43. Each submittal to EPA pursuant to the requirements of this Order shall include a written statement by Respondent signed by a principle executive officer or a ranking elected official, or by a duly authorized representative of that person, that contains the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

### **Submittals**

44. All documents required to be submitted to EPA by this Order shall be transmitted by mail to:

Ms. Cynthia Sans  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency - Region 7  
901 North Fifth Street  
Kansas City, KS 66101

45. A copy of documents required to be submitted to MDNR by this Order shall be transmitted 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

Mr. Gary Gaines, Director  
Missouri Department of Natural Resources  
Southeast Regional Office  
2155 N. Westwood Blvd.  
Poplar Bluff, MO 63901

## **VII. GENERAL PROVISIONS**

### **Effect of Compliance with the Terms of this Order for Compliance**

46. 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.

47. This Order does not constitute a waiver or a modification of any requirements of the CWA, 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(b), (c), (d) or (g) of the Act, 33 U.S.C. § 1319(b), (c), (d) or (g), 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**

48. 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**

49. 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.

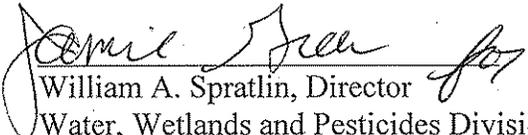
### **Effective Date**

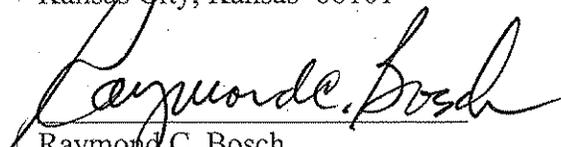
50. The terms of this Order shall be effective and enforceable against Respondent upon the date it is signed by EPA.

### Termination

51. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 29<sup>th</sup> day of June, 2009.

  
William A. Spratlin, Director  
Water, Wetlands and Pesticides Division  
U.S. Environmental Protection Agency  
Region VII  
901 North Fifth Street  
Kansas City, Kansas 66101

  
Raymond C. Bosch  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region VII  
901 North Fifth Street  
Kansas City, Kansas 66101

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/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 Findings of Violation/Order for Compliance by first class certified mail, return receipt requested, to:

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

Mr. Gary Gaines, Director  
Missouri Department of Natural Resources  
Southeast Regional Office  
2155 N. Westwood Blvd.  
Poplar Bluff, MO 63901

7-1-09  
Date

Kimberly Koffel